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Crime, Criminal Justice and Criminology in Post-Soviet Ukraine

A Report

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

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

Abstract

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

Outline

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

Sources and Acknowledgments

The Report relies upon not only published literature in Russian and Ukrainian, but also unpublished materials, including statistical reports and government studies, as well as interviews with many scholars, judges, legal officials, procurators, and policemen. The Report benefitted from research assistance and advice from many scholars and legal officials in Ukraine, including Iu. M. Groshevoi, A. G. Kulik, A. A. Svetlov, A. P. Zakaliuk, and V. S. Zelenetskii.

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Chapter One

INDEPENDENT UKRAINE: AN OVERVIEW

1. Geopolitical Significance

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

With NATO expanding its borders eastward (to the western edge of Ukraine), Ukraine's role in maintaining regional stability has only increased. If a newly expanded NATO is not to find itself face to face with a resurgent Russia, Ukraine will have to remain independent and resist the stationing of Russia's troops on its soil. Ukraine clearly has the political desire to remain independent of Russia, but it is not clear that Ukraine has the economic wherewithal and internal stability to back up its political goals. Its turbulent history, the legacy of Soviet rule, the immaturity of its democracy, and the chaos in its economy all call into question Ukraine's

coherence as an independent state. Moreover, if Ukraine continues to provide a hospitable environment for organized crime, it will provide a constant source of problems for NATO and EU countries -- as problems with the drug trade and trafficking in women already demonstrate. These factors help explain the immense attention the country has received in US foreign policy in recent years (in 1998, Ukraine was the third-largest recipient of US foreign aid, behind only Israel and Egypt).²

2. Internal Divisions.

Ukraine's history has been defined by its own internal divisions between East and West. Most of Eastern Ukraine has been under Russian control since the 17th century, and the Russian state today traces its roots to medieval Kiev (which it emphatically calls "Kievan Rus"). The Western quarter of the country (including areas traditionally known as Galicia), with between 1/5 and 1/6 of the total population, was not linked to Russia or the Soviet Union until 1939. These areas were part of the Austro-Hungarian Empire until 1920, when a large portion of this territory was incorporated into interwar Poland; it did not become part of the USSR until the Molotov-Ribbentrop pact ceded this part of Poland to the USSR.

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

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

Moments of political unity in Ukraine have been rare. Ukraine's declaration of independence, for example, was widely supported across the political spectrum, and in the December 1991 referendum on independence, over 90 percent voted for independence, including a majority in every region of Ukraine, including those traditionally linked to Russia. Since that time, however, the society and government have been divided about how to proceed on virtually all significant issues, including relations with Russia. Many of those who supported Independence were dismayed to see the government rupturing long-standing ties with Russia. After several years of acrimonious relations, a tentative compromise has been reached, in which Ukraine upholds economic ties with Russia but does not participate in Russian-led regional

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

3. *The Ambiguous and Ambivalent Emergence of Independence.*

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

Genuine independence was achieved suddenly, in the wake of the August 1991 putsch. In fact, the Ukrainian state was created almost spontaneously, in a rush of pronouncements in the late summer and fall of 1991.⁵ An amalgam of nationalists and an opportunistic political elite hammered out a pact of mutual convenience that yielded Ukraine's secession from the USSR. Put simply, the nationalists made a deal with political and economic officials (the *nomenklatura*)

in Kyiv. The nationalists promised not try to remove the government from power in its drive for independence if the government in Kiyv would break with the Soviet Union. For both sides, this was a sweet deal. The *nomenklatura* obtained their primary goal (retaining power), and the nationalists achieved their ultimate goal, an independent Ukraine. Finally, in December 1991, in the Belorussian forest outside of Minsk, President Kravchuk signed an agreement terminating Ukraine's participation in the Soviet Union.

The fact that independence was brought about neither by revolution nor the overthrow of the ruling elite has had lasting consequences for politics and policies in Ukraine. By agreeing to let the communist-era government retain power under a new label, the opposition made future political and economic change extremely difficult. Very few, if any, government officials had an interest in the rapid changes that political and economic reformers sought and the country objectively needed. And the expectations of nationalist reformers that the old guard would gradually be swept from power were naive. The *nomenklatura* in fact has managed to preserve real power, and control over property, quite easily since 1991, by means of a simple strategy -- by "recruiting to its ranks the most conformist leaders of the former counter-elite and by a timely change in its slogans for the sake of a new 'legitimacy.'"⁶ In addition, the Communist Party of Ukraine, to which many elite belong, has been at least as rigid and conservative as Russia's (some observers speculated that the Ukrainian communists endorsed independence so Gorbachev would not force upon them reformist economic policies). The deal brokered by the nationalists in 1991 thus left in power a cohort of officials vitally interested in the preservation of the previous political and economic system. A powerful and entrenched opposition to change was thus built into the transition in Ukrainian politics.

4. Ukraine's Constitution

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

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

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

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

5. *Ukraine's Weak State and the Problem of Economic Reform*

Although a 1990 Deutsche Bank report judged Ukraine the most promising post-Soviet economy, Ukraine has been a disaster since 1991. The first three years of independence were accompanied by hyperinflation, and between 1991 and 1998, Ukraine's real GDP declined by a cumulative 63 percent (compared to just over a 40 percent in Russia). Among the post-socialist countries, only Albania and Turkmenistan have suffered more severe downturns. Virtually no sector or industry has escaped a deep and broad depression. Although many aspects of macroeconomic stabilization were achieved after 1994, with the highlight being the introduction of a new currency (the Hryvnia) in 1996, the prospects for recovery soon are bleak. Most economic indicators and international authorities paint a dire picture for Ukraine. In 1996, the World Bank categorized Ukraine as among the "group 4" (slow reform) countries. In 1997, the World Economic Forum ranked Ukraine 52nd of 53 countries in overall competitiveness in its *Global Competitiveness Report*. And in 1998, The Heritage Foundation-Wall Street Journal *Index of Economic Freedom* ranked Ukraine 125th out of 156 countries, labeling Ukraine as among the "mostly unfree" economies of the world. Industrial investment (both domestically and from abroad) remains low -- despite lower inflation and a more stable currency. Since 1995 Ukraine has become dependent on massive infusions of capital from multilateral lending institutions, particularly the International Monetary Fund, in order to prop up its economy.

For the average Ukrainian, the consequences of the economic collapse have been devastating, even if difficult to quantify. Hyperinflation ruined the savings of the most defenseless sectors of the population, especially pensioners and the unemployed. Official unemployment rates still run at around 3 percent, but this is not an accurate measure. Many

workers have been placed on "administrative leave," or are officially listed as "employed" but are paid part-time, or not at all. In March 1993, inspections of 6,900 enterprises conducted by the State Center of Employment revealed that nearly 572,000 of the 3.9 million workers, or 14.6 percent, were on long-term leave. In certain regions of Ukraine and branches of industry at that time, more than 44 percent were compelled to take leave, which resulted in levels of hidden unemployment reaching 58 percent. Recent estimates place the number of "hidden unemployed" at close to 3.5 million. Many of these workers have turned to "shadow activities" for their sustenance. Registered unemployment grew from 162,000 in January 1996, to 351,100 in January 1997, before reaching 1,052,000 by July 1998. The ILO, however, estimated actual unemployment levels at closer to 9.8 percent, or three times the official rate. The situation is so dire that many Ukrainians go to Russia as gastarbeiters. As in the cases of other countries undergoing such profound socio-economic collapses, these conditions are criminogenic, a topic we explore in detail in Chapter 2.

Despite the extreme centralization of executive authority in Ukraine, and the Constitutional right to rule by decree, the President has not been effective at governing or reforming the economy. Kuchma, the former Prime Minister and current President, has been much more reform-minded than his predecessor (Kravchuk) and both parliaments, but he has not taken many necessary steps for economic recovery and he has been unable to impose his programs or laws on society. The most striking policy failures have been in the areas of large-scale privatization (especially in the agricultural sector), corporate restructuring, enterprise governance, and creation of an "investor friendly" business climate. Part of this policy failure stems from the state's own internal political divisions, and the difficulty of simultaneously

undergoing a fundamental political and economic transition. But much of the incapacitation of government is the result of the state's internal institutional weaknesses and illegitimacy. The government simply has difficulty commanding the loyalty of its subjects. It cannot predictably or reliably perform the most basic function of government: collecting taxes. It also has trouble obtaining the obedience of its own servants, as the discussion of corruption in Chapters 2 and 3 will show. In this sense, Ukraine is a quintessential case of what political scientists call a "weak state."¹¹

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

The sources of economic decay and decline lie in three areas. First, while Ukraine is rich in natural resources, most of these were depleted in the Soviet period. Extraction costs in many cases exceed the prospective prices of sales. Second, the Soviet Union left Ukraine with an economic base that was not viable in market terms. In particular, eastern Ukraine has enormous mining and metallurgy concerns that can neither be made profitable nor shut down without making redundant a substantial percentage of the work force. No realistic transition strategy has

been developed to phase out these industries. Third, Ukraine is highly dependent on Russia for its energy, and has suffered a huge decline in terms of trade in the shift to world market prices: the prices of Ukraine's energy imports have increased far more than the prices of Ukraine's industrial and agricultural exports. Ukrainians with connections to Russian exporters have taken advantage of the price differentials, and their administrative authority, to reap huge illegal profits in this import business.

Together with these systemic problems, the weakness of the Ukrainian state has facilitated the expansion of the shadow economy. The shadow, or "unofficial" economy in Ukraine was estimated at 60 percent of total real GDP in 1996.¹² Its growth has been swift. As early as 1992, a questionnaire of 223 private firms found that 54 percent of their aggregate profit was derived from shadow activities. In 1994, a poll of 200 companies operating with foreign capital revealed that 55 percent of their business was involved with the shadow economy. By 1997, approximately 40 percent of all currency was circulating outside of the official banking system.¹³ A significant proportion of the labor force is therefore at least partially, if not wholly, employed in shadow activities. In a strict sense, all of this activity is illegal. Some of it, as we discuss in Chapter 2, is closely linked to the criminal world.

The shadow economy, it should be emphasized, is at least partly attributable to excessive state regulation, which businesses have a hard time distinguishing from racketeering. The Byzantine tax system, onerous business registration requirements, and complex (and often contradictory) regulatory rules under which all legitimate economic interests must operate place in the hands of underpaid and overworked administrators innumerable opportunities for using public office for private gain. Over a thousand types of commercial activity are subject to

licensing. Twenty-five separate state organs have the right to audit businesses, and the average number of such annual checks has risen from 34 to 296. Ukrainian enterprises spend the equivalent of an estimated 3 percent of GDP on regulatory compliance each year. All of these rules and regulations have the effect of providing an army of state inspectors the power to shut down any enterprise in the country, unless a bribe is paid. To some extent, the state itself has forced firms into the shadows by making legitimate and profitable business nearly impossible.

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

6. The Outlook: Presidential Elections

Ukraine in 1999 enjoys relative political and economic stability, but it is an unenviable kind of stability. In contrast to Russia, the prospects for civil war or declaration of emergency rule

by the executive are minimal. At the same time, however, the chances for a decisive turn for the better either in the economic or political arenas are also slim. Indeed it appears the Ukraine may have found an unhappy but somewhat stable equilibrium between communism and liberalism.

The most important opportunity for change will come at the end of October in 1999, when the country will hold Presidential elections. The incumbent, Kuchma, is challenged most seriously on the left, by a trio of candidates ranging from the moderate socialist former Speaker of Parliament Oleksandr Moroz, the openly pro-Soviet Yuliya Timoshenko, and Petro Symonenko, the Chairman of the Communist Party. None of these candidates advocate radical change of any kind, and while Kuchma is often labeled a "reformist," it is more accurate to say that he is not openly anti-reform, for he has initiated little real reform in practice. Thus the chances of a genuine reformer coming to power in the upcoming election are exceedingly slim (5 rightist candidates can barely muster 5 percent support between them in recent polls). Change will have to come from some other source.

Ukraine is one of the few post-Soviet states to have peacefully and democratically changed executives (in 1994), but the notion of a fair election is already being severely undermined by Kuchma's reelection strategies. Most notably, the past year has seen a number of opposition newspapers and television stations closed on dubious grounds. Kuchma's policies put him on a western watchdog group's top five list of enemies of a free press. Thus while the vote itself will likely not be "fixed" the playing field for the campaign has been tilted in favor of the incumbent. If, as appears likely, Kuchma will defeat his leftist challengers, the prospect of a socialist revanche (such as in Poland) will disappear. But Kuchma's victory will not be a victory for economic reform, and in terms of democratization may represent a regression.

ENDNOTES

1. Zbigniew Brzezinski, "The Premature Partnership," Foreign Affairs, 73 : 2 (March April 1994): 80.
2. See Paul D'Anieri, Robert Kravchuk, and Taras Kuzio, Politics and Society in Ukraine (Boulder: Westview, forthcoming 1999), chapter 7.
3. For a lengthy discussion of these regional and ethnic divisions, see Andrew Wilson, Ukrainian Nationalism in the 1990s: A Minority Faith (Cambridge, 1997).
4. For a more detailed account of these developments, see Sherman Garnett, Keystone in the Arch (Wash. DC: Carnegie Endowment for International Peace, 1997).
5. According to Alexander Motyl "virtually no one in or out of the government was prepared for independence or its aftermath." See Alexander J. Motyl, Dilemmas of Independence: Ukraine After Totalitarianism, (New York: Council on Foreign Relations, 1993), 50; see also Chapter 2.
6. Volodymyr Polokhalo, 'The Neo-Totalitarian Transformations of Post-Communist Power in Ukraine,' Politychna Dumka/Political Thought, no. 3 (1994), 133-134.
7. For an account of the constitutional impasse in 1995, see "Kararyna Wolczuk, "The Politics of Constitution Making in Ukraine," in Taras Kuzio, ed., Contemporary Ukraine: Dynamics of Post-Soviet Transformation (Armonk. NY. 1997).
8. The President thus effectively appoints the Prime Minister, who in turn directs the Cabinet of Ministers (Article 106). The President also has the authority to appoint certain individual ministers. He has veto power over legislation, though there is provision for a parliamentary override. He can still overturn acts taken by the Cabinet of Ministers, but it is not clear that he can revoke actions taken by individual ministries unless they are in direct violation of the constitution. The President also appoints the heads of local state administrations, upon recommendation of the Cabinet of Ministers.
9. For an analysis of the problems of semi-presidentialism in Ukraine, see Andrew Wilson, "Ukraine," in Ray Taras, ed. Post-Communist Presidents (Cambridge, 1997). For a description of similar constitutional confrontations in Russia, see Eugene Huskey, Presidential Power in Russia, forthcoming from Myron Sharpe, Inc.
10. According to Alexander Motyl, a senior Ukrainian scholar, "the absence of an institutionalized party system means that...effective parliamentary rule is virtually impossible." See Motyl, Dilemmas of Independence, 173.

11. For an in-depth study of weakness in Ukraine, see Bob Kravchuk, "Ukraine's Soviet Inheritance: A Weak State," Taras Kuzio, Robert Kravchuk, and Paul D'Anieri. eds, State and Institution Building in Ukraine (New York: St. Martin's 1999).
12. See Razumkov, et. al., Report of the Ukrainian Center for Economic and Political Studies, "The Shadow Economy and Organized Crime in Ukraine," Kiev Zerkalo Nedeli 10 February 1996, 6. FBIS-SOV-96-094-S. (Original in Russian.)
13. See Alexander Paskhaver, "Ukraine's Shadow Economy During the Period of Transition." The Ukrainian Economic Monitor, vol. III, no. 6(13) June 1996: 6-11.
14. Lazarenko fled Ukraine in 1998 before criminal corruption charges could be laid, and is presently awaiting the outcome of an extradition hearing in San Francisco.

Chapter Two

CRIME AND CRIMINALITY IN POST-SOVIET UKRAINE

Between 1989 and 1999 Ukraine, like other former Soviet republics, experienced a dramatic surge in its overall rate of recorded crime, on the order of two and a half fold.¹ This increase should not surprise readers, for these very years witnessed the collapse of a whole economic system, the enfeeblement of the state and its capacity to enforce its laws, and radical changes in social structure. At the same time, behind these numbers lie a whole series of stories, some more familiar than others; and there remain as well riddles to solve and oddities that call for explanation.

Two stories loom so large as to define the organization of this chapter. The first concerns crime as a whole, and especially the ordinary, garden-variety crimes, property crime, crimes of violence, and so on. It is here, after all, that major surge in activity (and in police registration of activity) occurred; and, as we shall see, the really dramatic change occurred not in crimes of violence but rather in simple theft. On the one hand, the rise in theft almost certainly reflects the changes in social structure--whether reflected in class differences, social disorganization, social strain. On the other hand, the Soviet rates of property crime were so low in comparison with those found in Western European countries that one might qualify the story as normalization.

The other big story concerns the criminalization of the economy, that is, development of economic activities of organized crime (e.g. trade in narcotics) and the symbiotic relationship between the criminal world and much of private business, whose firms have come to rely upon criminal organizations for protection, and who themselves face strong incentives to evade taxation. Then there is the involvement of government officials, as participants more than as

combatants of these activities, and the spread of what is seen as corruption. There is, to be sure, some overlap between the worlds of ordinary and business-related crime, especially if one defines organized criminal groups in a loose fashion. But for purposes of analysis, the distinction remains useful.

As we proceed to examine in detail each of these stories (and their various parts), we will pay close attention to what is distinctive about the Ukrainian situation, in both reality and perception. The leading local commentators on crime in Ukraine go out of their way to emphasize that notwithstanding the growth of crime, Ukraine continues to have a much lower rate of recorded crime than does the Russian Federation, still forty percent less in 1995.² To be sure, comparison with other post-Soviet republics suggests that it is Russia that is the outlier; but explaining this dramatic difference should help us understand better Ukrainian realities.³ Beyond reality there is the matter of perception. In the writings of both criminologists and other commentators in Ukraine, one encounters a strain of pessimism that may or may not be warranted. This pessimism takes the form of assertions that Ukrainian officials are more corrupt or corrupted than their Russian counterparts, or that the dark figure of crime (the crimes unknown to the police or unrecorded by them) is larger in Ukraine.⁴ Whatever the true situation, these attitudinal differences may matter more than the reality behind them.

Patterns of Criminality and Ordinary Crime

Although the great surge in crimes committed and registered in Ukraine occurred in 1989-1995, there had been a pattern of gradual increase already from the mid 1960s, accelerating in the years 1978-1983 and followed by a brief period of stabilization in the mid 1980s and even

decline in 1987-1988 as a result of the anti-alcohol campaign of Mikhail Gorbachev. Overall, between 1972 and 1989 rates of record crime more than doubled. The first challenge is to explain this change, and this requires turning to history. In part, the increase reflected the growing urbanization of Ukraine (and USSR) -- for the USSR from 56% urban in 1970 to 66% in 1989 -- but even more it resulted from the declining influence of factors that had kept crime rates artificially low in previous decades.

At least four factors combined during the decades of the 1930s, 1940s, 1950s, and first half of the 1960s to keep crime rates in the USSR and Soviet Ukraine low, despite remarkably high rates of urbanization. One was shifts in the scope of the criminal law, especially periodic exercises in decriminalization. Thus, in the mid 1920s public drunkenness and petty theft were shifted to administrative jurisdiction. Decriminalization could come in enforcement practice, as well as in law, as in the wake of the Stalin's harsh decrees on theft in 1947 police for the most part stopped prosecuting juvenile offenders for thefts.⁵ A second factor depressing the crime rates was demographic, as convulsions like collectivization and World War II reduced artificially the number of young men (the main crime-committing group) in the population. This factor had special force in the decade of the 1950s; and when a new generation of youth began to impact on crime rates in the early 1960s, some of their activity was shifted to the purview of juvenile affairs commissions and effectively decriminalized.⁶ A third factor was the change in property relations and in patterns of production that occurred in the early 1930s. The decline in private property and the amount and attractiveness of consumer goods led to a corresponding decline in theft of private property. To be sure, pilfering of state property from the workplace developed into an epidemic, but until 1940 was treated as an administrative offense, and, once criminalized, the

offense was often ignored.⁷ A fourth factor influencing rates of recorded crime was the habits of police in recording crimes. For much of Soviet history police were evaluated on the basis of rates of solving crimes (raskryvaemost), and this encouraged them not to register crime reports, especially of thefts, where there were no obvious suspects. At times, police were known to keep a separate parallel record of "criminal manifestations", which did not enter the official statistics.⁸

The period 1965-1988 witnessed a decline in the effects of the first three of these crime-suppressing factors. Finally, after decades of disturbance some demographic normality was achieved. No further decriminalization of significance occurred; in fact, a series of police campaigns encouraged the qualification of more petty offenses as criminal. And, most important, the Soviet economy finally began to produce a significant amount of goods worth stealing. On the one hand, the Brezhnev government adopted a policy of increasing production of consumer durables of all kinds; on the other hand, a parallel or shadow economy (sometimes called the 2nd economy) emerged to facilitate production and distribution of a wide variety of consumer goods. The shadow economy was itself a criminogenic phenomenon, involving illegal production and trade, bribery of officials, misappropriation of supplies, and the use of private protection services; and we shall return to it in our discussion of business-related crime. But the shadow economy likely affected ordinary crime as well, by providing more opportunities for property crime and involving a large part of the population in law-avoidance activities that eroded the already low respect for law.⁹ As Table 2.1 (next page) shows, these factors contributed to a fairly steady increase in the total number of registered crimes in Ukraine in this period.

Table 2.1 Criminality in Soviet Ukraine, 1972-1988.

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

Source: Kulik, *Prestupnost v Ukraine*, no. 2, 1994, pp. 136-137.

In 1989 the number of record crimes in Ukraine rose by 32.7% over the previous year, from 242,974 to 322,340; and this surge requires special explanation. 1989 was the year that the USSR Ministry of Internal Affairs called for a change in the registration practices of police, instructing them to include all crimes reported to them (and promising not to pay attention to the low rates of detection that would result). The purpose of this artificially generated "crime wave" became obvious in the spring, when police officials went out of their way to publicize the data and generate a social panic. The purpose of this exercise in public relations was to attract more

resources for the police!¹⁰ This was how the Soviet police, in their latter days, chose to use the new openness in the media (glasnost) for their own purposes.

While the change in police reporting explains a good portion of the crime wave of 1989, there is reason to believe that there was an actual increase as well. For 1989 represented the beginning of the end of the Soviet economy, the year when suppressed inflation led to a goods shortage in the main economy, as the bulk of goods fled into the shadow economy. The real prices necessary to actually acquire scarce goods in the second economy became excessively high, especially as members of the public resorted to hoarding. There is, in short, every reason to believe that 1989 was the start of a real surge in property crimes like theft. And, as Table 2.2 shows, in Ukraine between 1990 and 1995, the amount of recorded crime increased at an annual average rate of 13%, reaching its peak of 641,860 in 1995.

Table 2.2 Criminology in Soviet and Post-Soviet Ukraine. 1988-1998.

year	Total # Registered Crimes	% growth from preceding year	Crime Coefficient (per 100,000)
1988	242,974	+2.2	473
1989	322,340	+32.7	623
1990	369,809	+14.7	713
1991	405,516	+9.7	780
1992	480,478	+18.5	922
1993	539,299	+12.2	1032
1994	571,891	+6.0	1096
1995	641,860	+12.2	1241
1996	617,262	-3.8	1208
1997	589,208	-4.5	1164
1998	575,982	-3.3	1137

Source: A. G. Kulik, Prestupnost v Ukraine, no. 2. 1994, pp. 136-7; and "Osnovnye tendentsii."

Each of the next three years registered a decrease in the order of 3-4% per annum. How can one explain this decrease? Were there important changes in the age structure of Ukrainian residents (for example, because of young men fleeing to Russia in search of jobs), or significant improvements in law enforcement? Not to our knowledge. The most likely explanation is changes in police practice, involving both more qualification of less serious incidents as administrative rather than criminal offenses (i.e. a quiet decriminalization) and an increasing tendency not to record as crimes incidents where there were not suspects (out of a concern with rates of solution).¹¹

However dramatic the increase in criminal activity in late and post Soviet Ukraine, that country did not come close to the levels of recorded crime in the Russian Federation. In 1993, for example, while Ukraine recorded 1,032 crimes per 100,000 population (the crime coefficient), the Russian Federation produced 1,890. Per 100,000 population aged fourteen and above, the difference was even greater: 1,287 versus 2,344.¹² These data reflect long-standing differences between the two republics: in 1972 Ukraine's coefficient stood at 283 and in 1971 Russia's was at 536. To be sure, republics like Moldova and Belorussia at each period had figures similar to Ukraine's, so Russia turns out to have been the anomaly.¹³ But why?

An obvious explanation would be differences in levels of urbanization. Parts of Ukraine, such as the Western regions (Zakarpattia, Ivano-Frankiisk, Volynskaia, Vinitaskaia), were primarily rural, and had always had the lowest coefficients of recorded crime in Ukraine, overall at one third the coefficients recorded in the industrial east, and lower than any rural region in Russia. Much higher levels of crime were found in the city of Kiev, Kharkov region, and the Crimea (thought by some to have the worst crime problem in 1999), and the highest coefficients

of crime in the eastern industrial regions of Dnepropetrovsk, Donetsk, and Lugansk. However, their coefficients of crime in 1993 reached only sixty percent of the levels recorded in the industrial regions of Russia, such as Sverdlovsk and Perm in the Urals.¹⁴ While levels of urbanization explain differences in crime between regions of Ukraine, they do not explain the systematic differences in levels of recorded crime between Ukraine and Russia. According to the 1989 census, Ukraine was no less urban than the Russian Federation (it was actually slightly more urbanized with 67% of its population living in cities as opposed to 66% in Russia). Moreover, the Ukrainian industrial regions Dnepropetrovsk and Donetsk had higher levels of urbanization (respectively 83% and 90%) than did the Russian regions of Sverdlovsk and Perm (77% and 87%). Nor did the age structure of the population explain the difference. In 1987 the share of the population between the ages of 15 and 29 (the most crime prone) registered in Russia 22.98% and in Ukraine 22.11%, with gender similar gender ratios.¹⁵

The Russian Federation had two criminogenic features largely lacking in Ukraine. The first was a substantial frontier area, most notably the Russian Far East, which had by far the highest crime rates in the whole former Soviet Union. The second was the huge number of transient persons moving around the country without fixed addresses (and not necessarily included in the population data). Even decades ago, a portion of crimes committed in the RSFSR were the work of persons from other parts of the USSR, for example Georgia and Uzbekistan. After the breakup, Russia received millions of refugees and resettlers from various parts of the FSU; and as well a large number of "visitors" from countries of the Near Abroad. And, many of the persons apprehended for crimes in Russia fell into these categories.¹⁶

Other explanations might focus upon law enforcement -- the density of police to population, variations in police practices and in registration, but it is unlikely that these would explain such large and long-standing differences in the levels of recorded crime.

The surge in recorded crime in Ukraine between 1989 and 1993 effected a major change in the structure of crime. Property crimes (eg. theft, robbery, swindling, and extortion) and economic crimes (such as bribetaking, counterfeiting, and trading in narcotics) grew so much faster than crimes of violence (esp. murder, serious assault, and hooliganism), that the former grew from a one third to two thirds share of all crime and the latter fell from two thirds to one third!¹⁷ Although a preponderance of crimes with "mercenary motives" is normal in times of economic decline, the shift in Ukraine and other post-Soviet states came quickly.

As Table 2.3 (next page) shows, by 1993 theft of private property had risen from its 1972 level of 14,798 by more than 13 times to 194,002; this figure reached 208,544 in 1995 before leveling out in 1998 at 184,760. At the same time, theft of state (and collective) property rose from 12,235 in 1972 to 115,987 in 1993, by 8.4 times, its peak before declining to 84,300 in 1998 (reflecting in part the progress of privatization). In addition, there is reason to suppose that the dark figure for these offenses was especially high. On the one hand, police were at all times reluctant to record thefts for which they had no chance of solution; on the other hand, members of the public, losing faith in the police's capacity and willingness to investigate thefts of apartments and cars, reported these occurrences with decreasing frequency.¹⁸

TABLE 2.3. THEFT of Private and State Property, 1972-1998.

Year	Theft of Private Property (# / % of all registered crime)	Theft of State and Collective Property (# / % of all registered crime)	Total # registered crimes
1972	14,798 / 10.9	12,235 / 9.0	135,646
1980	32,863 / 16.7	24,462 / 12.4	196,907
1990	129,900 / 35.1	49,429 / 13.4	369,809
1991	154,781 / 38.2	64,281 / 15.8	405,516
1992	179,889 / 37.4	99,559 / 20.7	480,478
1993	194,002 / 36.0	115,987 / 21.5	539,299
1994	197,715 / 34.6	113,993 / 19.9	571,891
1995	208,544 / 32.5	129,698 / 20.2	641,860
1996	198,447 / 32.1	114,689 / 18.6	617,262
1997	177,500 / 30.2	94,966 / 16.1	589,208
1998	184,760 / 32.1	84,320 / 14.6	575,982

Source: A. G. Kulik, *Prestupnost v Ukraine*, no. 2, 1994, pp. 136-7; and "Osnovnye tendentsii."

Apartments and warehouses represented the most common location for stealing, and the thieves favored above all jewelry, antiques, imported electronic goods, and hard currency. At the same time, the 1990s saw a revival of theft of chickens and raids on vegetable gardens. acts reminiscent of the famine of 1947. About half the thefts were committed by groups of offenders, often professional but not usually high level units of organized crime. (More on the variety of "organized groups" later). Not surprisingly, juveniles bore responsibility for more than one third of the thefts, and women committed thirteen percent. More than forty percent of apprehended thieves had criminal records, in the main for previous thefts.¹⁹

A considerable proportion of thefts were committed by single persons in their twenties without employment, and perhaps without fixed addresses as well. In the cities of Russia such

“floaters” were well represented among thieves and constituted one reason for the overuse of pretrial detention and consequent overcrowding in the prisons. It would be useful to determine whether Ukraine faced a similar problem.

Despite the importance of theft in the structure of crime in Ukraine, we have encountered hardly any studies of it.²⁰ It would be helpful to learn about the roots of theft, for example what portion reflected poverty or was related to social strain, and what portion represented the work of professional criminals taking advantage of an underpoliced and undercontrolled environment.

Crimes of violence also experienced a surge from 1988 to 1995, though at a lesser rate than property crimes. As Table 2.4 (next page) shows, intentional assault rose from 4241 in 1988 (versus 2,218 in 1972) to 8,800 in 1995. Robbery from 1,694 in 1988 (versus 834 in 1972) to 4,998 in 1994. And, intentional murder rose from 2,016 in 1988 (versus 1,577 in 1971) to 4,896 in 1995. In contrast, rape (including attempted) reached its high point in 1989 at 2,736 (versus 1,564 in 1972), then declined to 1,334 in 1998! As a result, the percentage of rape convicts among the population of labor colonies decline from 9.8% in 1991 to 3.4% in 1998.²¹

Table 2.4 Crimes of Violence, 1988-1998

year	Intentional Assault* (# / % of all crime)	Robbery (# / % of all crime)	Intentional Murder (# / % of all crime)	Rape (# / % of all crime)
1972	2,218 / 1.6	832 / 0.6	1,577 / 1.2	1,564 / 1.2
1988	4,241 / 1.8	1,694 / 0.7	2,016 / 0.8	2,301 / 1.0
1989	5,939 / 1.8	2,547 / 0.8	2,589 / 0.8	2,736 / 0.9
1990	6,673 / 1.8	2,959 / 0.8	2,823 / 0.8	2,661 / 0.7
1991	6,850 / 1.7	2,833 / 0.7	2,902 / 0.7	2,351 / 0.6
1992	8,117 / 1.7	3,692 / 0.8	3,679 / 0.8	2,369 / 0.5
1993	8,174 / 1.5	4,712 / 0.9	4,008 / 0.7	2,078 / 0.4
1994	8,772 / 1.5	4,998 / 0.9	4,571 / 0.8	2,061 / 0.4
1995	8,800 / 1.4	4,740 / 0.7	4,783 / 0.8	1,947 / 0.3
1996	8,429 / 1.4	4,933 / 0.8	4,896 / 0.8	1,752 / 0.3
1997	7,602 / 1.3	4,873 / 0.8	4,529 / 0.8	1,510 / 0.3
1998	6,943 / 1.2	4,897 / 0.9	4,563 / 0.8	1,334 / 0.2

Source: Kulik, *Prestupnost v Ukraine*, no. 2, 1994, and "Osnovnye tendentsii."

* "Intentional Assault" (Article 101 of the Criminal Code) involves inflicting grave bodily injury that is threatening to the life of the victim. Incidences of lesser forms of assault, including battery (Article 102) and battery committed in a state of severe emotional distress (Article 103) comprised another 3 percent of all registered crime in 1972; these, too, fell in the period under examination, to 1.5 percent in 1993 and 1.4 percent in 1998.

Although criminologists in Ukraine emphasize the novel aspects of the rise in murders--such as the presence of contract murders (210 in 1995) and the rise in the use of guns (from 15-16% of murders in the 1980s to 20% in 1993, with handguns replacing hunting weapons to a degree), the bulk of murders and the largest share of the increased number of murders remained as before "impulse murders" committed among family, neighbors, and friends while under the influence of alcohol. In 1995, 62.2% of murders reflected intoxication of the offender (virtually the same as in the 1960s); and only 21% of the victims were unknown to the assailant.²² One must conclude that the rise in murders (and also assaults) during the past decade reflected the

stresses of unemployment and impoverishment and the accompanying increase in consumption of alcohol far more than the growth of organized crime.

Ukraine's coefficient of murder (reports of actual and attempted, per 100,000 population) reached the level of 9 recorded by the United States in 1994, in contrast to the 5 registered by Germany and France. Still, Ukraine lagged well behind Russia at 22 and Estonia at 24; and six other Soviet successor states had rates higher than Ukraine (Kazakhstan at 15, Latvia at 16 etc.).²³

The sharp decline in reported incidents of rape during the 1990s deserves exploration. To be sure, the inevitable reluctance of victims to make reports to the police, assures a high level of latency, and it was possible that in the 1990s the inexperienced, underequipped, and fearful persons who filled the ranks of ordinary policemen had little sympathy with or respect for the claims of female victims. But we doubt that changes either in police conduct or public attitudes toward police could explain the drop in recorded rapes in 1998 below the level for 1972. Note that in Russia there was also a decline in rape data between 1990 and 1998, but not as dramatic. Was there a connection to the weak economic position of women, who represented major losers in the Ukrainian economic collapse, or to the reportedly dramatic increase in street prostitution in Ukraine, in part at low prices? The criminological characteristics of reported rapes yield few clues. As before, so in the 1995, two thirds of attempted rapes were committed by persons twenty-one and under, nearly two thirds of offenders were drunk as were forty percent of the victims, and many of the incidents resulted from misunderstandings.²⁴

The share of reported crimes in Ukraine committed by women has grown noticeably in the 1990s, rising from 13.6% in 1993 and 17.5% in 1996 (as opposed to 14.9% in Russia in 1995). One should note, however, that in 1972 women represented 20.7% of offenders in

Ukraine. To some extent, the share of crime committed by women is correlated with economic fortunes. For example, by 1980, the proportion of all crime committed by women had declined again to 15%; in 1985 and 1986 (years of marked shortages in consumer goods), it rose sharply to 22 and 26 % respectively, and again, in the mid 1990s (years of hyperinflation). In the 1990s women were involved mainly in crimes like theft and cheating customers/suppliers, but over the last five years they were increasingly implicated in narcotics related offenses and crimes of violence, usually in connected with drunkenness.²⁵

The share of juveniles in criminal activity, and of young persons (aged 18-24), grew during the years 1979 to 1993 (the coefficient for juveniles more than doubled, and that for young persons grew by 88.2%), while the coefficient for persons 25 and over increased by half. But from 1993 the share of juveniles and young persons began to drop and that of older offenders to rise, perhaps reflecting demographic factors. While juveniles aged 14 to 17 represented 13% of identified offenders in 1993 in Ukraine, their share had dropped to 8.6% by 1998. In Russia the share of juvenile offenders dropped from 17% in 1991 to 12% in 1995.

Like juvenile delinquents everywhere, Ukrainian youth committed mainly thefts (from apartments or of automobiles), operated in groups (gangs), and were motivated more by a desire to achieve prestige among their peers than by mercenary considerations.²⁶ What may well distinguish young offenders in Ukraine (and the FSU generally) from their counterparts in the West was the likelihood that they would mature into adult offenders. For one thing, the proliferation of criminal groups, including of an organized and professional nature, assured opportunities for criminal careers, and it has been reported that organized crime in particular actively recruits from young criminals.²⁷ At the same time, the moral code that predominates

among young persons in the countries of the FSU emphasizes as the number one value the pursuit of economic gain at any cost; and the heroes of youth are, if not mafiosi, at least the "new Ukrainians" or "new Russians", most of whom, the corresponding publics assume, made their fortunes through illicit means. It would be useful to determine whether an unusually large share of Ukrainian young offenders become adult criminals, perhaps through a cohort study.

The rate of recidivism among apprehended suspects in Ukraine between 1990 and 1993 averaged 18%, some three to four percent below that recorded in Russia, but this rate fell during the mid 1990s to about 15%.²⁸ Women and civil servants convicted of job-related crimes recidivated much less frequently, while persons convicted of theft, swindling, and trade crimes repeated more often than the gross averages. As of 1993, of repeat offenders, 30% committed a new crime within three years of release from confinement, two thirds within five years. Every seventh recidivist had been convicted of three or more offenses, and the bulk of these persons had received from a court the designation "especially dangerous recidivist". Receiving this stigma, say for convictions of two very dangerous crimes, or two moderately serious crimes and then one minor one (all according to a complicated formula) meant a loss of eligibility for early release and confinement in a "special regime" labor colony.²⁹

Another criminogenic group within the population of post-Soviet countries including Ukraine is migrants. In Russia, the greatest recipient of migrant population, newcomers accounted for 8% of recorded crime in 1995; data for the city of Moscow places the share for arrivals, temporary and permanent, at one third! While Ukraine does not receive as many migrants as does the Russian Federation, it remains a recipient, and some of its regions (in the southeast) have large numbers of newcomers. In addition to refugees and resettlers who come

legally, Ukraine in the 1990s received some 50,000 illegal migrants (according to official data).³⁰

We have not encountered any studies of the role of migrants in criminal activity, in general or specific areas of crime, like the shadow economy or illegal trade of narcotics or women.

Another question worth pursuing is the size and nature of the dark figure in Ukrainian criminality (that is, crime that does not become known to the police). Ukrainian criminologists assume that this figure is not only large but also growing, but, as we discuss in Chapter 3, they cannot always support this supposition with solid evidence.

In this overview analysis of ordinary crime in Ukraine, we have kept close to the available data and sought to explain observable patterns. It is also possible to stand back from the particulars and consider theoretical perspectives that offer explanations at a higher level of analysis and may in turn suggest new questions as well.

One of the oldest, and most commonsensical perspectives, was offered a century ago by Bonger, who sought to demonstrate a correlation between poverty and criminal activity. Parts of the Ukrainian population are so poor that stealing to survive may well be a fact of life. Ironically, it was the original Soviet leaders who, in a moment of generosity after coming to power, were ready to treat as a mitigating factor the commission of crimes "out of need" (iz-za nuzhdy). Sympathy for the downtrodden has long since left the criminal codes of the former Soviet republics, but hopefully it is still reflected in the practice of law enforcement.³¹

A far greater share of criminal activity, probably the bulk in Ukraine today, can be understood as a reaction to social strain. In his justly famous study of anomie, Robert K. Merton presented resort to crime as a positive (innovative) response to the increases in strain. The alternatives of immigration (deserting the ship), resignation (say in the form of alcoholism), or

rebellion have worse consequences for the society involved. What produces strain, of course, is the combination of relative deprivation, the permeation of society by a single set of values (e.g. material), and the uneven distribution of legitimate means of achieving them. Hence, anomie, strain, and the need for a response.³²

Arguably, the late and post Soviet experience, exemplified by Ukraine, contained a remarkable combination of circumstances that produce social strain. At one and the same time, a sudden and sharp form of social differentiation emerged, in which a large part of the population became impoverished and earned but a small fraction of that earned by the wealthy; the society became enamored with the values of material accumulation; and very few of the population (none in the public view) had access to legal ways of obtaining wealth.³³ Of course, some, especially the well placed, had the opportunity for immoral, if not illegal, acquisition of wealth, to the undying resentment of the rest.

In the USSR, there were also structured inequalities, though nowhere near as large or visible as those that emerged after its collapse. Most important, both social strain and its potential effects were muted by three important factors: the presence of a welfare state (until the 1980s at least the poorer parts of the population were protected by a safety net); opportunity for social mobility (the possibility to achieve success legally through obtaining higher education and resulting job tracks); and finally social control (the presence not only of police, but also of strong families and community institutions supporting a system of morality that was generally accepted.³⁴ From 1989, the protections of the welfare state have all but vanished in Ukraine (as well as Russia; the easy paths to social mobility had disappeared (only the pursuit of "business" promised any gains), and both policing and the system of "communist morality" had lost their

effectiveness. In place of any ideals or sense of right supplied even ritualistically by communist morality stood the worship of the dollar and the market, acquisitiveness above all.

One can go one step further than the theory of strain in an attempt to fathom the criminogenic state of contemporary Ukraine and posit an ideal type of society that is especially criminogenic. Recently in a creative line of analysis Elliott Currie has proposed an amalgam called a "market society", which is especially likely to generate high levels of violent crime.³⁵ A market society is one where the principles of the market are not confined to some parts of the economy and are not "appropriately buffered and restrained by other social institutions and norms," but instead "come to suffuse the whole social fabric, and to undercut and overwhelm other principles that have historically sustained individuals, families, and communities." A market society for Currie contains at least seven criminogenic mechanisms: "the progressive destruction of livelihood; the growth of extremes of economic inequality and material deprivation; the withdrawal of public services and supports...; the erosion of informal and communal networks of...support...; the spread of a materialistic, neglectful, and 'hard' culture; the unregulated marketing of the technology of violence; and...the weakening of social and political alternatives." Currie's larger point is that it is the United States that is the empirical referent for the construct of a "Darwinian" or "sink or swim" society, and that Western advisers and East European officials alike have erred in trying to bring precisely this kind of capitalism to the post-communist world. Perhaps, they had no choice, at least in countries of the FSU where the welfare state had already decayed and productive forces too weak to support revival (though the flow of ill-gotten financial gains out of Russian and Ukraine in the 1990s suggests otherwise). Avoidable or not, citizens of Ukraine and Russia alike were forced to live in a "sink

or swim” society, arguably one more Darwinian in nature than the United States, and this kind of society is bound to generate a lot of crime, property as well as violent.

It may well be that post-Soviet countries have market societies as well as unregulated, quasi-oligopolistic forms of a market economy, precisely because of the privatization of state resources, described by Solnick as ‘stealing the state’, which enriched so many former officials, criminal allies, and friends who remained in government.³⁶ The high rates of ordinary crime, including theft and murder, may be seen as a consequences of the creation of states dominated by the interests of a new class of entrepreneurs and predators, whose pursuit of profit naturally entails another world of criminal activity, that of business and elite crime.

Business Crime and Crime in the Economy

When the USSR collapsed in December 1991, the state-administrated economies of its several republics, including Ukraine, were already in the process of disintegration. Each of the successor states displayed its own particular blend of asset takeover by private entities and depression the state sector economic activity by shadow economy competitors. Already before Ukraine became independent, criminal elements had become major players in the economy, and the intimate connections between new entrepreneurs (many of them former officials), corrupted officials in government, and criminals were in full flower.

To understand organized crime and corruption in post-Soviet Ukraine it is necessary to come to terms with the shadow economy, and we begin this section by charting the growth of the shadow economy and privatization during the late Soviet years and in post-Soviet Ukraine. Next we analyze the activities of organized crime and patterns of corruption in independent Ukraine.

Even in the Stalin period the rigid formalities of Soviet economic planning were matched by an informal reliance by managers on personal connections and supply agents to gather inputs and the manufacture outside of the plan of necessary spare parts for machines. To move beyond and trade or sell additional supplementary production (outside and beyond the plan) to other firms was a natural concomitant. After Stalin's death, as the economic effects of the War receded, there developed in the USSR a demand for consumer goods that was not met effectively by the state sector, and in the 1960s a parallel market began to emerge. The supply of goods for this market came from a variety of sources, but at its core lay illegal production undertaken in the main by the managers of state enterprises. This activity involved a series of criminal offenses, starting with the misappropriation of state assets (supplies and production process) and extending to payment of bribes to superior officials and control agencies (to cast a blind eye) and eventually protection money to criminal elements who demanded a piece of the action. During the Brezhnev years (1964-1982), the shadow economy in the USSR grew to the point where it represented, by conservative estimate, fifteen percent of the country's GDP.³⁷

The "restructuring" of the economy in the Gorbachev period led quickly to both an expansion of the shadow economy and criminalization of the economy in general. The first laws permitting private (or "cooperative" businesses) provided outlets for legalization of previously illegal business. At the same time, the laws allowed a variety of officials the discretion to vet and destroy the new firms, providing an ideal opportunity for payoffs (bribes). Quickly, officials in local governments recognized as well that they could force owners of successful businesses to give them a piece of the action through ownership. Simultaneous with this scenario of small business, managers of large enterprise gained in 1987 unprecedented authority to control the

process of production and distribution, especially the prices that they charged. And, when the second law on cooperatives of 1988 allowed them to create spin off firms, they responded by starting to privatize the best of their firms' assets and to sell the production at inflated prices. Naturally, these managers needed capital to purchase parts of their firms, and the most available partners were persons who had amassed fortunes in the second economy. This included criminal elements, who during 1986-1988 had taken advantage of the restriction on state production of alcoholic beverages to develop a staggeringly profitable underground business.³⁸

By 1989 it had become so profitable to sell goods in the shadow economy, that managers of many more firms diverted production, and the shelves of state owned stores stood bare. And, as the leaders of the USSR lost control of the levers of the economy, they produced more legislation that enabled officials to acquire state assets in legal ways. One of the most important was the 1990 Law on Small Enterprises, which created an easy vehicle for the purchase (at low prices) of the most valuable parts of state firms, and facilitated what Western observers have called "spontaneous privatization". That process was further aided by the created of legal entities known as kontserny, which allowed the acquisition and quasi privatization even of whole ministries.³⁹

It was in this context that the now familiar partnerships involving entrepreneurs (including some industrial officials and the young Turks of the komsomol), criminal organizations (in part staffed now by former security police officials), and officials who remained in government--the "criminal-political nexus" that most former Soviets understand as "mafia."⁴⁰ It was also in 1990-1991 that the opportunities for a variety of criminal activities expanded, including primary business (like trade in arms and narcotics), and preying on the successes of

others (extortion and protection rackets). The growth of private and quasi-private business, legal, illegal or in between, also engendered the development of financial institutions, some closed tied to capital of criminal origins.

Both the shadow economy and the business-crime connection have continued and expanded in post-Soviet space.⁴¹ While Russia has encouraged further privatization of state assets (including less profitable ones), Ukraine has moved more slowly, promoting in the main privatization of small and local business. At the same time, many of the goods purchased by the public are not made in the country but imported, and the trading organizations have strong criminal connections. While Russia has engaged in a significant amount of legal and judicial reform, Ukraine has done little in comparison, but so far the Russian effort has had little impact on organized crime or corruption.

By all accounts the shadow economies of most post-Soviet countries expanded after independence, in the case of Ukraine to forty-eight percent of GDP, according one 1994 estimate.⁴² One reason is the attempt by the new government to extract taxes from private firms. In Ukraine, as in Russia, the various levels of government produced a tax burden for business that was confiscatory, and, when combined with obligatory payments for protection (what is called krysha or a roof), inconsistent with the survival of firms, let alone profit. As a result, most firms in Ukraine keep part of their business outside of their official books, including payments to employees (working on the side) and income. Further complicating attempts to sort out taxes is the large role of barter relations, even within the state sector, which makes it difficult to determine incomes and profits.⁴³ The reality is that the shadow economy and the official economy are intertwined and in practice hard to separate, as the same firms operate in both

worlds. A Ukrainian analyst recently described the shadow economy as "an organically connected structural part of the legal economy." Likewise, an estimated 80% of Ukrainians received income from second economy that they do not report.⁴⁴

The growth of the shadow economy in Ukraine is a symptom of the government's loss of the capacity to regulate the economy and to raise taxes, and it demonstrates a systemic weakness of the Ukrainian state to perform its basic functions. The vacuum creates opportunities for criminal groups with various degrees of organization, and encourages government officials as well to place private interests ahead of the illusion of servicing a public one.

Any discussion of organized crime in post-Soviet space must start with terminology, for neither "mafia" nor "organized crime" are used in a consistent way. To begin, the word "mafia" engenders particular confusion, since in the popular view it refers to the whole web of persons who profit from the new economic order--entrepreneurs, corrupt officials, and criminals--while professionals usually reserve the term for organized groups with the highest degree of internal structure and discipline, something akin to that found in the Sicilian mafia. Moreover, the term "organized crime" also has multiple meanings. While some criminologists in the FSU prefer to reserve this term as well for groups of criminals that resemble Western mafia organizations, both the police ministries and other criminologists prefer a broad rendering of the term, to include any and all groups that get together to commit crimes.⁴⁵ Just as Stalin in his day saw danger in any gathering of three or even two persons to plan a crime, so latter day authorities find it convenient to treat all criminal groups as "organized". For one thing, this leads to dramatic figures on the scale of the problem -- in 1997, Russia had 12,500 so-called organized criminal groups.⁴⁶ For another, the mixing of all groups together makes it easier to record progress in combating

organized crime, for it is usually the smaller and less structured groups that police are able to suppress. Thus, in 1996-1998, according to official data, the police in Ukraine "exposed and destroyed 3,189 organized criminal groups."⁴⁷ A leading Ukrainian criminologist, however, supports this categorization precisely because in his view the smaller, and less sophisticated groups, commit a large portion of the crimes that can be uncovered. He also finds wisdom in the observation of a popular Soviet (now Russian) chronicler of organized crime, Stanislav Govorukhin, that "one should not exaggerate the degree of order and organization in the criminal world, since we have no order anywhere."⁴⁸ The Ukrainian analyst then distinguishes three levels of organized criminal groups: the base level, comprising the majority of gangs of extortionists, thieves, swindlers, narcotics traders etc.; the middle level, involving relatively large formations with connections to authorities at the regional level; and the high level, with influence extending to multiple regions of the country, and often with international ties, and possessing means to launder money. But the analyst stresses, representatives of this top category of criminal groups do not appear as defendants in Ukrainian courts. According to official MVD data, of groups exposed in Ukraine in 1997, 3% had international ties, 6% interregional (within the FSU), and 20% interregional within Ukraine. While the meaning of "exposed" is unclear (various data suggest that this does not necessarily mean prosecuted), the proportions sound accurate.⁴⁹ A recent study of Russian organized crime concluded that of more than 5,000 groups (12,000 by another count), there were only 350 authentic organized criminal groups in the Western understanding of the term and of these between 12 and 20 might be classified as "major cartels." The same author, however, estimated that there were in the Russian Federation 6,500 private security firms (with 800,000 employees, 70% ex KGB), many of which were involved in extortion.⁵⁰

The state of publicly available information and analysis on the various kinds of criminal groups in Ukraine is weak, and, serious study of the different kinds of groups and their activities is sorely needed. A good deal could be learned about the nature and activities of "base" and even "middle level" groups from studying the cases of groups actually exposed and prosecuted; but the higher level groups, involved in international trade within the Near Abroad and beyond, likely requires some kind of ethnographic study, however dangerous. Particularly useful would be studies that focused not on particular crimes (for example, the number of persons apprehended and charged) but on business activities of organized criminal groups in particular sectors. Thus, one could imagine special studies of the role of organized crime in Ukraine in organized prostitution, the narcotics trade, in the theft and sale of automobiles (luxury cars stolen in Europe and sold in the FSU), in weapons trade, in the acquisition and trade of antiques, jewelry and old books, in the world of banks and credit. A whole other area for investigation is the system of "roofs", and the division of labor in the protection area (extortion and rackets) between private security firms and public bodies, including the various police forces.

For many of these topics, it is possible to report bits of relevant data, but as a rule this information raises more questions than it answers. Let us start with some activities of organized crime almost anywhere (prostitution, narcotics) and then turn to activities especially characteristic of the FSU (extortion, financial sector activities).

In the 1990s, due to the desperate state of the economy, Ukraine (and to a lesser extent Russia) became a center of pornography and prostitution for international consumption. According to an official report written in 1999, more than 400,000 Ukrainian women under 30 had left the country, most to work in this area. According to the Ukrainian consulate in Greece,

in Athens and Thessaloniki alone 3,000 Ukrainians work as prostitutes and in Turkey, 6000. A Dutch researcher has reported that some eight thousand Ukrainian women work as prostitutes in the Netherlands. It is unclear how many of these women came to this work knowingly and voluntarily; better educated than prostitutes from other countries, many of those from Ukraine and Russia were promised clerical or hotel positions. Typically, women who thought that they were traveling voluntarily, were later forced into prostitution, when their benefactors took away their passports and confined them. In this way, Ukrainian women have joined those from other poor countries as victims of the multi-billion dollar business of trafficking.⁵¹

Another growth industry for Ukrainian organized crime is trade and sale of narcotic substances. The growth in narcotics related crime known to the police has been remarkable: from 1988 to 1998 the number of violations rose by more than sixteen fold, and reached 39,800 offenses, or nearly seven percent of all recorded crimes. This data does not include some 26,000 rural residents who were fined in administrative procedure for illegally planting poppies.⁵² Not only does Ukraine constitute a link in the transportation of drugs from Asia to Europe, but local demand for drugs is rapidly growing. According to sociologists at the MVD's university in Kharkhiv who surveyed a sample of young people in that city in 1995 and again in 1997, there was substantial increase in respondents who had used narcotics once (from 22 to 34.6%). More generally the researchers uncovered an emerging subculture of narcotics among Ukrainian youth, one that included women as well as men.⁵³

In addition to playing a primary role in illegal business activities, organized criminal groups in Ukraine were involved, though private security and financial institutions, in the activities of a broad range of businesses. As a rule, most protection arrangements do not come to

the attention of the police, but in the mid and late 1990s appropriate 3,000 cases a year were registered; of these fully one seventh were established as the work of organized criminal groups. According to an official report, the protection rackets were especially prominent in the industrial cities of the East, as well as in the Crimea, and in Lviv. In addition to extracting the usual "tribute" in exchange for protection from other predatory groups, mafia groups extracted further impositions at the level of sales. Fully in control of the private and to a large extent state trade networks, criminal groups imposed a tax built into the price of goods, ranging from 20 to 30% of the final price. In other words, criminal groups in Ukraine imposed their VAT, in addition to whatever the state could extract!⁵⁴

Another major area of group criminal activity in Ukraine in the 1990s was the financial-credit system. It is important to stress that as in other post-Soviet countries the financial-banking sector in Ukraine was underregulated and open to all kinds of abuses. a wide variety of offenses were becoming commonplace, ranging from counterfeiting of money, bills of sale, bank guarantees, and other documents to bribes to obtain credit, to helping clients avoid taxes and hide income; to fictitious operations and various form of swindles of state money. Sometimes, criminals payed to obtain confidential financial information that they could then use against others (via extortion). Police recorded instances of financial swindles, banking crimes, and counterfeiting all increased substantially in the late 1990s, as did instances of money laundering. Some of these offenses were committed with the use of electronic banking and communications systems, but this mechanism for fraud awaits study.⁵⁵

A major study of terrorism in Ukraine concluded that organized crime groups were responsible for most of the many explosions of buildings (in 1995-1996 there were 560 such

incidents, in which ninety persons died). A small part of the destruction was the work of Kurdish groups.⁵⁶

Closely related to both the shadow economy and a powerful, organized crime was the corruption of state officials, who served as key players in these larger enterprises. In labeling particular actions and persons "corrupt", one runs the danger of imposing norms and values that are not shared by most of the actors involved.⁵⁷ As we shall see, neither in the past nor in the present was Ukraine governed by the legal rationality associated with Weberian bureaucracy, and much of what outsiders like to call corruption reflected traditional exchange relationships. At the same time, though, post-Soviet Ukraine has seen both an increase and a systematization of the pursuit of private gain by public officials that has major costs for ordinary citizens. Although corruption is criminogenic in the sense that it embodies violations of criminal law, enforcement of that law can have but limited impact on the nature and scope of corrupt activity, and all too often attacks on corruption turn out to be political instruments used by one faction against another.

Following Kaufmann and Siegelbaum, we understand as corruption "the abuse of official power for private gain", and see this definition as embracing both the misappropriation of state wealth and the extraction of rents from private entities. The rents may take the form of bribes or favors of any kind, and the action performed in exchange may be not only legal, but also required as fulfilment of an official duty.⁵⁸

The practice of corruption by government officials in Ukraine reflects more than the opportunities provided by privatization and the collapse of government/Party supervision. It reflects as well the traditional patterns of exchange relations that predominated under the Tsars

and continued in Soviet times; and the florescence of clientelism that accompanied the growth of the shadow economy from the 1960s on. To be sure, in the 1920s Soviet authorities launched a major campaign against bribe-taking by officials, but they could not win the battle in the long run. For the Soviet system became increasingly feudal, in both the relationships among political bosses at different levels of the hierarchy and in the relationship of the public to anyone who had authority or access to goods. Petty corruption, in the form of extra payments for scarce goods or favors, was ubiquitous, as was the habit of paying tribute to persons with the discretion to help or harm an individual in the future.⁵⁹ The growth of the shadow economy made these phenomena all the more systematic and gave higher officials (even members of the Politburo and Government) opportunities to take advantage of their networks.

Starting in the late 1980s, the collapse of state authority and the privatization of state assets to the benefit of public officials produced both a further expansion of corrupt activity by government officials and changes in its forms. Thus, it became easier than before for officials to misappropriate government assets, and new opportunities appeared in the realm of financial transactions. On a larger plane, officials in late Soviet and post-Soviet Ukrainian government -- largely the same persons throughout -- gained more opportunities for personal enrichment and faced fewer constraints on using them. Opportunities came not only because of the privatization process, but also because of an increase in bureaucratic discretion accompanied by the disappearance of any and all forms of accountability. As before, most laws were "frame laws," and failed to supply the details needed for application, leaving their specification to bureaucratic regulations. At the same time, the quick issuance of a stream of new presidential edicts, government resolutions, and laws, not to speak of their implementing regulations, assured a

multiplication of legal ambiguity and with it new scope of bureaucratic discretion.⁶⁰

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

Finally, whatever inhibitions had been supplied in the past by ethical or moral considerations largely disappeared in the immediate post-Soviet years, as public officials faced a sharp gap between the capacity to meet their needs and the income they obtained legally; and they shared a strong sense that everyone, including their bosses, used public office for private gain. In fact, not only officials but politicians, for examples deputies to the Supreme Rada and lower level legislatures were also reputed to take part in this process.⁶¹

In short, both private payment of officials to perform their duties and favoring persons who were part of the same network constituted "rules of the game" in most post-Soviet countries, including Ukraine. As some perspicacious analysts of the Soviet order had predicted (Moore, Jowitt), traditional forms of social relations came back with a vengeance.⁶² To say that corruption became normal, however, is not to denigrate its costs. Corruption does matter, and has a wide variety of potentially deleterious effects. These include diversion of resources from the achievement of public goals; weakening the positive effects of market mechanisms; increasing social inequality; discrediting law as an instrument of public regulation; strengthening

the hold of oligarchic cliques in government; weakening faith in public authority/increasing alienation; and even increasing social tension and eroding political stability.⁶³ Not all of these were present in Ukraine during the 1990s, but they all had potential.

The prosecution of government officials for corruption-related offenses, such as bribe-taking, usually reflects not only the extent of the phenomenon, but also patterns of policing and politics. Proving bribe-taking is notoriously difficult, and in many years in the USSR the majority of instances registered with the police did not lead to prosecutions. Then too, for any official of importance, screening by party authorities assured that only those out of favor with their masters would face the court.⁶⁴ All the same, convictions for bribetaking did increase in post-Stalin period--from 1,800 in 1957 to 3,000 in 1970 to 6,000 in 1980.⁶⁵ From 1986, however, the rates dropped precipitously: in Russia, from 3,454 (1986) to 2,008 (1987) to 812 (1988) to 441 (1989); and in Ukraine, from 1,895 (1986) to 1,473 (1987) to 1,100 (1988) to 1,049 (1989). From 1990 to 1998 the incidents of alleged bribe-taking recorded by the police in both countries rose by two and a half fold--to 5,807 in Russia and to 2,449 in Ukraine. Whereas in Russia, the rate of conviction stayed low (in 1997, 1,381 out of 5,624 registered offenses), in Ukraine successful prosecutions were far more common, with convictions registered in 1,641 out of 2,449 registered offenses in 1998.⁶⁶ This may have reflected a tendency in Ukraine to prosecute mainly low level officials, a tendency easily observed in the enforcement of the Ukrainian 1995 Law on Corruption.

Beyond attempts to expose bribe-taking and misappropriation of funds, a classic way to reduce corruption is to introduce regulations on conflict of interest and disclosure of income. The government of Ukraine succeed in not only drafting a law introducing such rules, but in

getting it approved in 1995. (In Russia, a comparable law has been blocked repeatedly, most recently by the President). To be sure, the 1995 Law on the Struggle against Corruption established not criminal but administrative responsibility, but violations of the new rules and regulations could lead to heavy fines and loss of employment. Interestingly, the new rules applied not only to civil servants but also to members of parliaments. Note that members of the Rada and also the regional legislatures had immunity from criminal prosecution. As might be anticipated the prosecutions for violations of the Law on Corruption were directed mainly at lower level officials (categories 5-7) and at deputies in rural and village councils. All the same, in 1997 and again in 1998, nearly 100 top level officials were convicted of offenses and some 235 policemen. The convictions were for such offenses as failing to declare income, doing business related to one's position, and receiving in connection with performance of their functions material benefits or any other advantages, such as access to goods or services at a discount--actions not dissimilar to bribe-taking. The convicted persons received fines, but rarely were they fired from their jobs.⁶⁷

Both the rates of criminal convictions and the passage and enforcement of the Law on the Struggle against Corruption suggest that political forces in Ukraine found it advantageous to pursue corruption, at least in low places. Moreover, the government has in 1997-1998 gone further to sponsor an anti-corruption campaign known as "Clean Hands", established a Coordinating committee on corruption, and develop a planning document known as the "Conception on the Fight Against Corruption for 1998-2005."⁶⁸ Various surveys suggest that Ukraine has an especially high degree of corruption, including a World Bank study of small business; and a locally generated report estimates that forty percent of enterprises and ninety

percent of commercial structures have corrupt relationships and that sixty percent of the income of officials comes from bribes.⁶⁹ But we are not convinced that Ukraine is actually worse off than Russia, and we doubt that there is any way to know. Consider a national poll conducted in late 1998 in the Russian Federation that found that only 36% of adults had never given a bribe to an official, and that 27% did so regularly; 36% had done so more than once, and 5% only once.⁷⁰ A recent survey of public attitudes toward corruption revealed that the publics in Hungary and Russia did not perceive it to be a major problem, but those in Bulgaria and Poland did, and these public feelings “seem unrelated to the ‘unknown’ level of real corrupt practices.”⁷¹ In spite of the difficulties of doing this kind research, it is worth discovering whether or not levels of perceived and reported corruption in Ukraine are in any way correlated.

To make sense of the flourishing of corruption, the shadow economy and organized crime in post-communist countries, sociologists from East and West, have turned to theories of social networks and clientelism.⁷² Endre Sik and Barry Wellman argue on the basis of Hungarian experience that the use of personal connections, what they call network capital, was more prevalent under communism in Eastern Europe than in the capitalist West, and became even more widespread in post-communist conditions. Their nuanced and well-illustrated analysis treats these patterns of conduct not as a form of deviance but as normal and understandable consequences of particular social conditions. In a study of crime in the Czech republic John Hagan and Detelina Radoeva explicitly connect crime and corruption with extreme differentiation in the possession of and opportunities to use what they call social capital, finding that high levels often lead to corruption and corporate crime, while low levels disconnect the others from society and also lead to crime. Finally, Andras Sajo has produced a most penetrating

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

Conclusions

As we review the dramatic changes that occurred in Ukraine during the past twelve years in the quantity and quality of crime, we reach mixed conclusions. On the one hand, the growth of ordinary crime, of violent and especially property crime, represents both a natural catching up with countries of the West (Ukraine still has a long way to go) and a normal response to social disorganization, increased social differentiation and social strain. If anything, rates of crime should have risen even more, and it may well be that the dark figure (latent crime) is unusually high, as some Ukrainian criminologists believe. On the other hand, the criminalization of the economy, though the expansion of the shadow economy, the role of organized crime, and corruption of state officials, represents a more serious condition for the future of Ukrainian economy and politics. While the high rates of ordinary crime might well level off, and even decrease, should Ukraine develop a prosperous economy and effective government, the domination of the economy by the political-criminal nexus may be more difficult to reverse.

While some observers see this as part of "transition", others, in our view correctly, view the business crime problem as endemic to post-communism, as at least corruption was to late communism. To be sure, there may be entry points in what seems to be a vicious circle. One is to study and find ways of developing the accountability of government officials and breaking them off from the criminal world. (This would require positive as well as negative incentives and therefore cost money.) Another approach is to encourage, rather than the opposite, criminal elements to launder money by investing in legitimate business. In fact, it is hard to imagine the development of a prosperous economy in Ukraine without major reinvestment in the country of profits that have been removed from the country. (In fact, it would be useful to have studies of capital flows and identification of any returning capital, however small). Serious, long-term investment in Ukraine will not take place, until a system of true private property is developed, with appropriate legal protections, but thus far the elites in Ukraine benefit more from an ambiguity in ownership.

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

ENDNOTES

1. A.G. Kulik and B. I. Bobyr, "Obshchaia tendentsiia prestupnosti v Ukraine v 1972-1993 gg. i prognoz na blizhaishie gody," Prestupnost v Ukraine (Biulleten zakonodavstva i iuridichnoi praktiki Ukraini, 2 (1994), 5-37, and "Prilozhenie," ibid., 134-186; and "Osnovnye tendentsii prestupnosti i sudimost v Ukraine v 1994-1998 gg.," with attached tables, unpublished (1999). Unless otherwise indicated, all references to statistical data on crime in Ukraine are drawn from these data.
2. See, for example, Kulik and Bobyr, "Obshchaia tendentsiia," 7-8.
3. Prestupnost i pravonarusheniia. 1991-1995: Statisticheskii sbornik (Moscow: MVD, MIu, Mezhgosudarstvennyi statisticheskii komitet SNG, 1996), 12-13, 21.
4. Louise I. Shelley, "Organized Crime and Corruption in Ukraine: Impediments to the Development of a Free Market Economy," Demokratizatsiya, 6:4 (Fall, 1998), 649, citing a 1997 study of the Ukrainian National Integrity Survey; Kulik and Bobyr, "Obshchaia tendentsiia. 7; A.F. Zelinskii, Kriminologiya: kurs lektsii (Kharkov, 1996), 29, 35.
5. For details see Peter H. Solomon, Jr., "Criminalization and Decriminalization in Soviet Criminal Policy, 1917-1941," Law and Society Review, 16:1 (1981), 9-44; Peter H. Solomon, Jr. Soviet Criminal Justice under Stalin (Cambridge and New York, 1996), chapter 12.
6. See Peter H. Solomon, Jr., Soviet Criminologists and Criminal Policy: Specialists in Policy-making (N.Y. and London, 1978), chapter.5.
7. From August 1940 until well into the 1950s, conviction for the crime "petty theft from an enterprise" brought a mandatory one year of imprisonment. Not wanting to lose productive workers who pilfered, factory managers often issued warnings or reprimands rather than reporting the offenders to the police. Solomon. Soviet Criminal Justice. 327-330.
8. Solomon, Soviet Criminal Justice, 327-330, 435-436.
9. On the involvement of the public in the shadow economy, see Konstantin Simis. USSR: The Corrupt Society (N.Y., 1982), and Alexander Shtromas, Political Change and Social Development: The Case of the Soviet Union (Frankfurt, 1980), 67-81.
10. Peter H. Solomon, Jr., "Reforming Criminal Law under Gorbachev: Crime, Punishment, and the Rights of the Accused," in Donald Barry, edited, Toward the "Rule of Law" in Russia? Political and Legal Reform in the Transition Period (Armonk, N.Y., 1992), esp.246-250.
11. According to an well informed analyst, apart from 1997 there were no drops in the level of signals about crimes provided by the Ukrainian public and there were signs of increasing use of administrative offenses. An analogous levelling and drop in recorded offenses took place in Russia a couple of years earlier and was produced in the main, according to V.V. Luneev (a top

criminologist), by police omitting to record hard cases. "Osnovnye tendentsii," 2; V.V. Luneev. "Kontrol nad prestupnostiu: nadezhdy li pokazateli?" Gosudarstvo i pravo. 1995, no.7, 89-96.

12. Prestupnost i pravonarusheniia, 20, 21.

13. A.I. Dolgova, ed., Kriminologiia: Uchebnik dlia iuridicheskikh vuzov (Moscow, 1997). 147; "Prilozhenie," (to Kulik and Bobyr), 136.

14. Ibid., 184-185; Prestupnost i pravonarusheniia, 19-20.

15. "The 1989 Census: A Preliminary Report," Current Digest of the Soviet Press, 42-17 (1989), 17-23; Michael Ryan, compiler, Contemporary Soviet Society: A Statistical Handbook (London, 1990), 94-95.

16. Dolgova, Kriminologiia, 712-713; 764-769.

17. Kulik and Bobyr, "Obshchaia tendentsiia," 13.

18. On public attitudes toward the police in Ukraine see A.G. Kulik, "Otnoshenie naseleniia k militsii," Prestupnost v Ukraine, 65-79.

19. Zelinskii, Kriminologiia, 170-181; Kulik and Bobyr, "Obshchaia tendentsiia," 13-16.

20. A recent bibliography of publications by Ukrainian criminologists lists no published studies of theft, only two dissertations--one on "the prevention by police of theft of private property on railroads" and another on "the prevention of open theft and robberies of state property." It is unclear whether either includes a major empirical component. "Bibliografiia rabot ukrainskikh kriminologov, opublikovannykh v 1992-1998 gg.," unpublished (1999).

21. "Otchet po rezul'tatam issledovaniia po teme 'retsidivnaia prestupnost v sovremennykh usloviakh i meropriiatiia ee preduprezhdeniia,'" unpublished (1999). 12..

22. Zelinskii, Kriminologiia, 212-218; A.E. Mikhailov. Nekorvstnaia nasilstvennaia prestupnost i ee preduprezhdenie (Kiev, 1997), 12-24.

23. V.N. Kudriavtsev and A.V. Naumov, eds., Nasilstvennaia prestupnost (Moscow 1997). 19 (in chapter by V.V. Luneev).

24. A. I. Dolgova, ed., Prestupnost, statistika, zakon (Moscow, 1997). 215; Sostoianie prestupnosti v Rossii za ianvar-dekabr 1998 goda (Moscow: MVD, 1999); Zelinskii, Kriminologiia, 218-221.

25. Kulik and Bobyr, "Obshchaia tendentsiia," 22-24.

26. Zelinskii, Kriminologiia, 244-257,

27. "Sostoianie borby s organizovannoi prestupnostiu v Ukraine" (informatsionnaia spravka), unpublished, 1999, 8.
28. The term "rate of recidivism" refers to the share of persons "revealed to have committed crimes" previously convicted of a criminal offense (any) that remained on their records. (The criminal codes of Soviet republics provided for the expiry of the record of a conviction after an established period of time without a new offense). For details on the calculation of recidivism, see Zelinskii, Kriminologija, 234-236.
29. Zelinskii, Kriminologija, 231-243; "Otchet po rezultatam issledovaniia po teme 'retsidivnaia prestupnost...'" Note that the assignment of the label "especially dangerous recidivist" had a lot in common with the "three strikes and you're out" laws in the parts of the United States. A relatively trivial offense could and did lead to grave consequences for offenders bearing no reasonable connection either to their rehabilitation or just deserts.
30. Dolgova, Kriminologija, 708-725; "Primernaia tematika sovmetnykh ukrainsko-amerikanskikh kriminologicheskikh issledovaniia (predlozheniia nauchno-issledovatel'skogo insitututa Nacionalnoi akademii vnutrennykh del Ukrainy)," unpublished (1999), 7.
31. Willem Bongers, Criminality and Economic Conditions (Boston, 1916); Solomon, Soviet Criminal Justice, 33-34.
32. Robert K. Merton, "Social Structure and Anomie," (1938) in Merton, Social Theory and Social Structure, Revised and Enlarged Edition (N.Y., 1957), 131-160. See also Joachim J. Savelsberg, "Crime, Inequality, and Justice in Eastern Europe: Anomie, Domination, and Revolutionary Change," in John Hagan and Ruth Petersen, eds. Crime and Inequality (Stanford, 1995), 206-224.
33. For data on social stratification, see Paul D'Anieri, Robert Kravchuk, and Taras Kuzio, Politics and Society in Ukraine, forthcoming from Westview Press, chapter 6.
34. The classic research on the importance of the spectrum of social control for comparative crime rates is Freda Adler, Nations not Obsessed with Crime (Littleton, Colorado, 1983). The Russian criminologist Viktor Luneev cites Adler with approval and argues that it was the effective web of social control for much of the Soviet period that kept crime rates in the USSR low. V.V. Luneev, "Prestupnost v Rossii pri perekhode ot sotsializma k kapitalizmu." Godusdarstvo i Pravo, 1998, no.5, 45-58.
35. Elliott Currie, "Market, Crime and Community: Toward a Mid-Range Theory of Post-Industrial Violence," in Lawrence M. Friedman and George Fisher, eds, The Crime Conundrum: Essays on Criminal Justice (Boulder, Colorado, 1997), 17-44.
36. Steven Solnick, Stealing the State: Control and Collapse in Soviet Institutions (Cambridge, MA, 1998).

37. On the shadow (or "second") economy in the Brezhnev period, see Gregory Grossman, "The Second Economy in the USSR," Problems of Communism, 26:5 (1977), 25-40; on the criminogenic connections, see Annelise Andereson, "The Red Mafia: A Legacy of Communism," in Edward P. Lazear, ed., Economic Transition in Eastern Europe and Russia: Realities of Reform (Stanford, 1995), 340-366. The estimate of the size of the shadow economy is Grossman's.
38. For an overview of this story, see Victor M. Sergeev, "New Social Phenomena and Crime in Post-Communist Russia," Russian Politics and Law, 36:5 (Sept.-Oct. 1998), 3-8. See also, Anthony Jones and William Moskoff, Ko-ops: The Rebirth of Entrepreneurship in the Soviet Union (Bloomington, 1991).
39. On the legal framework of managerial privatization, see Simon Johnson and Heidi Kroll, "Managerial Strategies for Spontaneous Privatization," Soviet Economy, 7:4 (1991), 281-316.
40. The term "criminal-political nexus" first appeared in Louise Shelley, "The Political-Criminal Nexus: Russian-Ukrainian Case Studies," unpublished (1998).
41. See, inter alia, Svetlana Glinkina, "The Shadow Economy in Contemporary Russia," Russian Politics and Law, 34:2 (March-April, 1996), 46-70; and V.M. Esipov, Tenevaia ekonomika: Uchebnoe posobie (Moscow, 1997).
42. A World Bank estimate reported in "Sostoianie borby s organizovannoi prestupnostiu." 19. Other estimates include: 33% for the whole FSU in 1994 (by Daniel Kaufmann and Paul Siegelbaum) and 55% (Louise Shelley) for Ukraine in 1997. Kaufmann and Siegelbaum, "Privatization and Corruption in Transition Economics," Journal of International Affairs, 30:2 (Winter 1997), 420; Shelley, "Organized Crime and Corruption," 656.
- Note that as of 1989, before the collapse of Soviet economic system, estimates of the size of the shadow economy fell in the 17 to 25% range. Leslie Holmes, The End of Communist Power: Anti-Corruption Campaigns and Legitimation Crisis, 149-150.
43. On tax collection problems in Russia, see Alexander Morozov, "Tax Administration in Russia," East European Constitutional Review, 5:2-3 (1996), 39-47; and a unique anthropological study, Barbara Zschoch, "Tax Fraud in Yaroslavl Small Enterprises: Techniques, Causes, Cures," unpublished paper (1997). On tax issues in Ukraine, see Bob Kravchuk, "Ukraine's Soviet Inheritance: A Weak State."
44. Tenevaia ekonomika: Opyt kriminologicheskogo issledovaniia (Lugansk, 1997), 38: "Problemy sozdaniia gosudarstva i zashchity prav cheloveka v Ukraine," Materialy II regionalnoi nauchnoi konferentsii (fevral 1996 goda), unpublished (Lvov, 1996), 4.
45. Thus, the Moscow criminologist Azalia Dolgova prefers a narrow, Western style definition of "organized crime," her Ukrainian counterpart Zelinskii prefers a broad one. See Zelinskii, Kriminologija, 197-201.

46. "Dannye o proiavleniakh organizovannoi prestupnosti v 1993-1997 v Rossii," Organizovannaia prestupnost, 4 (1998), 258-261.
47. "Sostoianie borby," 11.
45. Quoted in Zelinskii, Kriminologija, 201.
49. Ibid., 200-208.
50. Mark Galeotti, "The Mafiya and the New Russia," Australian Journal of Politics and History, 44:3 (1998), 415-416. See also V.V. Luneev, "Organizovannaia prestupnost v Rossii: Osoznanie, istoki, tendentsii," Gosudarstvo i pravo, 1996, no.4, 96-109.
51. "Sostoianie borby," 25-26; Louise Shelley, "Human Trafficking: Defining the Problem," Organized Crime Watch--Russia, 1:2 (February 1999), 1-2.
52. Kulik and Bobyr, "Obshchaia tendentsiia," 19; International Narcotics Control Strategy Report, 1997:Ukraine (Washington, D.C. Bureau of International Narcotics and Law Enforcement Affairs, March 1998).
53. "Molodezh i narkotiki: nauchnyi otchet po itogam sotsiologicheskogo issledovaniia." unpublished report (Kharkov: MVD Universitet vnutrennykh del. kafedra sotsiologii. 1997). For analogous data and analysis of adolescents and narcotics in the Russian Federation. see V.A. Popov and O.Iu. Kondrateva, "Narkotizatsiia v Rossii -- shag do nationalnoi katastrofy." Sotsiologicheskie issledovaniia. 1998, no.8. 65-68.
54. "Sostoianie borby," 12-13, 16-17.
55. Ibid., 17-24.
56. V.F. Antilenko, Sovremennyi terrorizm: sostoianie i vozmozhnosti ego uprezhdeniia (kriminologicheskoe issledovanie) (Kiev, 1998). 156. 145.
57. For wise observations along these lines. see Margaret Beare. "Corruption and Organized Crime: Lessons from History," Crime, Law and Social Change. 28:2 (1997). 155-172. See as well the trenchant remarks of Andras Sajó, "that corruption in Eastern Europe is, in part, a function of Western perceptions." Sajó, "Corruption. Clientelism and the Future of the Constitutional State in Eastern Europe," East European Constitutional Review. 7:2 (Spring 1998). 37-46.
58. Kaufmann and Siegelbaum, "Privatization and Corruption." 422.
59. For vivid examples. see Simis, USSR: The Corrupt Society.
60. On frame laws and bureaucratic discretion. see Sergeyev. "New Social Phenomena." 9-19.

61. See A.M. Boiko, "O nekotorykh faktakh kotorye determiniruiut korruptsiuu," Doklad dlia konferentsii "Kontseptsiia formirovaniia zakonodatelstva Ukrainy," unpublished (October, 1997).
62. Barrington Moore, Jr., Terror and Progress--USSR: Some Sources of Change and Stability in the Soviet Dictatorship (N.Y., 1954); Kenneth Jowitt, "Soviet Neotraditionalism: The Political Corruption of a Leninist Regime," Soviet Studies, 35:3 (1983), 275-297.
63. For a comprehensive analysis of the negative consequences of corruption (and of some of its latent positive functions), see the Satarov report: Fond informatika dlia demokratii. "Korruptsiia v Rossii," published in Rossiiskaia gazeta, 19 Feb.1998, 3-16; partially reprinted in Chistye ruki, 2 (1999), 5-13; and translated as "Russia: Corruption Seen as a Socioeconomic Problem." FBIS-SOV-98-072, available on the internet to subscribers to wnc.fedword.gov.
64. On party screening of misdeeds by important officials, see Peter H. Solomon, Jr., "Soviet Politicians and Criminal Prosecutions: The Logic of Party Intervention." in James Millar, ed., Cracks in the Monolith: Party Power in the Brezhnev Era (Armonk, N.Y., 1992, 3-32.
65. Table in Chistye ruki, no.2 (1999), 10.
66. The Russian data comes from Viktov Luneev, "Sniskhoditelnost vlastei k korruptsiioneram dovedena do absurda," Chistye ruki, no.2 (1999), 26-33, especially at 31; and the Ukrainian data from Kulik and Bobyr, "Obshchie tendentsii," and Kulik, "Osnovnye tendentsii."
67. Informants have told us that the police and procuracy in Ukraine competed in the generation of cases under the law on corruption, and produced many weak ones that had to be stopped by judges. Zakon Ukrainy ot 5 oktiabria 1995, "O borbe s korruptsiei;" Luneev, "Sniskhoditelnost:" "Borba s korruptsiei v Ukraine (informatsionnyi material)," unpublished (1999).
68. "O sostoianii ispolnenii tsentralnymi i mestnymi organami ispolnitelnoi vlasi aktov zakonodatelstva o gosudarstvennoi sluzhbe i borbe s korruptsiei." Postanovlenie Kabineta Ministrov Ukrainy ot 3 avgusta 1998, No.1220."
69. Shelley, "Organized Crime and Corruption;" "Sostoianie borby," 25.
70. Valerii Rudnev, "Budushchee bez korruptsii," Chistye ruki, no.1 (1999), 1-2.
71. Sajo, "Corruption, Clientelism, and the Future of the Constitutional State in E. Europe," 42.
72. Endre Sik and Barry Wellman, "Network Capital in Capitlaist, Communist, and Postcommunist Countries," in Barry Wellman, ed., Networks in the Global Village: Life in Contemporary Communities (Boulder, Colorado, 1999), 229-253; John Hagan and Detelina Radoeva, "Crime and Capitalization in the Czech Republic," in Friedman and Fisher, The Crime Conundrum, 75-92; Sajo, "Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe."

Chapter Three

CRIMINAL JUSTICE IN POST-SOVIET UKRAINE

The system of criminal justice in Ukraine today is, as it has been for nearly ten years, on the verge of reform. New draft codes of criminal law and procedure, as well as draft laws on court organization, the status of judges, procuracy, and even organized crime, have circulated in academic and law enforcement institutions, traversed in and out of the Ukrainian legislature, briefly appeared in public for commentary, and then made their way back to the floor of parliament for debate and further readings. While there is little chance that any of this fundamental legislation will be adopted in 1999, a year of Presidential elections, there is a strong possibility now that some of this legislation will be adopted within the next two years. Ukraine today faces considerable pressure to modernize and humanize legislation governing the administration of criminal justice. The adoption of a new Constitution in 1996, ratification of several international covenants and obligations, and Ukraine's desire to remain in good standing with the Council of Europe, and eventually join the European Union, all increase the likelihood of major movement on these legislative issues.¹ This political time frame presents criminologists and legal scholars both in Ukraine and abroad with a small window of opportunity. Applied research completed prior to the adoption of this critical legislation may yet influence the process of reform. And while as outsiders we should not be naive about the prospects for shaping the future of Ukrainian criminal justice, we should also not be unduly pessimistic. The imprimatur of science, international expertise, and serious scholarship behind any legislative recommendation in Ukraine's polarized parliament today would smooth its journey. Perhaps just as importantly, it would strengthen the position of criminologists and legal scholars in the development of public policy.²

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

The Soviet Legacy.

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

Institutions.

The central position in this neo-inquisitorial system of criminal justice was occupied by the Procuracy, an institution of such power and prestige that it deserves special attention here. Originally created by Peter the Great as the "eye of the Tsar," the Russian procuracy had until 1864 responsibility for monitoring affairs of state, in particular ensuring compliance with the edicts of the autocrat. The Judicial Reform of 1864 transformed the Tsarist procuracy into a prosecutorial agency, but in 1922 Lenin decided to restore to the Soviet procuracy its role as supervisor of legality in public life, including responding to the complaints of citizens about illegal actions of government officials. Throughout its history (right to 1991) the Soviet procuracy performed both supervisory and prosecutorial functions, with varying balances. During the late 1920s and 1930s the procuracy was mobilized by the party leadership to help implement its transformational policies, including industrialization and collectivization, as well as to prosecute, sometimes extra-judicially, those branded as "enemies of the people."⁴ Despite this involvement in the extra-legal terror, the Procuracy evolved to become the main mechanism of centralization and the restoration of legal order, however draconian, in the late Stalin period. Subsequent Soviet leaders expanded the role of the Procuracy in public affairs, partly as a counterweight to the secret police in succession struggles, but also in order to develop "socialist legality." Shoring up public confidence in the state and ensuring greater predictability in economic relations were important regime goals, and the Procuracy played a critical role in their achievement. The Procuracy quickly became the most prestigious legal institution, with the best cadres and the greatest resources. Its stature, and centralization -- unlike most public officials, procurators were not subordinate also to local governments -- made the Procuracy, both in the eyes of the public and in reality, the one

agency in the USSR capable of curbing corruption in the localities, and providing at least a modicum of hierarchy in the application of laws. In the Gorbachev period, the Procuracy experienced further growth -- in both personnel and political significance. During the so-called "war of laws," as republics and regions demanded more autonomy or in some cases sovereignty, the Procuracy served as the last bastion of Soviet legality.

The political prominence of the Procuracy stemmed in large part from its responsibility for the "general supervision" (obshchii nadzor) of legality in public life. The Soviet Procuracy performed the role of an aggressive and omniscient ombudsman, protecting the interests of the commonweal, intervening in civil suits, and, most importantly, reviewing citizens' complaints against the state. But the Procuracy was not supposed to wait for signals of wrongdoing: its task was to preempt illegality -- to prevent not just crimes, but also social injustice, pollution, malfeasance in state enterprises, and maladministration of the state. For this purpose, it conducted periodic "check-ups" (proverka), which were in effect "raids" on public agencies and social organizations. With the power to subpoena information and documents, the Procuracy could refer its findings to courts for the application of fines or initiation of criminal proceedings, or recommend to the government changes in laws and administration. In sum, the Procuracy was a metagovernmental institution, with unique and unwieldy powers -- not a separate branch of government, as some have suggested.⁵

In matters of criminal justice, the Procuracy was similarly omni-competent and powerful. Its power stemmed from its unusual dual role in administering justice: a procurator acted as both prosecutor and referee of the legality of proceedings at all stages. This prosecuting procurator, as well as his superiors, could issue "protests" of that court's rulings and verdicts, which higher

courts were obliged to review. In addition, the procurator presenting the state's case against the accused in court was also responsible for insuring "objectivity" in the dossier and development of the case during the pre-trial investigation. This commingling of functions jeopardized its impartiality. The fact that the Procuracy also answered to the state for the success of the fight against crime, however measured, made its dual role especially problematic. The Procuracy had an institutional conflict of interest, and its allegiance to legality was divided.

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

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

Courts in Soviet Ukraine were weak, dependent bodies that lacked public respect, and the career of judge had low status and few rewards. First, the jurisdiction of the courts was limited. Courts did not deal with constitutional matters; their main mandate was the enforcement of criminal law and the resolution of civil disputes relating to divorce and alimony, housing and inheritance, and labor issues. The judiciary's role in reviewing the legality of the actions of government officials was exceedingly small (for example, not until the 1970s could one contest a traffic ticket in court), and, as we explained above, closely circumscribed in the crucial pretrial phase. Further, the courts played but a minor role in the resolution of commercial disputes, as conflicts between state-owned firms were handled by special tribunals of the state *arbitrazh* (not

a part of the court system). But even these modest functions judges could not perform free of constraints, as they faced pressures to avoid acquittals and to sentence according to the policies of the day. Records were kept of judge's performance, according to such criteria as "stability of sentences" (i.e. the percentage of verdicts that withstood appeal), and these records influenced the course of the judge's career. Judges reversed too often faced disciplinary proceedings and on occasion recall.⁸

Second, rather than being independent, judges in the USSR were exposed to multiple lines of dependency -- one horizontal and two vertical. Within the localities in which they worked judges depended upon local political officials, including the party bosses, for the provision of personal benefits (such as apartments and vacations) and for extrabudgetary support of the courts (maintaining and repairing court buildings, provision of cars). In addition, the local party leaders had a voice in the judge's continuation in office, including a say in their periodic renomination for "election" (for five years) and the right to initiate a recall. Most judges felt sufficiently obliged to their local patrons so as to cooperate with their needs -- whether responding to the occasional intervention about a case or maintaining appropriate records. Still, in the last decades of Soviet power, judges felt even greater dependency upon their two vertical masters -- the ministry of justice and the higher courts. The Ministry of Justice, and its departments in the regions, administered the courts by controlling their budgets, distributing bonuses, handling complaints, monitoring delays, and writing the performance evaluations on which judges' career advancement depended. The higher courts supervised by holding training courses, convening conferences on judicial practice, conducting disciplinary proceedings, and using their considerable appellate power.

Another sign (and cause) of the low status of the courts and judges was financial. The Soviet government was famous for its capacity to target resources to its priority concerns, and the administration of justice was not one of them. Typically, the buildings occupied by courts throughout the Soviet period were among the most modest and worst maintained public buildings -- a matter of constant complaint. Moreover, the salaries provided to judges and budget for court staff and expenditures were barely adequate -- exposing judges to rely upon the generosity of local officials, and occasionally to fall prey to corruption. Another sign of the judges' low status was the meagre provision of benefits, which in the Soviet system mattered greatly. A large number of judges in the 1970s and 1980s lacked apartments of their own, and many, like their colleagues in the MVD, left state service for private practice in the last years of Soviet power.

Finally, judges in the late Soviet period had a weak sense of professional identity. For one thing, judges received little, if any, special training before starting at their posts; familiarity with the courts came mainly from earlier experience working as secretaries in the courts. Opportunities for mid-career training (special courses) existed but were on the whole episodic and superficial. For another, judges had none of the institutions that might develop interactions among them and make them into a community. There were no associations of judges, no special journal for judges, and no research institute devoted to problems of the courts and the administration of justice. To be sure, judges in many regions had opportunities to gather in the capital city for conferences, but these were typically organized by party bodies or justice officials to make judges aware of the current priorities in the struggle against crime, which was viewed by many governmental officials as a prime responsibility of the courts.

Criminal Procedure.

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

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

Performance.

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

The two worst aspects of criminal justice in Ukraine were an over-reliance on detention as a “measure of restraint” and ensuring the appearance of accused at trial, and the excessive use of imprisonment. First, at least 35 percent of all accused, and virtually all persons charged with offenses likely to receive custodial sanctions, spent many months, and sometimes years, in jail awaiting trial.¹¹ There was no provision for bail, and alternative measures of restraint were available principally for those charged with truly trivial offenses. Second, prison was the main form of punishment in Ukraine -- perhaps because of the economy’s insatiable demand for cheap labor.¹² In some years, 60 percent of those convicted by courts were given custodial sentences. By the 1980s, the rate of imprisonment was down to 40 percent, and at the end of the decade it stood at 34. But this figure was misleading, for it encompassed a wide variety of non-violent crimes, as well as several offenses that in other countries might be classified as misdemeanors. Not only was prison a virtual certainty for those guilty of crimes of violence, but it was also used routinely for those who committed ordinary property offenses, and especially attempts on socialist property.

TABLE 3.1 Sentencing in Ukrainian Courts, 1990 - 1991.

year	# convicted	# / % imprisoned	# / % given “corrective labor”	# / % “chemo”	# / % “conditional conviction”	# / % other non-custodial
1990	104,199	35,947 / 34.5	22,890 / 22.0	8613 / 8.3	6096 / 5.9	30,653 / 29.4
1991	108,553	35,055 / 32.3	24,128 / 22.2	9283 / 8.6	7208 / 6.6	32,879 / 30.3

Source: A.G. Kulik, Prestupnost v Ukraine, no. 2, 1994, p. 141.

NOTES: “Corrective Labor” main non-custodial form of punishment: it consisted of nothing more than the court obliging the convict to remain at his/her place of employment and deducting 20 to 25 percent of his salary into the state treasury. “Chemo” (khimiya), was the vernacular term for “conditional convictions with compulsory labor service;” it referred to in the toxic conditions in which prisoners were made to work. “Conditional Conviction” was a probationary sentence, which could be transformed into real imprisonment if the convict violated the conditions of his probation. Other non-custodial punishments included fines, social supervision, and for juveniles, “suspended sentences” (otsrochka ispolnenie prigovora) which differed little from conditional conviction.

Was Ukrainian criminal justice effective in fighting crime? On paper it was spectacularly successful. Levels of "cleared" or solved (raskrytvo) crimes were fantastically high. In most years, the clearance rate hovered above 90 percent; for certain offenses it was closer to 100. Such stellar performance, however, had much less to do with the mythic "advantages" to the prosecution of neo-inquisitorial procedure than with the vices of the police accounting system. Until 1988, the police could "solve" crimes without sending cases or criminals to court. Between 1970 and 1980, the Ministry of Internal Affairs considered a crime "solved" from the moment a decision was made to open (vozbudit') a criminal investigation. Between 1980 and 1988, a crime was deemed solved once charges were formally presented to the accused. In both systems, however, the police were not required to obtain a conviction in order to be favorably evaluated. Not surprisingly, many crimes "solved" never made it to court. Soviet criminal procedure aided and abetted these practices, affording both Police and Procuracy many ways out of pursuing a criminal case to its logical conclusion. For example, criminal proceedings could be terminated for a host of "non-rehabilitative reasons" (that is, if there had been a "change of circumstances" and the act had ceased to be "socially dangerous"), and the accused could be diverted from formal prosecution -- by having their cases sent to "comrades courts," or being placed under a variety of forms of social supervision.¹³

In 1988, however, the USSR Procuracy and MVD jointly decreed that henceforth a crime would be considered solved only when a procurator had signed a conclusion to indict (obvinitelnoe zakliuchenie) -- which meant that the case now had to be sent to the court for trial. These rule changes limited prosecutorial discretion and discouraged diversion, but they also

encouraged the police to engage in activities designed to protect their performance ratings – principally, concealing reports of crimes.¹⁴ Because of this latter effect, and the emergence of high amounts of unrecorded or “latent” crime, the performance numbers remained respectable, and the police still appeared vigilant. As Table 3.2 shows, police opened investigations in almost 75 percent of registered crimes, identified suspects in every second case, and, with the assistance of the Procuracy, secured convictions for more than 90 percent those charged.

Table 3.2 Police Performance, 1990.

year	# crimes registered	# / % investigations opened	# / % suspects “identified”	# / % charged	of “identified,” # / % convicted
1990	369,809	271,346 / 73.4	186,683 / 50.5	114,674 / 61.4	104,119 / 90.8

Source: A.G. Kulik, *Prestupnost v Ukraine*, no. 2, 1994, pp. 135-140.

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

Post-Soviet Criminal Justice

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

Judicial Reform.

In the first years of independence, Ukraine moved quickly to introduce judicial reforms. In April 1992, a Conception of Judicial Reform was endorsed by the Parliament, and by the end of 1993, a packet of laws was adopted that substantially improved the status of judges in Ukraine and reduced external influence on their work. Instead of being elected by the public at large for five year terms, district court judges were now elected, upon the recommendation of the Chairman of a Regional Court, for 10 year terms by the regional legislative assembly.¹⁶ Judges also acquired some capacity for self-government, with new corporate associations (Councils of Judges) and "judicial qualification commissions" (comprised of judges and lawyers nominated by politicians), that vetted candidates for judicial posts, controlled disciplinary proceedings, and convened

Congresses for the discussion of reform issues. There were also increases in the salaries of judges, as well as a host of new benefits and privileges, including, most importantly, the right to adequate housing within 6 months of appointment.¹⁷

Unfortunately, these innovations did little to address the two main sources of judicial dependence – the Ministry of Justice and higher courts – and were much more modest than those called for by judges and many legal scholars. Most judges, for example, wished to take away from the Ministry of Justice the responsibility for judicial administration and court financing, and create in its place an entirely autonomous Judicial Department, subordinate only to the Supreme Court and Council of Judges.¹⁸ But the Ministry of Justice was reluctant to give up this important lever of influence on judges, and the deputies in the Parliament, excited about democratic rule and representative government, were unwilling to cede political power to the judiciary. The forces against radical reform were simply too powerful. Furthermore, there were substantial problems in the realization of even these modest improvements in judicial status and independence. Despite the new legislation, judges had difficulty obtaining appropriate housing, continued to work in dilapidated buildings, and were frequently exposed to outside pressures (often from deputies).¹⁹ Not surprisingly, the number of vacancies and rate of turnover in the judiciary remained high, which only served to worsen the performance of courts about which politicians were so agitated. In February 1994, the President ordered work on a new Conception of Judicial Reform, but by the time one had been drafted, the window of political and economic opportunity for radical changes had closed.²⁰ Parliamentary elections in March, 1994, followed by Presidential elections in October, and a row over the division of powers in the drafting of a new constitution created a political crisis that put judicial reform off the active agenda. So contentious were the politics of

Ukrainian Constitutionalism that only narrowly was a collapse of the Republic avoided.²¹

The adoption of a new Constitution in 1996 reopened the door to radical legal and judicial reform, for it enshrined a wide array of important civil liberties and proclaimed new forms of courts that will require profound changes to the organization of the judiciary and criminal procedure. For example, the Constitution proclaims rights against double jeopardy (art. 61), searches and seizures not sanctioned by courts (articles 29-31), and contains provisions for jury trials, new forms of appellate review, and the abolition of the Procuracy's power of "general supervision." However, none of these rights and changes are realizable without new enabling legislation, and the "Transitional Provisions" in the concluding chapter of the Constitution. Section 15, postpones the introduction of many of these changes until 2001, or until such time as Parliament introduces such legislation. Because of the protracted socio-economic crisis, and the priorities of political figures at the national level, the state has not had the means with which to deliver on these promises. The only major institutional innovation in the area of judicial reform has been the introduction of a Constitutional Court, which has been besieged by questions of the proper configuration of state power, not the niceties of criminal law and procedure.²² Two other dramatic new institutions – the introduction of habeas-like hearings for those in pre-trial detention,²³ and the possibility of bail²⁴ – have been grafted onto the neo-inquisitorial structure, but neither has had great consequences for courts or the way justice is administered.

Judicial reform in the new Ukraine has thoroughly bogged down. There is neither a political engine nor public constituency for reform. Both the Supreme Court and the Ministry of Justice, the two institutions most directly interested and affected by judicial reform, lack the right of legislative initiative, and are themselves stalemated over reform issues. The two Committees

in the Rada concerned with judicial and justice reform – the Committee on Legal Reform on the one hand, and the Committee on Legislative Facilitation of the Operation of Law Enforcement Agencies and the Fight Against Organized Crime and Corruption, on the other – are divided on the major questions of the day, and rumored to be patronized by the Supreme Court and Ministry of Justice, respectively. The most important piece of reform legislation, the Draft Law on Court Organization (Sudoustroistvo), on which the vast majority of changes to criminal procedure depend, has stalled. The key sticking points include: the proper configuration of projected juries (whether they will be “mixed” or classical, how many votes should be required for conviction and acquittal);²⁵ the nature of new appellate courts; the relationships of local courts to existing administrative units; and the place and role specialized tribunals, such as motions, administrative law, commercial, and military courts.²⁶ Although a “conciliatory commission” was to smooth over the differences between the two remaining drafts (originally, five were submitted), and Sirenko, the Chairman of the Committee on Legal Reform, reportedly “promised” that they would be overcome in time to debate the bill before summer recess, the Deputies could not come to agreement and the bill was not put to the floor for consideration.²⁷

In the meantime, the judiciary has endured a protracted crisis in funding, and a backlash against their enhanced status and newly won insulation from outside interference. In 1998, courts received only 49.6 % of the amount of funding deemed “essential to basic operations.” In February, a Deputy Ministry of Justice claimed that there had been a twenty percent increase in the amount budgeted for the courts in 1999, so that almost 70% of the level requested by the judiciary as essential will be delivered this year.²⁸ A recent report, however, claims that at mid-year, courts have received only one-third of their appropriations.²⁹ Lower level judges report that

their courts receive assistance and short term subsidies from local governments -- which tends to jeopardize their decisional independence in a variety of cases -- but these sums are usually modest and will likely dry up as a source of sustenance in the future.³⁰ Having lost its patience with the Council of Ministers, the Supreme Court has now requested that the Constitutional Court rule on the constitutionality of the government's failure to properly fund the courts.³¹

The backlash against courts comes chiefly from the executive. Last year, for example, the Council of Ministers proposed amendments to the Law on the Status of Judges that would have eliminated many of the privileges and benefits of judges.³² In January of last year, too, the President established a Higher Council of Justice, which is comprised of 19 individuals, including leading politicians, legal officials (of which only two are judges) and scholars, aggressively vets first time candidates for judicial posts, and reviews disciplinary conduct materials.³³ Councils of this kind in other countries, such as France, Italy, and Canada, are dominated by judges.³⁴ The President also has arrogated to himself the right to appoint chairman of district courts; although the Constitution is ambiguous on this point, the most responsible reading gives this power to the judges of the court in question.³⁵ Finally, the President has displayed open contempt for the Supreme Court's autonomy. This February, for example, President Kuchma complained to a journalist about the Supreme Court's supervision of judicial practice on matters related to the Law on Foreign Investment. Specifically, he charged that and that the Supreme Court wrongfully endorsed lower court practice, which upheld the rights of foreign investors after the Law was annulled. Kuchma suggested that people hurt by such decisions should "demonstrate" in front of the Supreme Court.³⁶ Under these circumstances, it is not surprising that responsible parliamentarians claim that "the judiciary today is completely subordinated to the executive."³⁷

The Police.

The police, or MVD, have been beset by similar problems stemming from the weakness of the state and the chronic crisis in funding government operations. The MVD, according to the present Minister, Iu. F. Kravchenko, is financed at only 30 % of its basic needs.³⁸ Although some of the shortfall is made up by local government subventions, the inability of the state to properly fund and maintain the police has led to an exodus -- both involuntary and coerced -- of capable cadres, a reduction in the ability to train reliable policemen and criminal investigators, and a sense of betrayal that adversely affects the loyalty of the police. Indeed, this combination of factors has spawned considerable corruption in the ranks. Most of the corruption about which there is reliable information, and much folklore, is of the petty, garden variety kind -- such as the indiscretions of the employees of the State Automobile Inspectorate (GAI). But the scale of these and other forms of professional degeneration is nevertheless worrisome. For example, internal investigations uncovered 108 "acts of corruption" in 1997, and in the first quarter of 1999, 50 policemen were fined for misdemeanor corruption. In 1997 and 1998 respectively, more than 10 percent (24,500 and 30,500 of a total of 220,000) of MVD employees were relieved of their duties, some of whom were fired for wrongdoing ; in addition, 525 and 325 faced criminal prosecution for various kinds of malfeasance.³⁹ Even if the direct consequences for the fight against crime of this *ennui d' corps* are not great, the impact on the public perception of police integrity and efficacy is considerable, and tends in turn to contribute to the scale of unreported crime.

A different form of police corruption may have more serious long-term consequences for fighting crime. In some cases, officers and even whole police units have sold out to or been captured by criminal groups, a development dubbed "merging" (srashivanie) in both Ukraine and

Russia. Although no reliable data exist on this kind of corruption, it is clear that the police on occasion perform services for wealthier, better supplied criminal groups and businesses -- by looking the other way, providing tips, selling information, or, less commonly, doing their dirty work. It is also not uncommon for police to compete with criminal groups in the supply of protection services. Some of this activity is centralized, aggressively marketed, and organized institutionally within the MVD as "Extadepartmental Security (Vnevedomstvennaia okhrana). But some of the "protection" services provided by police are unofficial and disloyal. The most well known examples of this entrepreneurial policing include giving guarantees of safety to businesses from the incursions of gangs, criminal groups, or fire, health and tax inspectors.⁴⁰ In return for these services, policemen receive free meals and hospitality from local restaurants, or scarce goods and services from stores. This activity is difficult to distinguish from racketeering. At the very least, it blurs the distinction between cops and robbers. Nevertheless some policemen defend these practices as either no different from the free donuts enjoyed on occasion by cops in the US, or as a policeman's anthropology -- the kind of good detective work that gets cops closer to the ultimate objects of their investigations. Whatever the merits of such claims and denials, the state's lack of supervision of such conduct is cause for concern.

Partly in response to these developments, the MVD has set up a new Division for Public Relations. So far, this Division has conducted or sponsored victimological surveys and used other research instruments to better understand public perceptions of and interactions with the police. Some of the research and findings are fairly primitive and used for crude purposes. For example, the Minister recently reported with a sense of accomplishment that 34 percent of respondents in a survey claimed to trust the police, while 33 percent did not.⁴¹ But other projects conducted under

the auspices of the new public relations Division are more promising. The MVD, for example, has helped fund experiments with "municipal police" departments, which will not only deliver better information on public attitudes but also develop more reliable information about the extent of unreported crime.⁴² These and other investigations can rely on the considerable research potential and capacity of the institutes, laboratories and universities subordinated to the MVD (which we discuss in chapter 4) in order to bring about a better understanding of police problems and their potential remedies.⁴³

The Procuracy.

The collapse of the USSR has been both a boon and bane for the Ukrainian Procuracy. On the one hand, the Procuracy has experienced huge growth – especially in its central administrative apparatus, which lacked independent managerial capacity when it was subordinate to the USSR. By 1997, the number of central staff was three times that in 1986. The magnitude of this growth is now criticized as excessive, and a reduction in personnel and administrative units has been engineered by Potebenko, the current Procurator General.⁴⁴ But this recent downsizing should not be seen as a sign of a curbing of the Procuracy's functions. On the contrary, the scope of "general supervision" of legality, which the Procuracy advertises as its greatest virtue, has grown markedly in recent years.⁴⁵ The protracted socio-economic crisis, poaching of state assets, and general lawlessness in public relations have heightened the state's need for self-protection and increased the public's demand for quick and inexpensive legal aid. In this sense, the collapse has brought about added justification for the existence of this omni-competent institution.

On the other hand, the pledge to create a "rule of law state," the desire for greater integration with European government institutions, and above all the promised dilution of its

functions in the new Constitution, all raise questions about the validity of the Procuracy's present status. According to the Constitution, not only are most of the functions of supervising legality in the pre-trial stage (searches and seizures, arrest warrants) presently performed by the Procuracy to be transferred to the courts, but the rights and powers associated with general supervision are to be dissolved by 2001 (Chapter 15, paragraph 13). And although two years are left before new legislation must be adopted on these questions, there is already a vigorous debate on the future of the Procuracy. The abolitionists are in the minority, although many of the arguments they advance are sound – including the claim that the Procuracy is not sufficiently independent of government to be able to properly supervise its officials.⁴⁶ Most of the pillars of the academic legal establishment echo the nostalgic and nationalist claims of Potebenko, who insists that Ukraine's unique identity and current socio-economic predicament warrant the retention of the historical role of the Procuracy.⁴⁷ Nevertheless, there is considerable uncertainty over the future role and function of the Procuracy in Ukraine. Research on topics such as prosecutorial discretion and the effectiveness of pre-trial supervision might influence the outcome of the debate.

The Character of Criminal Justice.

There have been only modest changes in the administration of justice in Ukraine since the collapse of the USSR. Acquittals remain below 1 percent of all dispositions; in 1998 they were one half of one percent.⁴⁸ There are, however, strong signs of more rigorous judicial scrutiny of evidence amassed by the prosecution – especially in the review of habeas-like petitions and in the rise in the number of cases terminated by courts. In both 1997 and 1998, courts released from custody every third prisoner who contested the legality of his pre-trial detention.⁴⁹ Between 1990 and 1998, terminations rose from 5 to 10.3 % of all dispositions.⁵⁰ Together with a steady rate of

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

The greatest problem faced by courts in the administration of criminal law today is excessive case-load. Since 1990, the number of criminal defendants has increased by 230 % and the number of administrative, or misdemeanor hearings, has risen in similar proportions. The growth in civil suits has been equally intense, from under 300,000 in 1990 to nearly 800,000 in 1998.⁵¹ The expansion of the judicial corps, by contrast, has not been large; there was only a modest increase in the total number of judges between 1990 and 1998. But these figures do not fully capture the strain on the judiciary, for judges now also play an active role in corporate self-governance in addition to administering an ever expanding and often contradictory body of law. The principal means by which this growing burden has been relieved are: defacto decriminalization (police and prosecution treating certain felonies as misdemeanors), allowing bench trials in civil suits (if the parties consent to a single-judge hearing), and authorizing judges to try some criminal matters without lay assessors. More fundamental changes to criminal and civil procedure that might simplify and accelerate trials are currently under consideration.⁵²

Fighting Crime in Ukraine: Assessing the Regime's Response

Neither the President nor the public finds the performance of the state in combating crime satisfactory. More than two-thirds of citizens polled in 1994 rated police work "poor," and just over half of policemen polled judged their own "effectiveness" as "low."⁵³ Even the Minister of Internal Affairs now claims he is "not satisfied" with police performance, lamenting that almost 30 percent of murders and robberies are not solved.⁵⁴ But public opinion polls, pre-electoral platitudes, and clearance rates are not sophisticated ways of assessing the system's performance in fighting crime. Clearance rates in particular are famously tricky instruments of measurement. In Ukraine, as in the US and U.K., this rate is calculated without respect to the number of persons ultimately convicted of crimes. It is also based not on the number of crimes reported to the police, but rather on the number registered by them. Moreover, it subtracts from the total number of crimes police have to clear the number of cases "suspended" (priostanovleno) because a suspect could not be identified within two months.⁵⁵ For these and other reasons, clearance rates thus tell us little about the quality of police detective work, and should be discounted in the attempt to assess police performance in Ukraine. Although steps to establish different measures of police effectiveness are being taken, at present we lack a reasonable criterion by which to assess police performance.⁵⁶

Two other factors complicate assessments of the system's response to crime -- limited access to data, and the unreliability of official statistics. First, despite more openness in the regime's reporting of crime, there are still great problems in accessing information about the extent of crime in Ukraine. In 1998, the State Committee on Statistics published only 100 copies of Crime in Ukraine (Zlochinnost v Ukraine), the only authoritative source of information on rates

of crime. Scholarly articles and books with complete sets of data are also rare. One issue of an irregular legal periodical accounts for the majority of citations and bulk of public knowledge about the recorded levels of crime and punishment in Ukraine.⁵⁷ Even researchers within MVD academies and institutes report that they labor under considerable restrictions to the data they themselves manage.⁵⁸ Establishing a unified and publicly accessible data base on crime is a prerequisite to assessing the system's performance; it would also constitute an important first step in the development of a mature empirical criminology in Ukraine.

Second, there are grave and legitimate concerns about the reliability of crime data generated by the MVD. Not a single police officer, judge or procuracy official interviewed by the authors of this study believes that the reported 2.2% decline in registered crime in 1998 reflects the truth. Almost all law enforcement officials know of tricks used to enhance performance ratings that distort the aggregate picture of crime -- some of them quite alarming. For example, the head of a district police department outside of Kharkov reports that coroners in his district are paid to record mysterious cases of murder as instances of "the infliction of grave bodily harm" from which death followed unintentionally in order to relieve the police of pressure to clear these crimes.⁵⁹ These and other deceptions are not rare -- and presumably more common for less serious crimes. Each year, the Procuracy uncovers about 15,000 crimes "concealed" (skrutykh ot ucheta) by the police, and opens criminal investigations into another 15,000 cases where the police unjustifiably decided not to commence inquiries.⁶⁰ Skepticism and cynicism about the veracity of police crime statistics is so legion in Ukraine that many procurators advocate the transfer of control over data registry to civilian authorities.⁶¹

The government itself has acknowledged a problem with crime data, and recently endorsed

a program to study seriously the causes of, and means of combating, the dark figure -- "latent crime" (latentnaia zlochinnost). Funding for this program, unfortunately, has reportedly dried up.⁶² Nevertheless, initial studies have made some headway. Some scholars have even taken steps to set up a conceptual apparatus for the study of latent crime. For example, Zelenetskii proposes to distinguish between "artificial" and "natural" latency -- that is, treating deliberate police distortion and deception as "criminally latent crime" and the public's underreporting of crime as organic.⁶³ Other scholars focus on the extent of this "natural" latency; typically they report large amounts of latent crime. One victimology survey in Kiev conducted with international assistance found that only half of all crimes are reported to the police.⁶⁴ A senior sociologist at a police institute in Kharkov, however, suggests that the rate of unreported to reported crime is 10:1; for certain kinds of crimes, he estimates it is 30:1.⁶⁵ Sorting out the scale of this latent crime is clearly a prerequisite to any assessment, and would provide a suitable topic for joint research.⁶⁶

Without advances on these three fronts, of course, any analysis of police performance must remain speculative. Our observations here are accordingly tentative: they are intended to raise questions for future research. Table 3.3 (next page) presents data on levels of reported and registered crime, as well as the further handling of such offenses by police in the last 8 years. What do these data tell us about the quality of policing?

Table 3.3 Crime and Punishment in Ukraine, 1990-1998.

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

* as % of "registered"

First, there is still a considerable amount of selective registering of crime in Ukraine. The rise in levels of reported crime was not matched by a rise in registered crime; in 1990, two out of every 3 reported crimes were registered; by 1998, it was only 2 out of 5. Unless the public is reporting false or frivolous incidents at a growing rate (which is unlikely, given the low public confidence in the MVD), it would appear that the police are dismissing more allegations of criminal activity than before.⁶⁷ True, the police are not arbitrarily dismissing reports of crime: the decrease, since 1993, in the percent of registered crimes that led to a formal initiation of criminal investigation suggests that police are compelled to register such reports even when the prospects of their solution is not great. Nevertheless, we need to know much more about the disincentives to registering crimes, and the rationale for not opening criminal investigations when the required elements of a crime are present.⁶⁸ What governs police investigators' decisions to confer on reported offenses the status of a registered crime? How many reported but unregistered crimes

were serious offenses? Is this selective registration of crimes merely a defacto decriminalization, or something more corrupt and worrisome?⁶⁹

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

Finally, the ratio of convictions to number of registered crimes has increased noticeably in this period, from 28 to 40 percent. Yet the ratio of convicted to reported crime has remained fairly stable, hovering around 18 percent for most years. This would suggest that there has been little improvement in the ability of police to catch criminals in the past decade. However, in light of the great increase in levels of crime, the growing complexity of offenses, and the underfunding of the MVD, perhaps such steady rates mean police are coping adequately with their tasks. Clearly, there are limitations to the knowledge that can be generated by examining this data in the aggregate. In order to advance our understanding, we must approach these data on police processing by categories of crime.

Economic Crime

Ukraine has decriminalized some previously prohibited economic activities, but it has not gone as far as Russia. For example, "speculation" -- that is, the purchase and sale of scarce goods for the purpose of making a profit -- remains a crime in Ukraine (Art. 154), as do "illegal currency transactions." Moreover, since 1992 the Rada has adopted laws that introduced a multitude of new offenses in the economic sphere.⁷⁰ Ukrainian society is deeply divided on the question of decriminalizing certain forms of economic activity, especially those affecting retail prices on consumer goods. On the one hand, many (perhaps most) insist that the economic collapse and transition away from solely socialist forms of property relations have given rise to much nefarious economic conduct, a considerable portion of which causes harm to innocent or unwitting citizens. Others, by contrast, argue that the Ukrainian criminal code prescribes penalties for too many forms of ill-defined types of economic activity, giving the regime and its administrators too much discretionary control over citizens' daily lives. Although this debate is unlikely to be solved by better criminology and police performance assessments, it is instructive to analyze the available data on economic crime.

There indeed has been considerable growth in the number of recorded crimes in the economic sphere -- an increase in Ukraine overall since 1990 by a factor of two. Nevertheless, a considerable portion of the relevant articles in the code pertaining to economic crimes remain "dormant." According to Kalman, a researcher in Kkarkov, between 1992 and 1996, only 1/3 of the offenses listed in the Code found any application, and only 50 percent of those criminal investigations that were initiated ended up being sent to court.⁷¹ These and other data suggest that shortcomings in the fight against economic crime are attributable to excessively discretionary

prosecutorial strategies. The high incidence of fines as penalties in particular suggests that the offenses chosen for prosecution were not grave. However, other research in Kharkov indicates that police strategies are also part of the problem: only minor offenses and offenders are targeted. The fact that in Kharkov more than 50 percent of all accused were women suggests that "discretionary policing" also stifles the fight against major economic crime.⁷² Sorting out the relative contribution of police and procuracy to this shortcoming is a high priority. Are procurators ducking and/or diverting serious cases from prosecution, or are few serious criminals apprehended in the first place? Are the police preying only on petty offenders in the market place? What role do corruption and performance evaluation play in policing strategies? In order to develop answers to these and other questions, researchers will need, among other things, more control over the recording of crime in the economic sphere.⁷³

Corruption

Corruption in Ukraine has reached truly impressive proportions. As Table 3.4 below shows, more than 15,000 civil servants were convicted of a crime of office last year -- that is, five percent of the total number of civil servants in Ukraine.⁷⁴ Equally impressive is the performance of the Procuracy in prosecuting official crimes. In 1998, procurators obtained convictions in 67 percent of bribery cases known to the police (1,641 convicted; 2,449 registered offenses).⁷⁵

Table 3.4 Corruption in Ukraine, 1997: Convictions for "Official Crimes"

year	# convictions for "official crimes"	Abuse of Office (Art. 165)	Negligence (Art. 167)	Accepting Bribes (Art. 168)	Forgery (Art. 172)
1997	11,311	2,756	1,787	1,540	4,435
1998	15,127	3,861	2,253	1,641	6,524

Source: Zakaliuk, "Bor'ba s korruptsiii v Ukraine." unpublished paper.

This success rate may have less to do with the investigative and trial skills of Procurators than with the 1995 Law on the Struggle Against Corruption. By establishing administrative penalties (fines and removal for office) for many offenses virtually indistinguishable from their counterparts in criminal law -- for example, "receiving material benefits, services, privileges and other benefits" in exchange for the performance of public services (Article 1A, Law on the Struggle Against Corruption) closely resembles "accepting bribes" (Article 168, Criminal Code)⁷⁶ -- this law effectively decriminalized many forms of corruption. Now, instead of drawing up criminal charges, the police, in consultation with the Procuracy, can handle reports of corruption and malfeasance without getting bogged down in formal, costly and lengthy pre-trial investigations. Such added prosecutorial discretion could be expected to improve the quality of cases with which the Procuracy decided to introduce criminal charges.

Ideally, giving police and Procuracy new discretion in such matters should have worked also to diminish the pressures not to dismiss reports of crime and corruption (which, for obvious evidentiary reasons, are not easy to investigate or prosecute, and thus might jeopardize clearance rates). The evidence available so far appears to suggest that both Police and Procuracy are not dismissing reports of such offenses. As Table 3.5 (next page) indicates, in few cases do Procurators obtain permission to try officials with immunity, and in less than half of all cases do they obtain convictions.⁷⁷ Although we do not know the total volume of potential offenses, these numbers suggest police and Procuracy are conducting the struggle against corruption with some integrity -- or at least without excess regard for the prospect of success at trial.

Table 3.5 Fighting Corruption in Ukraine: Misdemeanor Prosecutions, 1997-1998.

	1997 TOTAL	1997 (civ. servants)	1997 (deputies)	1998 TOTAL	1998 (civ. servants)	1998 (deputies)
# charges filed	6,344	4,548	1,096	6,902	5,162	1,029
# sent to trial	5,422	4,510	217	6,656	5,128	819
# convicted	1,925	N/A	N/A	N/A	N/A	N/A
# requests for per- mission to proceed with charges	995		977	246		224
permission given	188		183	48		48
permission refused	378		374	31		30
# not sent to trial (expiry of statute of limitations)	37	14	22	10	5	2

NB: these are misdemeanor, or administrative, offenses, pursuant to the "Law on the Struggle Against Corruption."
Sources: Zakaliuk, "Bor'ba s korruptsii v Ukraine," unpublished paper: Visnik Verkhovnogo Sudu, 1998. no. 1.

What explains the low rate of success in prosecutions for misdemeanor corruption? A study conducted by the Supreme Court in May 1998 – to which, unfortunately, we have not had access – reportedly claims that in half of the cases analyzed by the Court, the accused was not, legally, a "public official" (dolzhnostnoe litso).⁷⁸ In another set of cases, whose size is unknown, courts discovered the elements of a crime, and thus terminated misdemeanor proceedings so that criminal charges would be drawn up. Furthermore, judges at the Kiev City Court claim that many cases are poorly prepared. They send one-third of their cases got back for supplementary investigation, whence they rarely return. Detectives, these judges maintained, fail to diligently execute the orders of investigators. And since defense counsel are present in most corruption cases, many charges fail to stand up to the evidentiary scrutiny at trial.⁷⁹ Finally, corruption may be part of the answer. The fact that, according to one scholar, some judges assign penalties lower than the statutory minimum, suggests exchange relations play a role here too.

Two factors combine to diminish the effectiveness of the campaign against corruption even in respect to those officials that are convicted. First, the sanctions stipulated in the law are far too mild; financial penalties (between 25 and 50 "monthly minimum wages," or approximately 250 - 500 dollars) for corruption are negligible, especially when weighed against the possible gains from such activity. Unfortunately, the prospect of change is not great: Parliament is unlikely to endorse upward revisions in the scale of penalties in the near future, for it is composed of potential objects of such misdemeanor prosecutions.⁸⁰ Second, the political will for punishing corrupt officials is waning. Local authorities are not only reluctant to allow prosecutions (only rarely are officials stripped of their immunity), they intervene in the process of punishment as well. According to the Council of Ministers, every 2nd convicted official is not dismissed from his or her position, despite the requirement of removal in the Law on the Struggle Against Corruption. At the national level, too, government appears to have washed its hands of the corruption problem. In its most recent decree, the Council of Ministers decried the "formal" implementation of the 1995 Law, but took no new steps to reinvigorate the struggle.⁸¹ In short, the problems in the struggle against felony and misdemeanor corruption are as much political as they are legal and organizational.⁸²

Organized Crime

Ukraine moved quickly to develop an adequate machinery to combat organized crime. In July 1993, Parliament adopted a law "On the Organizational-Legal Foundations of the Fight Against Organized Crime," which not only established an analytical bureau for the study of "organized crime," and created a new office within the Presidency for coordinating the struggle against it, but also introduced a slew of new police powers.⁸³ Under the Law, the new special Units for Fighting Organized Crime (UBOP) within the MVD and FSB (Federal Security Service, or

successor to the KGB) were empowered to: 1) subpoena information from banks and other commercial entities; 2) petition a court to suspend the license and close down operations of commercial entities suspected of criminal acts; 3) conduct wiretaps and searches and seizures -- in some cases without a warrant from the Procuracy; and 4) pay people to infiltrate and/or establish commercial relations with suspected criminal organizations (Articles 12 and 13). The same law also introduced the possibility of immunity (partial or complete) for especially cooperative participants (Article 14, part 2). A few months later, in December 1993, Parliament adopted a another helpful law "On Ensuring the Safety of Participants in Criminal Proceedings," which created a host of protections for witness and victims of crimes -- including identity changes, work and residence relocations, and provisions for the security of dependents.⁸⁴ Together with laws that either introduced new crimes or raised penalties for offenses committed by criminal groups -- such as extortion and racketeering -- this legislation appeared give the state formidable weapons in the fight against organized crime.⁸⁵

The data trucked out by the MVD on the fight against organized crime are impressive, giving credence to the (apparently contradictory) claim both that organized crime is now a "threat to national security" and that it is successfully being battled.⁸⁶ According to MVD statistics, in the past three years, 3,189 organized criminal groups responsible for almost 20,000 crimes have been "exposed and destroyed" (vyavleno i unichtozheno).⁸⁷ A closer examination of the data, however, generates concern about the use of this indicator as a measure of success in the fight against organized crime. First, there appears to be little attrition in the war against organized crime. Each year, the same number of groups that is destroyed reappears in the statistical ledgers of "identified" groups.⁸⁸ Second, the groups caught and "destroyed" are apparently not guilty of large numbers of

crimes. In fact, the average number of crimes committed by each organized group has declined from 10 in 1991 to 7 in 1998. Although it is conceivable that this decrease is a consequence of earlier detection and interdiction by the police, it is more likely that this statistic represents the modest scale of criminal activity of the groups that are caught. Third, data on the character of the crimes committed by organized groups suggest that only minor groups are being apprehended and brought to justice. Between 1990 and 1998, theft (krazha) accounted for between 35 and 50 percent of the offenses for which groups were charged. Although robbery, extortion and murder are becoming part of the repertoire of groups caught, they remain a small percentage.

What accounts for the problems in fighting organized crime in Ukraine? Why are only minor groups being caught? There are at least five kinds of difficulties that merit our attention. First, corruption and the complicity of government in organized crime are serious obstacles to its investigation and prosecution. According to a senior researcher in the President's Coordinating Committee for the Fight Against Corruption and Organized Crime, corruption is "the main obstacle in overcoming organized crime in Ukraine."⁸⁹ Many forms of corruption are in fact indistinguishable from organized crime. A significant percentage of those officials fined for misdemeanor corruption, for example, were charged with protecting or failing to stop unlawful activities of economic entities under their regulatory control.⁹⁰ This political patronage may well protect offenders from the scrutiny of criminal investigators. It is not clear, however, that complicity and corruption in the ranks of the MVD are part of the problem in tackling organized crime. According to senior officials in the Procurator General's office, only a small percentage (6.8%) of investigations conducted by the UBOP are "terminated for non-rehabilitative reasons," which is a convenient way of getting rid of unwanted cases.⁹¹ However, in light of the frequent

allegations of police corruption from the MVD itself, further research, including study of other potential indicators of police complicity such as latent crime, should be conducted on this question.

Second, there is a significant problem with resources in the fight against organized crime in Ukraine. Although its UBOP enjoy a separate budget line in the MVD's annual appropriations, the funds are either inadequate or sequestered. Investigators report that there is not always enough money to pay for expert testimony and lab work, and they are sometimes faced with extortion: experts sometimes will refuse to release their reports and conclusions until cash is paid in advance. There are also many mundane problems associated with insufficient funding. Shortages of cars, surveillance and crime scene equipment, and other technology slows down the work of investigators and hampers timely prosecutions. Finally, investigators have heavy case-loads and receive little, if any, special training for their work.⁹² Faced with the prospect of low clearance rates at the end of each accounting period, investigators give preference and greater attention to cases that are more familiar and easier to solve.⁹³

Third, there are problems in the organization, administration, and coordination of the struggle against organized crime. Principal responsibility for guiding the fight against organized crime rests with the ephemeral-sounding "Coordinating Committee for the Fight Against Corruption and Organized Crime." Established in June 1993, the Coordinating Committee was in 1997 to be transformed into the National Bureau of Investigation, the Ukrainian analogue of the FBI. A Presidential Edict creating the NBR was issued, and consent to the creation of such an institution was obtained from the Constitutional Court, but the Parliament failed to enact enabling legislation: the NBR therefore remains an entity on paper only. Little is known about the work and structure of the Coordinating Committee. According to its Secretary, its primary focus is not

economic crime but contract murders and the prevention of crimes against members of the mass media.⁹⁴ Although the Coordinating Committee has met 47 times since 1993, it addressed the question of witness protection for the first time in June 1999, and only recently finalized a unified system for reporting organized crimes.⁹⁵ This information gives the impression that the state has only just begun setting up the administrative machinery for successfully fighting organized crime.

Fourth, there are many problems of interagency cooperation and rivalry -- perhaps because of the absence of a permanent institution for directing the fight against organized crime. The organized crime battlefield is therefore institutionally over-crowded, with the Tax Inspectorate, Customs Agency, Central Bank, Security Service, Procuracy and Police all competing for jurisdiction and the rewards from successful prosecutions. The competition between the Procuracy and Police is especially problematic. In 1994, special investigatory units for organized crime were created within the departments of the Procuracy for overseeing legality in the fight against organized crime. Although this practice yielded positive results, according to a senior official from the Procuracy, these special units were dissolved in 1997, and operative control of organized crime investigations reverted to the UBOP of the MVD.⁹⁶ Even the UBOP, however, lack an investigatory monopoly; last year, approximately 40 percent of organized crimes were investigated by ordinary police.⁹⁷ To some extent, then, the recent appointment of the Procurator General as the new Chairman of the Coordinating Committee may relieve some of these tensions and settle some of the jurisdictional jealousy (likely in favor of the Procuracy). But if past politics is a guide, administrative intrigue only begins after the appointment of a new boss.

Finally, much to the dismay of police, procuracy and judges, Ukraine still lacks a legal definition of "organized crime." Nowhere in the Criminal Code is the term "organized crime"

explicated authoritatively.⁹⁸ It is not clear, however, how much this void hampers the fight against organized crime. There is ample room for prosecutorial maneuver in the provisions for “accomplices” (souchastie) in Article 19, and many articles of the Code prescribe penalties for various forms of participation in proscribed conduct (for example, in Article 69, on Banditism and in Article 155⁸, on Interfering With Legal Economic Activity). Furthermore, official Commentaries on the Code, which lack legal force but nevertheless give guidance to legal practitioners, help elucidate the meaning of “organized crime.”⁹⁹ The real problem may be in the operative definition of organized crime, which appears to rely heavily on “stability” or “durability” (ustoichivost) as the defining attribute of an organized group. Almost all judges, investigators, and procurators interviewed for this study complained about the evidentiary difficulties of proving that a group is “stable.” Here it appears that myths about the mafia, and the early development of a sophisticated and rather scholastic conceptual apparatus -- fit only, perhaps, for the analysis of groups in Sicily -- may be hampering the prosecution of organized crime.¹⁰⁰ Obviously, an authoritative definition of the term “organized crime” in the Code would assist legal officials, as would the overcoming of other hurdles in procedural law (such as freeing accomplices from criminal liability),¹⁰¹ but the paucity of prosecutions for major criminal groups cannot be attributed solely to legal lacunae.

The Future of Criminal Justice Reforms

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

Code of Criminal Procedure (kodeks kriminalnogo protsessu). For example, the introduction of stiffer sanctions for certain politically sensitive offenses -- such as economic crimes -- in 1995-1997 fostered complacency in the movement to adopt new basic legislation. Nevertheless, the "general part" (obshchaia chast') of the new Criminal Code, which lays out basic rules and principles (e.g. on punishments, and key concepts such as negligence, conspiracy) has passed a first reading in the Rada, and is slated for a second reading as soon as Parliament resumes in the Fall. It is unlikely, however, that this first part will sail smoothly through the legislature, for there remain fundamental disagreements on key issues, as well as specific arguments on smaller issues that may escalate into factional or doctrinal disputes.

A central sticking point will be the norms governing conspiracy and accomplices (souchastie) -- Chapter 6, Articles 25-30 -- which are central to the prosecution of organized crime. There is, for example, likely to be concern, if not alarm, over the open-ended description of the means by which a "facilitator" (posobnik) can be deemed to have assisted in the commission of a crime.¹⁰² In addition, there are what appear to be doctrinal disputes over the minimum number of persons required for a crime to be deemed committed by an organized "group." For example, Litvak, the former Procurator General, insists it is nonsense for two people (which, he points out, are in fact "pair") to continue to be considered a "group."¹⁰³ Another point of contention will be the introduction of criminal liability for organizations and "juridical persons" (juridicheskikh lits), which will place economic interests in harms way.¹⁰⁴ Finally, there promises to be much debate on the special part (osobennaja chast) of the Code, which defines and stipulates penalties for all offenses, but has yet to be examined as a whole by parliament. Reportedly, deputies and interested groups and agencies have submitted more than 1200 proposals on the special part of the

code, with recommendations ranging from punishment scales, the delimitation of offenses, and the allocation of investigative jurisdiction.¹⁰⁵

No less important to the reform of criminal justice, and improved fight against crime in Ukraine, is the elaboration of a new Code of Criminal Procedure. In July of this year, a "working group" under the auspices of the Council of Ministers and chaired by Maliarenko, the Head of the Criminal Division of the Supreme Court of Ukraine, submitted to the government a final draft of the Code. Before sending it to Parliament for debate and first reading, however, the Council of Ministers reportedly distributed the Draft to certain scholars and institutions for further commentary. Though such deliberative diligence is not unusual in Ukrainian legislative politics, it is odd in the case of this law since the working group consisted of not only a broad array of leading specialists in criminal procedure, but also officials from numerous interested government agencies. Whatever the reason for such caution in the development of this legislation, it is not likely that the Draft Code of Criminal Procedure will receive a first reading in the Rada until the Fall (the Rada reconvenes on September 6, 1999). We do not expect brisk adoption of this law either, since there are so many controversial issues.

Apart from doctrinal differences on appellate procedures and the proper scope of review, there are likely to be drawn out debates about summary criminal proceedings -- during both the pre-trial investigation and trials. Opposition to the abbreviation of criminal investigations and acceleration of trials is primarily well-meaning: opponents view such proposed simplifications of criminal procedure as dangerous incursions into the rights of suspects and accused -- and as an echo from the Stalinist past. But without some form of plea bargaining or sentence agreement, it is hard to imagine a radical improvement in the fight against organized (or even merely group)

crime. Ukraine's system of criminal justice presently lacks the means by which to sufficiently encourage, and reward, the cooperation of co-defendants.

ENDNOTES

1. For a description of some of these obligations and the domestic pressure they give rise to, see Jaroslav Koshiw, "Ukraine About to be Shut out of Europe," Kiev Post, December 17, 1998, and the interview with Supreme Court judge T. Prisiazhniuk, in Golos Ukrainy, January 8, 1999, 1.

2. The current President of Ukraine, Leonid Kuchma, recently issued a decree sponsoring the development of a Law on Criminological Expertise, which, if adopted, would require an assessment of the criminological consequences of any new legislation to be conducted prior to the consideration of new bills. For a description of this bill, and the problems of financing such an enterprise, see the forthcoming article by A. P. Zakaliuk in Pravo Ukrainy.

3. For a more detailed description of Soviet criminal procedure, see Christopher Osakwe, "Soviet Criminal Procedure," Tulane Law Review, 1985; for a description of the character of justice administered in Soviet courts, see Solomon, "The Case of the Vanishing Acquittal: Informal Norms and the Practice of Soviet Criminal Justice," Soviet Studies, 39, 4 (October 1987), 531-555, and Foglesong, "The Evolution of Criminal Justice and Development of Judicial Dependence in Late Soviet Russia," in Solomon ed. Reforming Justice in Russia (Armonk, NY, 1997), 282-304.

4. For a detailed description of the role of the Procuracy in the terror, and analysis of the early system of justice in Soviet Russia, see Peter H. Solomon, Jr., Soviet Criminal Justice Under Stalin (New York and Cambridge, 1996).

5. For a discussion of the Procuracy in the post-Stalinist period, see Eugene Huskey, "The Administration of Justice: Courts, Procuracy, and Ministry of Justice," in Huskey, ed., Executive Power and the Soviet State, (Armonk, NY, 1992), 221-248, and Gordon Smith, "The Struggle over the Procuracy," in Solomon ed., Reforming Justice in Russia, 438-373.

6. As early as the 1960s, the Procuracy ceded to the police the investigation of most ordinary crimes. The procuracy retained responsibility for investigating murder, corruption, and major economic offenses. The KGB had even more proscribed jurisdiction, investigating only crimes against the state such as treason, sedition, terrorism.

7. Sociological research by legal scholars in the late Soviet period suggested that police investigators were the least qualified of all employed jurists. See, for example, Louise Shelley, Policing Soviet Society: The Evolution of State Control, (London and N.Y., 1996).

8. While judges everywhere dislike being overruled, the prospect of reversal had special consequences for judges in Soviet Ukraine. Their records on "stability of sentences" played a major role in their performance rating, potential bonuses, professional reputation, and future careers -- including the likelihood of promotion and possibility of not being renewed after the expiry of the current five-year term. Viktor Shishkin, the former Procurator General, acknowledged this reality in a recent article, referring to the "organizational consequences" that were often drawn in respect to defiant or opinionated judges. See Shishkin, "Problems and Prospective Solutions for Establishing a Judiciary in Ukraine," Parker School Journal of East European Law, 3, 1 (1996), 31-40.
9. A more detailed description of these and other rules of criminal procedure in Ukraine can be found in Sergey Chapkey and Vladimir Tochilovsky, "Ukraine," World Factbook of Criminal Justice Systems, available at www.ojp.usdoj.gov/bjs/pub
10. 95 percent of all rulings to terminate criminal proceedings concerned cases of private prosecution -- insult; slander, and inflicting light bodily injury. For data on terminations, see the appendixes in A. G. Kulik, Prestupnost' v Ukraine, no. 2, 1994.
11. By law, pre-trial detention was limited to 2 months. However, the Code of Criminal Procedure made ample provision for extensions, in the event of "difficult" investigations. It was not unusual for investigators to get extensions up to 6 months, and not very rare for pre-trial incarceration in truly complicated cases to last 18 months.
12. A powerful economic rationale undergirded penal policy in Soviet Ukraine: both prisons and other forms of punishment played a significant role in Soviet economic development. See, for example, S. Swianiewicz, Forced Labor and Economic Development: An Enquiry into the Experience of Soviet Industrialization (London, 1965).
13. For a more detailed study of police and prosecutorial practices in the pre-trial stage, see Todd S Foglesong, "The Politics of Judicial Independence and the Administration of Criminal Justice in Soviet Russia, 1982-1992, unpublished doctoral dissertation, University of Toronto, Department of Political Science, 1995, chapter 3.
14. For an inventory of these practices, see V. S. Zelenetskii, Vozbuzhdenie ugovnogo dela (Kharkov, 1998), 6-23.
15. See the discussion of the meaning of these terms in Harold Berman, "The Rule of Law and the Law-Based State (*Rechtsstaat*)," Harriman Institute Forum, 4, 5 (1991).
16. Judges elected for the first time were given probationary five year terms. For more on the 1992 Law on the Status of Judges, see Lisa Halustick, "Judicial Reform in Ukraine: Legislative Efforts to Promote and Independent Judiciary," Parker School Journal of East European Law, 1, 5-6 (1994), 663-686. In Russia, by contrast, the 1992 Law on the Status of Judges conferred upon judges life-time tenure. For a more detailed account of the movement for judicial independence in Russia, see Peter H. Solomon, Jr. and Todd S. Foglesong, Courts and

Transition: The Challenge of Judicial Reform in Russia (Westview, forthcoming), ch. 2.

17. For a recent Ukrainian account of these developments, see V. D. Bryntsev, Sudebnaia Vlast (Pravosudie): Puti reformirovaniia v Ukraine (Kharkov, 1998). For an account by a North American, see Kim Ratushny, "Towards the Independence of Judges in Ukraine?" forthcoming in Saskatchewan Law Review, Volume 62 (2).

18. See Bryntsev, 33; Halustick, 676-677.

19. For accounts of these problems, see the Daily Report: Ukraine, published by FBIS, July 6, 1993, pp. 70-72; November 14, 1994, 49-50, and the Ukrainian Supreme Court's resolution no. 4, April 12, 1996, "On Applying Legislation That Ensures the Independence of Courts." in Ukainski Chasopis Prav Liudini, nos. 3-4, 1997, 157-164.

20. For an account of the origins of the Conception of Judicial Reform, see the interview with V. V. Onopenko, the former Minister of Justice, in Khreshchatyk, August 1, 1995, p. 3. A draft Conception was prepared in 1995 by Vasillii Onopenko, the Minister of Justice from 1993-1994, but never endorsed by Parliament. For a description of some of the ideas in the unrealized Conception, see Onopenko, "Sudebno-pravovaia reforma: tsel' i sredstva." Golos Ukrainy, October 27, 1998, 8.

21. For accounts of the politics of Ukrainian constitutionalism, see Katarina Wolczyk, "The Politics of Constitution Making in Ukraine," in Taras Kuzio, Contemporary Ukraine: Dynamics of Post-Soviet Transformation (Armonk, NY, 1998), 118-138, and Andrew Wilson, "Kuchma," in Ray Taras, ed. Post-Communist Presidents (Cambridge, 1997).

22. For an outline of the Court's functions, and a review of the first two years of its decisions, see Bohdan Futey, "Upholding the Rule of Law in Ukraine: The Judiciary in Transition," unpublished paper presented at the University of Ottawa, October 2-3, 1998. See also the remarks of Anatolii Selivanov and Evgenii Marchuk, in "Tsel' pravosudiiia," Golos Ukrainy, December 15, 1998, 10-11. It should be noted that the creation of the Court did not immediately resolve the question over the power to review the Constitutionality of laws and normative acts. Less than a month after the Constitutional Court first convened, the Supreme Court ruled that the courts of general jurisdiction could also apply the Constitution when subordinate legislation was found to be in contravention of its provisions. See the report by Sergei Demskii, "Primenenie Konstitutsii Ukrainy vo vremia provedeniia sudoproizvodstva." Golos Ukrainy, November 6, 1996, 3.

23. In 1998, 877 of the 2,648 (i.e. 33 percent) of those contesting their custody in these hearings were released from jail. Data furnished by the Ministry of Justice. For studies of earlier court practice, see: V. G. Klochkov, Sudebnyi kontrol za sobliudeniem zakonnosti i obosnovannosti primeniia mery presecheniia – zakliuchenie pod strazhu (Kiev, 1998); V. P. Korzh, Uchastie prokurora v rassmotrenii materialov sudebnoi proverki o zakonnosti i obosnovannosti aresta (uchebno-metodicheskoe posobie) (Kharkov, 1997).

24. For an American account of bail reform in Ukraine, see Christopher Lehman, "Legal Reform in Ukraine: Life in the Trenches," Demokratizatsiya, 7, 2 (Spring, 1999), 228-240.
25. For a description of some of the options under consideration, see the interview with Vasiliï Maliarenko, the Head of the Criminal Division of the Supreme Court, "Sud prisiazhnykh: novaia nadezhda ili problema?" Golos Ukrainy, January 20, 1999, 3.
26. For a detailed account of the development of this legislation, written by the Academy of Legal Science's Institute for the Study of Crime in Kharkov, see N. V. Tsibileva and M.V. Khotenets, "Problemy realizatsii konstitutsionnykh printsipov v postroenii sudebnoi sistemy Ukrainy," unpublished report.
27. Interview with Oksana Vinogradova, Head of the Department of Judicial Reform, Ministry of Justice, April 19, 1999. See also, Vasil Onopenko, "Konstitutsiia Ukrainy i sudoproizvodstvo: raskhozhdeniia i paradoksy," Golos Ukrainy, April 14, 1999, 6.
28. Interview with O. M. Paseniuk, the Deputy Minister of Justice, February 3, 1994. Paseniuk, a former judge, argues that it benefits the courts to have the Ministry of Justice in charge of finance, since the Ministry's budget covers more than just courts, and it can move monies across categories, for example from the Notary or Bar, and possibly prisons (unless the Department of Corrections is established at the National level), to the judiciary.
29. Genadii Udovenko, "Problemy reformirovaniia pravosudiia v Ukraine," Golos Ukrainy, June 16, 1999, 4.
30. Paseniuk, the Deputy Minister of Justice, claimed that the Council of Ministers in 1996 (before the adoption of the Constitution) suggested that the courts be financed from local budgets. Judges at the Kiev City Court acknowledged this, and referred to a CM Decree no. 1313, from 1997. They also reported a more recent contradictory ruling of the Council of Ministers which forbids local governments from such discretionary spending – that is, using money in ways "not already stipulated" (ne po naznacheniiu). Interviews, April 20, 1999.
31. See "Verkhovny sud v sude. konstitutsionnom." Golos Ukrainy, June 19, 1999, 3.
32. See "Sudiam, gosudarstvenuiu zashchitu," in Golos Ukrainy, December 3, 1998, 2.
33. See the interview with Valerii Evdokimov, the Chairman of the Higher Council of Justice, "Komu doveriat' sudeiskuiu mantiiu," Golos Ukrainy, January 14, 1999, 3.
34. See Mary Volcansek and Jacqueline Lucienne Lafon, Judicial Selection: The Cross Evolution of French and American Practices (New York, Greenwood Press, 1998), and Martin L. Friedland, A Place Apart: Judicial Independence in Canada (Ottawa, Canadian Judicial Council, 1995).
35. Compare Articles 106 and 128 of the Constitution of Ukraine.

36. See Vladimir Zamanskii, "President Kuchma: 'Ia obrashchus' k narodu i zakazu: idite demonstratsiei k Verkhovnomu Sudu za zarplatami i pensiiami," Kievskie vedemosti, February 11, 1999, 12. More recently, Kuchma derided a decision of the Kiev City Court which annulled the results of mayoral elections due to irregularities and violations of the election law. Kuchma claimed the court "trampled the will of thousands of Kiyv voters." RFE-RL Newswire, v. 3, no. 142 (July 23, 1999).
37. Sirenko, "Bez parlamentskogo kontroliia, pravovoe gosudarstvo nevozmozhno," Golos Ukrainy, October 13, 1998, 3.
38. See the interview with Kravchenko, in FBIS, January 5, 1999. For example, almost 10 percent of the personnel in the Minsk District Department of Internal Affairs is paid for by the Kiev City, not National, government. Interview with Head of the Minsk District Division of Internal Affairs, Kiev, April 17, 1999.
39. Most of the officials relieved of their duties come from the GAI and Prisons. See the interviews with V. Lytvynenko, Deputy Head of the Main Administration for Fighting Organized Crime and Corruption of the MVD, FBIS, November 7, 1998, and Minister Kravchenko, FBIS, October 20, 1998. According to Kravchenko, the MVD employs a total of 220,000 people. See "Zvit pered ukrainskim narodom pro operativno-sluzhbov diialnost organiv vnutrizhnikh sprav u 1998 rotsi," Imenem zakonu, no. 7, 1999, 7.
40. Some of these problems are discussed in the interview with M. Korniyenko, a Deputy Minister of Internal Affairs, FBIS, December 3, 1998.
41. See the interview with Kravchenko, "Ministra nikogda ni zabirala militsiia," Golos Ukrainy, July 11, 1998, 11. For a more sophisticated analyses of the results of such studies, see A. G. Kulik, "Otnoshenie naseleniia k militsii," in Prestupnost v Ukraine, no. 2, 1994, 65-79, and V. S. Zelenetskii, Vozbuzhdenie ugolovnogo dela (Kharkov, 1998), 18-19.
42. See, for example, "Kriminogennaia situatsiia v g. Kharkove," the results of a research project conducted jointly by the Kharkov City Government and University of Internal Affairs. More recently, senior researchers at the University of Internal Affairs in Kharkov launched a new project investigating the "effectiveness of police-public interactions" (Factory effektivnosti vzaimovsiazii militsii s naseleniem), the results of which are due next year.
43. One internal administrative problem worth investigation concerns the relationships within police departments. Many observers claim there are strained relations between detectives (rozysk), on the one hand, and investigators on the other. Detectives are evaluated by the number of criminal cases opened (vozbuzhdennykh), and thus have little incentive to fulfill the orders (porucheniia) of investigators, who are evaluated on the basis of completed cases (okonchennykh). See the discussion of this problem in M. Potebenko, "Vremia trebuet ne slov, a deistvii," Golos Ukrainy, August 21, 1998, 3.

44. See G. Vasilev, "Cherez pravoporiadok - k obshchemu poriadku," Golos Ukrainy, September 17, 1998, 3.
45. For examples of the arguments in favor of general supervision, see N. Chernenko. "Prokuror dolzhen imet' pravo," Golos Ukrainy, May 26, 1999, p. 10, and V. Davydov and N. Rudenko, "Prokuror na zashchite gosudarstva i grazhdanina," Golos Ukrainy, October 13, 1998, 11.
46. Ironically, one of the most ardent advocates of limiting the jurisdiction of the Procuracy is Shishkin, a member of parliament who was Procurator General from 1991 to 1993.
47. For Potebenko's most recent arguments, see "Reformy i institut prokurorskogo nadzora," Golos Ukrainy, December 1, 1998, p. 10, and "Prokuratura na strazhe prav cheloveka," Golos Ukrainy, June 12, 1999, p. 8. For the views of the President of Ukraine's Academy of Legal Sciences, see V. Tatsii, "Chto goditsia dlia Londona, prezhdvremenno dlia Kieva," Golos Ukrainy, April 10, 1999, 3.
48. For a report on judicial practices in 1996 and 1997, see "Sudova statistika," in Visnik Verkhovnogo Sudu, no. 1, 1998.
49. Special Report prepared for this study by the Ministry of Justice. In Russia, by contrast, only one of every five of habeas petitions in the last two years was successful. See Foglesong. "Hebeas Corpus or Who Has the Body? Judicial Review of Arrest and Detention In Russia." Wisconsin International Law Journal, 14, 3 (Summer 1996).
50. Statistical Survey prepared for this report by the Ministry of Justice.
51. See "Sudova statistika," in Visnik Verkhovnogo Sudu, no. 1, 1998, 43-45.
52. See V. A. Bryntsev, Sudebnaia vlast/pravosudie: Puti reformirovaniia v Ukraine, Kharkov, 1998.
53. Kulik, 1994.
54. See Kravchenko's comments in FBIS, January 5, 1999. For recent published data on the effectiveness of the police, see "Zvit pered Ukrainskim narodom pro operativno-sluzhbovu diialnost; organiv vnutrishnikh sprav u 1998 rotsi," Imenem Zakonu, no. 7, 1999.
55. See the MVD's Instruktsiia pro edinii oblik zlochiniv (Instructions on Uniform Registration of Crimes).
56. Some police officials are willing to countenance changes to the system. Kirichenko, the Deputy Minister of the Interior who supervises academic research institutes under the auspices of the MVD, says that establishing new criteria for the evaluation of effective police work are a high priority, and claims that a senior MVD official is preparing to write a dissertation on the topic.

57. A. G. Kulik, ed., Prestupnost' v Ukraine, no. 2, 1994.

58. Ukrainian researchers are also hampered by the system of data collection and the use of indiscriminate reporting categories by the state. For example, in the best study of the prosecution of economic crime in Ukraine, authors report that 75 percent of all prosecutions in Kharkov were for articles 154 and 155 (speculation and a host of other forms of unlawful means of acquiring wealth. Because the data is not broken down by subsection of article 155, it is impossible to know how serious the offenses and prosecutions were in these cases, thus making an intelligent assessment of performance impossible.

59. Interviews. This same Chief of Police estimated the real murder rate as twice the reported level. Other policemen I interviewed told stories of bodies being moved across district boundaries for the same purpose.

60. See the discussion in V.S. Zelenetskii, Vozbuzhdenie ugovnogo dela, 6-14.

61. Interviews.

62. Interview with A. P. Zakaliuk, one of the drafters of the program of study.

63. See V. S. Zelenetskii, Vozbuzhdenie ugovnogo dela (Kharkov, 1998), 6-23.

64. See A. G. Kulik, "Mezhdunarodnyi opros zhertv prestuplenii v Kieve," unpublished paper.

65. Interview with V. Sobolev, Head of the Department of Sociology at the University of Internal Affairs, Kharkov.

66. So far, Ukrainian researchers have only employed extensive and expensive methods to study this problem. Instead of using anthropological or ethno-methodological approaches to the study of latent crime, criminologists have relied solely on survey-based means of gauging the levels of unreported crime.

67. This conclusion contradicts the findings of A.M. Bandurka, a member of parliament and Rector (ie. President) of the University of Internal Affairs in Kharkov, who implies that the problem with concealing crimes diminished in 1994. See A. M. Bandurka and A. F. Zelinskii. Vandalism (Kharkov, 1994), 4.

68. See the discussion in Zelenetskii, cited above.

69. Kulik, in "Osnovnye tendentsii," suggests police dismiss only reports of minor offenses.

70. These offenses include: unlicensed or fictitious entrepreneurial activity, many forms of commercial and bank fraud (eg deceiving customers and suppliers), tax evasion, exposing commercial secrets, bootlegging, counterfitting, services extortion, price collusion and fixing, false bankruptcies, and others.

71. Draft report by A. Kalman, "Problemy povysheniia effektivnosti pravoprimeritelnoi praktiki borby s ekonomicheskoi prestupnostiu v Ukraine," Kharkov, April 1999.

72. O. G. Kalman, I. O. Khrystich, and Iu. G. Boiko, "Uzagalnennia praktiki borot'bi zi zlochinnostiu u sferi eknomichnoi diialnosti pravookhoronnikh ta pravozastosovchikh organiv kharkovskoi oblasti za 1992-1997 rr.," Pitannia borot'bi zi zlichinnostiu, Kharkov, 1998, 75-95.

73. Ukrainian researchers are clearly hampered by the control over data collection and the use of indiscriminating categories by the state. For example, in the best study of the prosecution of economic crime, authors report that 75 percent of all prosecutions in Kharkov were for articles 154 and 155, speculation and a host of other offenses. Because the data is not broken down by subsection of article 155, it is impossible to know the gravity of the offenses and prosecutions.

74. According to Decree no 1220 of the Council of Ministers from August 3, 1998. "On the status of implementing legislation on state service and the struggle against corruption by central and local agencies of executive power," there were 296,819 civil servants employed in 1997.

75. For data on the number of registered crimes, see Kulik, "Osnovnye tendentsii."

76. The three main offenses for which civil servants or elected officials were charged in both 1997 and 1998 were: 1) "illegal receipt of material benefits, services, privileges, and other goods" in exchange for the fulfilment of state duties; 2) "engaging in entrepreneurial activity directly or via intermediaries or through persons under one's regulatory authority;" and 3) violating rules on the declaration of income. Together, these three categories constituted nearly 3/4ths of all forms of prosecuted misdemeanor corruption. An additional 693 were fined for violating Article 184 of the Code of Administrative Infractions (i.e. improper use of state property).

77. A recent report by the Secretary of the Coordinating Committee for the Fight Against Corruption and Organized Crime claims that 2/3 of all cases "collapse" in court. See: "K sotrudnichestvy i vzaimodeistviiu - odin KROK," Golos Ukrainy, June 26, 1999, 12.

78. Decree no. 13 from May 25, 1998.

79. Interview with Kiev City Court Judges.

80. See the interview with V. Lytvynenko, Deputy Head of the Main Administration of the Ministry of the Interior, FBIS, November 7, 1998.

81. See Decree no 1220 of the Council of Ministers from August 3, 1998.

82. For the government's own assessment of the relative weights of these factors, see the program "On the Concept of Struggle Against Corruption for the Years 1998-2005," adopted by the President of Ukraine, April 24, 1998.

83. See "Ob organizatsiono-pravovykh osnovakh borby s organizovannoi prestupnostiu." in Zakonodatelstvo Ukrainy o borbe s prestupnostiu (Kharkov, 1999), 204-230. Oddly, the law used the term the diminutive form of the word "group" (gruppировka, not gruppa).
84. See the Law "Ob obespechenie bezopasnosti lits, uchastvuiushchikh v ugolovnom sudoproizvodstve," published in Zakonodatelstvo Ukrainy o bor'be s prestupnostiu (Kharkov, 1999), 175-187.
85. See especially Articles 155³, 155⁵, 155⁶, 155⁷, and 155⁸ of the current Criminal Code.
86. For example, the Chief of Staff of the MVD (nachalnik glavnogo shtaba) of the MVD gave me a glitsy slide show on the successes in the fight against organized crime, replete with pie charts and sophisticated tables which I was later not allowed to examine more closely.
87. Glushkov, "Sostoianie borby s organizovannoi prestupnostiu." unpublished paper. Unfortunately, the MVD does not report data on convictions for organized criminal groups. We have no idea how many of the "destroyed" groups end up in prison.
88. See Zlochinnost v Ukraine, 40-41.
89. See Glushkov, "Sostoianie borby s organizovannoi prestupnostiu v Ukraine." 26.
90. See the interview with Aleksandr Voitsekhovskii, Secretary of the Coordinating Committee for the Fight Against Corruption and Organized Crime, "K sotrudnichestvu i vzaimodeistviu -- odin 'KROK,'" Golos Ukrainy, June 26, 1999, 12.
91. Interview with V. V. Korol, Head of the Department for Supervising Legality in Organs of Criminal Investigation, Detection, and Inquiry of the MVD, Office of Procurator General, April 22, 1999.
92. Although central officials claim all investigators charged with solving organized or economic crimes receive special training, investigators in local police departments insist they received little instruction prior to accepting their new briefs. Interviews, Minsk District Department of Internal Affairs, Kiev, and Kuriazhy District Department of Internal Affairs, Kharkov.
93. As O. R. Protsuk, a senior procurator in the Department for Supervising Legality in Organs of Criminal Investigation, Detection, and Inquiry of the MVD, put it, "when you work on a conveyor belt and the clock is ticking (kogda sroki podzhimaiut), you tackle cases that are easy to solve." Interview, April 22, 1999.
94. See Voitsekhovskii, "K sotrudnichestvy i vzaimodeistviu -- odin KROK." Golos Ukrainy, June 26, 1999, 12.

95. Data from the Coordinating Committee and MVD do not always track. Compare, for example the information from the CC in Glushkov, "Sostoianie borby" with the claims of V. Melnikov, Deputy Minister of the Interior, in FBIS, Nov 5, 1998.
96. G. Vasilev, "Cherez pravoporiadok – k obshchemu poriadku," Golos Ukrainy, September 17, 1998, 3. According to other procurators, investigators in the UBOP do not receive special training, and differ little from rank and file police detectives.
97. Interviews with Korol, Protsuk, and A. V. Kovalenko, the Head of the Department of International Cooperation of the Procuracy General.
98. See the interview with V. Lytvynenko, Deputy Head of the Main Administration of the Ministry of the Interior, FBIS, November 7, 1998.
99. See, for example, the Ugolovnyi Kodeks Ukrainy: Kommentarii (Kiev, 1998), edited by S.S. Iatsenko, 647.
100. See the discussion in Zelinskii. Kriminologija: kurs lektcii (Kharkov, 1996), 198-208.
101. V. M. Groshevoi, the Vice President of the Academy of Legal Sciences, and the preeminent scholar of criminal procedure in Ukraine, voiced concern about this issue in particular. Interview, February, 1999.
102. The first part of the current text of paragraph 5, article 26 reads: "A facilitator is one who by his advice or instructions, or by making available the means or implements of a crime, or by removing obstacles to the commission of a crime, *or by other means (ili inym obrazom)* renders assistance to the commission of a crime by other participants ... " {italics added}.
103. Under the existing Criminal Code, a group is "two or more persons." For Litvak's views, see "Prava na oshchibku net: zametki po povodu odnovo iz proektov ugolovnogo kodeksa Ukrainy," Golos Ukrainy, July 7, 1998, 7.
104. See, for example, the discussion in V. Smitienko and G. Agafonov, "Otvetstvennost iuridicheskikh lits – nasushchnaia problema ugolovno-pravovogo regulirovaniia," Golos Ukrainy, March 5, 1996, 9.
105. Phone interview with A. P. Zakaliuk, July 23, 1999.

Chapter Four

SOVIET AND POST-SOVIET CRIMINOLOGY IN UKRAINE

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

In the first decade after the Russian Revolution native criminology developed an impressive set of institutions and activities. Young legal and medical researchers alike succeeded in gaining sponsorship from governments ranging from the federal to the city level and establishing a major research institute in Moscow (the State Institute for the Study of Crime and the Criminal) and a series of research offices (kabinety) in a number of cities, including Odessa, and later Kiev and Kharkov. Although like their European counterparts, Soviet scholars treated criminology as primarily a legal science, its research was interdisciplinary and included both sociological-statistical study of crime and biopsychological examinations of criminal offenders. But its home in law did not save criminology from the destruction that befell all social research. In 1929, young Marxist scholars attacked the clinical side of Soviet criminology as “neo-Lombrosian” and therefore “anti-Marxist”, and not long after even the purely sociological studies (e.g. of recidivism, or alcoholism and crime) were also stopped. The problem was that

Stalin and his henchmen found any empirical research (or reality-testing) more threatening than useful, and all (largely embryonic) forms of social research died out in the 1930s.¹

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

The revival of criminology was approved by party authorities on the grounds that empirical (or "concrete sociological") research would improve law enforcement and reduce crime, that is make a practical contribution. But the keepers of the ideology insisted that the reality testing not challenge party doctrine or dogma. Since 1930 crime was officially understood as a "remnant of the bourgeois capitalist order", foreign to Soviet social structure and on the decline. As late as 1960 no one could publish anything to the contrary. But it was difficult to develop any kind of criminology on this basis, and during the 1960s and 1970s criminologists struggled to expand their domain. In the early 1960s, A.B. Sakharov helped to make study of the personality of the offender a legitimate object of study, even though he understood "personality" as a social-psychological, and not biologically determined, structure. A few years later, I.S. Noi (of Saratov) pushed further to get recognition of the role, however limited, of biological factors in crime causation, thereby facing head on the original ideological objection to criminology.

Finally, in the 1968 and beyond V.N. Kudriavtsev developed a multi-factorial vector-based theory of crime causation, which integrated and gave place to a wide variety of primary and secondary factors. Kudriavtsev's original theory, developed with little knowledge of Western scholarship, was in its integrative power analogous to Sutherland's "theory of differential association", but it represented macro theory rather than theory of the middle range, and did not generate researchable hypotheses.³

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

Who were the new Soviet criminologists? In the main specialists in criminal law (a few psychologists joined), who managed, one way or another, to learn something about techniques of statistical analysis and perhaps survey research. In the 1960s, 1970s, and 1980s, there were no sociologists available to study crime or deviance, for all forms of social research had been stopped under Stalin, and practitioners of the newly revived sociology had great trouble gaining a foothold in universities; all sociology was taught as a subfield of philosophy, and few sociologists were produced until the late 1980s. From the mid 1960s criminology did become a compulsory subject in law faculties, and a professor at every institution training jurists had to teach it. But research in criminology was concentrated in two large research institutes in Moscow--in the Procuracy Institute already mentioned (which at its peak had nearly two hundred

researchers, half doing criminological study), and from the 1970s in the Research Institute of the Ministry of Internal Affairs. The latter quickly became the main center for studies of penal institutions and their inmates and of policing, while the former concentrated on studying the causes and prevention of various kinds of crime. In the 1970s criminologists succeeded in convincing many legal officials that criminal justice had to prevent crime as well as repress criminals, and criminal policy came for a while to reflect this emphasis.⁴ At no time, however, was serious, extended study of the behavior of police and legal officials attempted. Sociology of criminal law remained underdeveloped.

In the late 1970s the study of victimology began to make headway, but, on the whole, the intellectual framework of Soviet criminology did not grow beyond its ruling paradigm. For one thing, criminological theory did not advance beyond the multifactorial theories of the 1970s. In particular, none of the major Western developments from the 1950s on--stigma or interactionist theory; the advances in theories of strain and opportunity; the critical or neo-Marxist criminology developed especially in England; the Foucaultian, post-structuralist theory; or the application to criminology of theories of risk. Post-Sutherland sociological theories of crime, say from Merton to Cloward and Ohlin, to Becker and the interactionists, were analyzed for Soviet audiences in the 1971 by A.M. Iakovlev, but the ideas were not absorbed into mainstream Soviet criminology, not did they have an impact on research agenda.⁵ Few criminologists traveled abroad (even to conferences), and those that did understood the limitations under which they had to work.

When Ukraine became an independent country at the end of 1991, it inherited a modest criminology. There were no major criminological research centers at all (recall that the institutes attached to the Procuracy and MVD were in Moscow), and what research existed was conducted

mostly by faculty at the various police academies and legal training institutions. At the same time, the theoretical and methodological scope of criminology in Ukraine was limited. Studies of crime and its causes had a narrow applied approach, and categories or concepts were largely legal rather than sociological in nature. Obviously, there was a shortage of senior scholars ready to step into the breach, and government underfunding of all science (due to the economic collapse) made careers in legal and social science unattractive to bright and ambitious youngsters.⁶

In this context, the institutional development of post-Soviet Ukrainian criminology is remarkable. As of 1999, there were at least three major centers of criminological research in Ukraine (one in Kiev, two in Kharkov) and research was being conducted in many other places as well. The scholars of the police took the lead, with a large number of criminologists employed at The National Academy of Internal Affairs (the former Police Higher School) in Kiev, and the University of Internal Affairs in Kharkov, both of which are police training institutes. The National Academy of Internal Affairs (NAIA) is home to two groups of criminologists -- one working in the many laboratories of its Research Institute, and another in its Department (kafedra) of Criminology. The Department of Criminology is staffed by able teachers, few of whom do applied research, however. The Academy's leadership includes Shakun (First Vice Chancellor), a prolific criminologist, with several works on urbanization and crime, but whose research, oddly enough, is not very empirical. The bulk of the Academy's applied criminological research therefore takes place under the aegis of its Research Institute, a former branch of the All-Union Research Institute of the USSR MVD.

Most of the criminological research at the NAIA Research Institute is commissioned by the government, often directly by the MVD. This accounts for the highly specific and voluble

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

In Kharkov, the University of Internal Affairs is administered by Bandurka, a prominent Deputy (member of parliament), who is also Vice President of the Ukrainian Association of Criminologists.⁸ The University is fairly young, having graduated only five classes of jurists (about 10,000 students), most of whom have joined the ranks of detectives and investigators in the MVD. Already, however, the University has developed a Laboratory of Criminology Research, which is well-funded and well-equipped for advanced applied research. The computer facilities in particular are impressive. The Laboratory draws on faculty from many different departments of the University for its research, and is committed to interdisciplinary approaches to

the topics it studies. Yarmish, the First Vice Rektor of the University, supervises all academic research, and Sobolev, the Chair of the Department of Social Psychology, one of only a handful of scholars in Ukraine with the degree of Doctor of Sociological Sciences, plays a central role in most projects.

The Laboratory in Kharkov currently has five main topics of research: First, latent crime, which is studied primarily through surveys and a cooperative and experimental program with the city government to set up a municipal police force;⁹ Second, corruption, racketeering, and extortion, which it hypothesizes as a continuum of criminality; Third, the drug trade and narcotics use, especially among juveniles;¹⁰ Fourth the systematization of crime data and police performance indicators; and fifth, the subculture and behavior of organized criminal groups. Only for this last topic do researchers propose to use the methods of ethnography and anthropology.¹¹ On the whole, the Laboratory has an expressed preference for extensive, and expensive, research tools and methodologies (such as surveys).

Outside of the world of the police stand three different Academies under whose auspices serious criminological research is conducted. The oldest, and now weakest, is the National Academy of Sciences of Ukraine (NAS), which is home to the Department for Problems of Strengthening Legality and Fighting Crime of the Institute of State and Law, headed by A. A. Svetlov. In this Department are two veteran criminologists (Kostenko and Svetlov, both Doctors of Legal Sciences), and two junior criminologists. The principal research interests of these scholars are juvenile crime, criminal psychology, and crimes by officials (corruption). But since funding for basic research has diminished considerably in the past five years, and the analytic disposition of these scholars is formal and legal, not empirical or sociological, few of their

publications are rich in description or data. Their preferred method is a legal "case-study" – that is, deducing the causes of the commission of certain kind of crime by analyzing a batch of criminal cases that have passed through the courts.

The second Academy of importance is the National Legal Academy Named After Yaroslav Mudry (hereafter, NLA). The NLA, formerly the Kharkov Institute of Law, is the premier center for the teaching of law for civilians in Ukraine. It employs Ukraine's most well-known legal scholars (including Groshevoi, the ageless doyen of Ukrainian criminal procedure). V. Ia. Tatsii, the President (Rektor), plays a prominent role in Ukrainian legal politics, and is often included *ex-officio* in many governmental and quasi-governmental bodies (such as the Higher Council of Judges). Because of the NLA's focus on instruction, however, most of its faculty are better versed in theory and pedagogy than applied criminology or the actual administration of justice. There are, of course, exceptions. In fact, many of the best researchers (such as Borisov, Kalman, and Zelenetskii) combine appointments at the NLA with slightly better-paying work at a research institute of the Academy of Legal Sciences.

The Academy of Legal Sciences (ALS), a brand new academic research institution, was established by the President of Ukraine in 1994. It also is headed by V. Ia. Tatsii, and is, reportedly, one of only four state-funded academies (the other three are the Academies of Agrarian, Medical, and Pedagogical sciences). The Academy's principal function is to coordinate the scientific research of Ukraine's best legal scholars and institutes. It has established two subsidiary bodies -- the Kiev Regional Center (which houses the Department of Legal Information, and is the prospective site of an Internet Studio Project), and the Research Institute for the Study of Problems of Crime, in Kharkov. Created in 1995 and headed by V. I.

Borisov, a Professor from the NLA, who also works for the American-funded Kharkov Center for the Study of Organized Crime, this Institute has a large staff (67 researchers) but limited funding. There are, for example no computers or experience with statistical software programs or regression analyses in the Sector for the Study of Crime, headed by Kalman. Nevertheless, it has produced some valuable studies of corruption and economic crime, its major research focus since 1997.¹² The Sector for Judicial Reform, equally challenged by a paucity of resources, has also generated valuable reports and commentaries on draft legislation on court organization.

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

The impressive institutional frameworks for criminology developed in the last few year have not always inject new or vital content into research. Even the main research centers in Kiev and Kharkov are by and large starved for funds; many, if not most, of their researchers work part-time, supporting themselves through teaching and other jobs. At the same time, much of the research underway remains within the framework of Soviet criminology -- in terms of topics.

theoretical underpinnings, and research methods. Thus, the main subject areas for research work published between 1992 and 1998 comprised: the structure and dynamics of crime; the personality of the offender; victimology; causes and conditions of crime (alcoholism urbanization, migration); prevention of crime (especially in police work); organized crime and corruption, economic crime, narcotics and crime, juvenile crime, and violent crime. In most of these subject areas publications included three or four short articles and one or two dissertations: only seven research monographs and four textbooks were published. The research plans through the year 2000 include a few new topics -- a study of latent crime; a history of penal institutions in Ukraine; studies of computer crime -- but the bulk of Ukrainian criminology promises to continue along tried and true paths.¹⁵

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

ENDNOTES

1. On Soviet criminology in the 1920s and 1930s, see Peter H. Solomon, Jr., "Soviet Criminology: its Demise and Rebirth, 1928-1963," in Roger Hood, ed., Crime, Criminology and Public Policy: Essays in Honour of Leon Radzinowicz (London, 1974), 571-593. On criminology in Soviet Ukraine in the 1920s, see I. N. Danshin, "Iz istorii kriminologicheskikh uchrezhdenii v Ukraininskoii SSR v 20-30-e gody," Voprosy borby s prestupnostiu, 32 (1980); Danshin, Vvedenie v kriminologicheskuiu nauku (Kharkov, 1998), 56-67; and L.O. Ivanov and L.V. Ilina, Puti i sudby otechestvennoi kriminologii (Moscow, 1991), 146-154.
2. Solomon, "Soviet Criminology," and Peter H. Solomon, Jr., Soviet Criminologists and Criminal Policy: Specialists in Policy-making (N.Y. and London, 1978), esp. chpt.4.
3. A.B. Sakharov, O lichnosti prestupnika i prichinakh prestupnosti v SSSR (Moscow, 1961); L.G. Krakhmalnikh and I.S.Noii, "O profilaktike prestuplenii priskhopatov," Sbornik nauchnykh rabot Saratovskogo otdeleniia NNOSMiK, vyp.3 (1961), 260-270; I.S. Noi, et al., "O rasshirenii nauchnoi osnovy izucheniia prestupnika," Tezisy dokladov is soobshchenii na mezhvuzovskoi konferentsii o teoreticheskim i metodologicheskim problemam pravovoi nauki (Kishinev, 1965); V.N. Kudriavtsev, Prichinnaia sviaz v kriminologii (Moscow, 1968), and N.P. Dubinin, I.I. Karpets, V.N. Kudriavtsev, Genetika, podevedenie, otvetstvennost (Moscow, 1982).
4. Solomon, Soviet Criminologists, 136-144.
5. A.M. Iakovlev, Prestupnost i sotsialnaia psikhologiya (Moscow, 1971).
6. Danshin, Vvedenie, 73-76; Zelinskii, Kriminologiya, 15-16.
7. Despite Glushkov's access to primary materials on organized crime groups, there is little ethnography in his analyses and published work.
8. Bandurka tends to publish highly publicistic works. See for example, General Militsii sovetuet i preduprezhdaet (Advice and Admonition from a Police General), Kharkov, 1998.
9. This project began in January 1997, and has yielded several publications already. A second survey took place in February 1999; it is to be followed by more detailed interviews with victims of crimes who did not report the offenses to the police.
10. Work on this topic has already yielded a major report, Narkotiki i molodezh, written up by I. P. Rushchenko.
11. Sobolev reports that several of his students are experimenting with ethnomethodology as a means of studying social groups. One had successfully entered into a gypsy community. For the study of subculture of organized criminal groups, Sobolev hopes to conduct intensive research inside prisons.

12. See, for example, the final reports published in volume 2 of its journal, Pitannia borot'bi zi zlochinnistiu, Kharkov, 1998.
13. "Ukrainskaia kriminologiia: tsenry, kadry, napravleniia issledovaniia, publikatsii, plany do 2000g.," unpublished report (1999).
14. See, for example, his Tin'ova ekonomika iak ekonomichnoi kriminologii (Kiyv, 1998).
15. "Obzor sostoianiia razrabotki kriminologicheskikh problem i podkhodov k izucheniiu i analizu prestunosti v nauchnoi literature i pravookhranitelnoi praktiki v 1992-1998 gg.," unpublished report (1999); "Bibliografiia rabot ukrainskikh kriminologov, opublikovannykh v 1992-1998 gg.," unpublished report (1999); "Ukrainskaia kriminologiia."
16. Professor Louise Shelley of American University has taken admirable initiatives in bringing Ukrainian criminologists to Washington for extended stays.

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