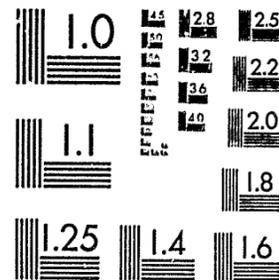


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to support the successful prosecution of cases involving repeat offenders.

Reducing crime and jail and prison populations by way of a strategy of selective incapacitation can be achieved in other ways as well, especially in the areas of pretrial release, plea bargaining, and sentencing. The prosecutor at either the Federal or local level can serve both the judge and the community by providing the judge with information about an offender's crime proneness, to support the pretrial release decision. While the constitutional issues involved in the ongoing pretrial detention debate are not likely to be resolved soon, one dominant practical consideration tends to moot that discussion: Few judges care to read in the newspaper that a defendant they released on bail committed another serious crime. Judges are inclined to find a legitimate reason for locking up the most dangerous defendants (and releasing ones who are not dangerous), hence they are interested in knowing which ones are in fact the most recidivistic and dangerous.

Prosecutors can also use information about an offender's crime proneness to increase or shorten sentence terms. One way is to take more cases involving chronic offenders to trial rather than offer a sentence or charge concession to induce a guilty

plea. Another way is to recommend to the judge a longer sentence in such cases.

Current procedures for dealing with repeat offenders at the local level—including the use of arbitrary case selection criteria and the career criminal unit as centerpieces—may be largely ceremonial, ineffective, and costly. A Federal career criminal program can, instead, exploit simple, unobtrusive procedures such as those described above to effectively incapacitate offenders who are criminally active at both the Federal and local levels, and to seek alternative sanctions for those who are not.

The concept of a Federal program that targets resources on cases involving recidivists is not new. The FBI's list of the 10 persons most wanted by that agency exemplifies a long-standing focus on dangerous recidivists by Federal criminal justice agents. The implementation of such a program among other Federal investigative agencies and in the offices of U.S. attorneys—and support of such a program by the Federal Judiciary—is warranted by the public concerns about crime and the high costs of prisons and jails. Because the stakes are high, it is important that the institution of a Federal career criminal program proceed in an orderly yet expeditious manner, with explicit goals and procedures for ensuring that those goals are achieved.

90379 A Radical/Marxist Interpretation of Juvenile Justice in the United States*

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Introduction

Juvenile justice in the United States has a history that reflects the concerns of several different groups. In the beginning of the 19th century, the initial concern was to separate the treatment of children from that of adults within the court system. The result of this distinction was the development of a system of

juvenile justice, with its own rules and relationships. By the middle of the 20th century, this parentally oriented system had become a complex network of bureaucracies. As the system's many arms tightened their control over the lives of more and more children, questions were raised about the efficacy and morality of this system. The radical/Marxist view of juvenile crime focuses on the social conditions that define and encourage juvenile crime. According to this view, the problem is with society, not necessarily with the child. The radical/Marxist approach concentrates on changing the juvenile system to eliminate the injustices it perpetuates.

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This paper traces the origins and evolution of the juvenile system in the United States from an alternative viewpoint—that of the radical/Marxist.

Historical View of the Juvenile Justice System

Viewed in Marxist/radical perspective, the child-saving movement in America, that had its origins in the 1800's, was not the humanistic welfare and reform undertaking that we have heretofore accepted; rather, it was devised by individuals, such as members of the elitist Chicago Women's Club, from the middle and upper socioeconomic classes as a form of social control. The child-savers did not save poor, working-class children from the indignities of the criminal justice system. The child-savers actually helped to build a far-reaching web of juvenile court systems that tended to subject greater numbers of children to capricious and humiliating punishments. Herman and Julia Schwendinger have traced the origins of the system of juvenile delinquency as far back as the 17th century in capitalist societies.¹ However, it was not until the close of the 19th century that an attempt was made to combine all such reforms as juvenile court, probation, child guidance clinics, and reformatories into an organized system of juvenile justice. This progressive movement was led by the bourgeoisie (middle class) at a time when the newly industrialized nations were in the heart of social and economic change. The Socialist party and other militant movements were demanding changes in society that would improve their lot as worker-producers. This need for more equitable distribution of wealth and control of the means of production was distinctly at odds with the newly evolving capitalist state.

The child-saving movement was seen as but another bourgeois institution in the guise of welfare-state benevolence. The movement created the institutions necessary for greater control of the thoughts and behavior of lower class children. In its drive to institute mandatory education, the child-savers were a very significant factor in assisting in the growth and expansion of a specialized and disciplined labor force. It was the mission of the child-savers to use the criminal justice system to achieve order and stability while preserving the existing class system and distribution of wealth.

While the child-saving movement was supported and financed by corporate liberals, the day-to-day work of lobbying, educating

the public, and organizing was undertaken by petit-bourgeois reformers, professionals, and special interest groups. The more moderate and conservative sectors of the feminist movement were especially active in antidelinquency reforms . . . it was dominated by the daughters of the old landed gentry and the wives of the industrial nouveau riche.²

The practice of the traditional juvenile court was evolved under the concept of *parens patriae* in which the state was assumed to intervene as a parent in the lives of those children brought under its influence. The causes of youthful misconduct were assumed to be scientifically identifiable and treatable; therefore, delinquency was approached as a treatable sickness, thus giving rise to the concept of individualized justice and rehabilitation. Adjudication occurred because the delinquent was in need of help and treatment rather than in need of punishment after a finding of guilt in the adult criminal court. This *parens patriae* approach, with its apparent concern for the individual, enabled the juvenile adjudication process to involve an ever-increasing number of children in the system since it was initially conceived as a helpful, benevolent way of aiding a child in need of care or supervision. The unfortunate child who was processed by the system was not given the constitutional safeguards afforded by our criminal justice system because of the special status of being juvenile.

Certain recurring themes and goals have characterized all juvenile programs and institutions since the original separate system of justice for juveniles, beginning with the establishment of houses of refuge in the 1820's. Most programs have targeted crime reduction, reduced recidivism, and the importance of the integration of the child of the poor working class/minority into the lowest echelon of social and occupational worlds, thereby limiting their hopes and aspirations for a better life.

During the Industrial Revolution, the availability of children for exploitable labor was used by industrialists as a lever to pressure the larger work force to labor for lower wages. As families were broken up by the migration to urban industrial areas, children were forced to migrate to make a wage from industrial jobs. Most major reform of the late 19th and early 20th centuries that concerned children was based on the fear of those who were neither in school nor employed. The focus of reformers and proponents of social control in the late 19th century centered on the lowest socioeconomic class. Essentially delinquency was invented in the 19th century because society wanted to change traditional methods for controlling youthful behavior by instituting the juvenile court system and compulsory education to ensure the perpetuation of the rule of the bourgeoisie and its concept of childhood.

¹Herman Schwendinger and Julia R. Schwendinger, "Delinquency and the Collective Varieties of Youth," *Crim. and Social Justice*, No. 5 (Spring/Summer 1970), p. 11.

²Anthony M. Platt, *The Child Savers, The Invention of Delinquency* (Chicago: University of Chicago Press, 1977) p. xxiv.

The creation of the juvenile court at the close of the 19th century was followed by other important changes—the development of the general high school in the early 20th century and formation of groups of social workers who dealt exclusively with youth. The general high school served to promote the significance of adolescence within urban society and created a means of isolating these youths as an age group within the general population. Until World War I, economic needs demanded that adolescents be regarded as young adults, members of the working economy, rather than as children. However, the disparity between the level of training given to adolescents and the demands of modern warfare and the conditions of the postwar economy were such that the economy was no longer able to absorb great numbers of youths in the job market. The shift to a more sophisticated technological society gave rise to a new generation of youths who could not be employed. Their choices were to continue in school or drop out without the credentials for future employment. The general high school and even the vocational/technical school which followed it did not meet the needs of all young people. Thus, while the development of the comprehensive school system removed many youngsters from the drudgery of the child labor market, it also created a class of adolescents who could not adapt to the socially acceptable institutions.

In 1933, in the midst of the Great Depression, 75 percent of the eligible work force under 24 were either unemployed or working sporadically. The young were the hardest hit of all the workers because they possessed marginal skills and therefore were the principal holders of entry-level jobs. These displaced youthful workers filled the streets, draining the welfare resources of municipal agencies. The youth worker emerged as an outgrowth of concern by the social worker in the late 19th century social welfare movement.

The isolation of youths from productive work and general breakdown of social order in many communities brought the problem of delinquency and the task of delinquency control into prominence. Such developments as the Chicago Area Project and the dramatic expansion of organizations for youngsters like the Scouts and Boys' Clubs were indicative of the social work profession's growing concern with this population and its failure to adapt to society. Federal involvement in the 1930's was still limited to funding certain relief-oriented efforts such as the Civilian Conservation Corps and the Works Progress Administration. Yet these efforts serve as an early indicator of directions Federal policy would take when again confronting unemployment in the early 1960's and in the 1970's.⁴

⁴Joseph Bute, Jr., "Practicing from Theory: Work with Youths and Reflections on Radical Criminology," *Crime and Delinquency*, January 1981, p. 111.

The Emergence of Radical/Marxist Theory

By the early 1960's, legal processing, as regards the handling of juveniles, was viewed by some as too all-encompassing. Many children brought before juvenile courts are there for suspected violation of status offense statutes—conduct which would not be subject to sanction if committed by an adult. Among the diverse forms of behavior which have been subject to sanction by the juvenile justice system are:

- (1) Immoral conduct
- (2) Knowingly associating with vicious and/or immoral persons
- (3) Running away from home
- (4) Use of intoxicating drink
- (5) Smoking cigarettes in public place
- (6) Refusal to obey parent/guardian
- (7) Incurability
- (8) Habitual truancy from school
- (9) Curfew violation
- (10) Knowingly visiting a house of ill repute
- (11) Using vile or obscene language
- (12) Wandering the street at night
- (13) Growing up in idleness or crime

Not only were these "crimes" seen as inappropriate for prosecution, but the ways in which the justice system treated juveniles also came under attack. The Gault decision expanded the rights of juveniles in the court system. In many ways, this decision ushered in an era of new views on juvenile justice. The prominent post-Gault movements of the juvenile justice system in the United States have been toward decriminalization; diversion; due process; and deinstitutionalization.

Radical theory represents a line of social thought leading away from the concept that delinquent tendencies are somehow inherent in the nature of some individuals; rather, radical theorists believe that these tendencies are inherent in the manner in which society makes and enforces rules which are selectively applied to different segments of our capitalist society.

Radical criminology is the view that capitalist and other class societies entrust disproportionately greater power to the hands of some ruling group, who use that power to shape criminal laws and criminal justice policy to serve their own aims, while putting this forth as the public interest. Radicals study the abuse of power by the powerful. This radical theory of abuse is in direct opposition to the Marxist notion that public policy is not primarily the outcome of the aims or intentions of individual actors in the social system, but the product of capitalist structure. Radical theory experienced a revival in the last two decades as American society was weakened by years of decay in the inner-city, urban violence, war, and the exposure of a corrupt presidency. Radical theory was a viable alternative for those with resulting feel-

ings of despair and dismay. Blame could be placed on our capitalist leaders for the creation of crime and injustice. Radical theorists draw heavily on Marxian theory and conflict theory.

Conflict theory supports the belief that our society is characterized by both class conflict and a pervasive lack of justice. Law is recognized as a social product and a social force. Society is organized through exercise of power by a small but elite ruling class. Society is held together by force and constraint. Delinquent acts are so defined only because it is in the interest of the ruling class to define them as such.

Karl Marx was a conflict theorist who viewed history as a perpetual struggle between the two principal economic classes, the bourgeoisie and the proletariat. The bourgeoisie owned and controlled the means of production; thus the poor laborer (proletarian) was subjected to his middle-class economic and social rules of order. Dialectical materialism traces the rise and fall of contrasting economic systems. Marx viewed history as the culmination of three principal social and economic eras—ancient slave society, feudal society of the Middle Ages, and capitalism. Although each era marked a step forward in the progress of man, each also included the elements of its own destruction. Although capitalism has provided a wealth of material goods and instituted constitutional government, it has made individual accumulation of wealth and property its goal. No energy is expended in pursuing human rights or relieving human suffering. The proletariat are given dehumanized positions in society. The worth of individuals has been sacrificed to the bourgeois struggle for the command of wealth. According to Marx, this conflict between the classes would inevitably lead to the unification of the proletariat wherein they would overthrow the bourgeoisie and all remains of capitalism would be liquidated, class struggle would no longer exist, and the historical dialectic would come to an end.

Marxism studies society, capitalism in particular, as a structure of production which itself determines what aims and intentions individual agents in that structure will have and what they will perceive as in the public interest. It does not see criminal justice or any other public policy as the result of the abuse of power; it sees it rather as the outcome of normal exercises of power by individuals occupying the various roles allotted to them by the structure of capitalism. Thus, while radicalism is in the first in-

⁴Jeffrey H. Peitman and Sue Headlee, "Marxism and Criminal Justice Policy," *Crime and Delinquency*, January 1981, p. 26.

⁵LaMar T. Empey, *American Delinquency, Its Meaning and Construction* (Homewood: The Dorsey Press, 1982, pp. 428-430).

stance a moral condemnation of the abuses of power by capitalists, Marxism seeks a scientific analysis of how the structure of capitalism determines the behavior of capitalists and non-capitalists alike.⁴

According to Quinney, the following represent six contemporary expressions of radical theory:

- (1) American society is based on an advanced capitalist economy.
- (2) The state is organized to serve the interests of the dominant economic class, the capitalist ruling class.
- (3) Criminal law is an instrument of the state and ruling class to maintain and perpetuate the existing social and economic order.
- (4) Crime control in a capitalist society is accomplished through a variety of institutions and agencies established and administered by a governmental elite, representing ruling class interests, for the purpose of establishing domestic order.
- (5) The contradictions of advanced capitalism—the disjunction between existence and essence—require that the subordinate classes remain oppressed by whatever means necessary, especially through the coercion and violence of the legal system.
- (6) Only with the collapse of capitalist society and the creation of a new society, based on socialist principles, will there be a solution to the crime problem.⁵

Policy Implications

Among the key implications of radical theory is that delinquency problems cannot be solved within the framework of capitalist society. This is because the oppressive nature of the ruling class is characterized by truly criminal behavior. Today's radical criminologists, for the most part, advocate radical change by peaceful means.

Traditional social policies have tended to isolate social problems thereby drawing attention away from the conditions of the economy and its unequal distribution of goods and wealth; instead, attention is centered on the victim of those conditions. Currently, most professionals are working under state or Federally funded programs restricted to groups proposing to prevent or control behavioral problems manifested in children and adolescents. The policy response evades the fundamental economic problem. Programs such as CETA have been created to provide youths with training for some type of work, even though the economy is unable to withstand full employment, regardless of the level of job skills. If we seek to deter delinquency, the radicals suggest, we must recognize that it stems from the functions of the economy and our ineffectual responses to intolerable economic conditions.

Reactions to Delinquency*

	INDIVIDUAL TREATMENT	LIBERAL REFORM	RADICAL NONINTERVENTION
Basic assumptions	Differentness of offenders delinquency a symptom, psychosocial determinism	Delinquency concentrated in lower class; individual constrained—particularly by subcultural pressures, social determinism	Delinquency widespread throughout society basic role of contingencies, neo-antideterminism
Favored methodologies	Clinical, comparison of matched samples	Analysis of rate variations, ecological analysis; study of subcultures	Self-reports, observation, legal analysis
Focal point for research	The individual	Social class, local community	Interaction between the individual and the legal system (and other agencies of reaction)
Representative causal perspectives	Psychodynamic theories, family oriented theories	Anomie theories; cultural transmission, opportunity theory	Labeling analysis, drift and situational theories
Prevention	Identification of "pre-delinquents", probation and counseling	Street gang work; community programs piecemeal socio-economic reform	Deemphasis on singling out specific individuals, radical sociocultural change
Treatment	Therapy, training schools	Community programs, improving conditions in institutions	Voluntary treatment
Juvenile court	"Individualized justice", rehabilitative ideal	Better training and caseloads; more attention to social factors	Narrow scope of juvenile court jurisdiction, increased formalization

From the radical noninterventionist perspective, delinquents are viewed as youthful misconduct as extremely widespread throughout all strata of society whereas delinquent behavior is the result of social labeling as applied to those youths, generally from the lower economic classes, who are caught and officially processed through the system. Noninterventionists argue for the acceptance of greater diversity in juvenile behavior and an abolition of many existing laws and/or a definitive narrowing of their scope so as to decrease criminalization. The importance of uniformly applied punishment is also stressed in addition to full implementation of all formal constitutional safeguards in all juvenile proceedings which are instituted. Most noninterventionists would support a radical change in major capitalist institutions and current middle-class cultural values.

The earlier reform perspective in the evolution of juvenile justice policy was based on social class system, neighborhood, and both group and sub-cultural aspects of youthful behavior. Reformist

policies aimed at changing such things as value systems and neighborhoods rather than concentrating on the individual juvenile offender. Even the most passionate of reformers, according to Schur, now admit that eliminating delinquency is not a feasible goal. Reformists continue to view delinquency as a problem about which something must be done—a problem to be solved; a solution to be found. This notion still imputes a great deal of personal responsibility to the individual delinquent: The problem lies with the delinquent himself.

The policy perspective adopted by the President's Commission on Law Enforcement and Administration of Justice in 1967 advanced the position that unless society takes action to change the attitudes and conditions that are associated with crime, no improvement will be forthcoming in the areas of law enforcement and justice administration. This commission acknowledged that the roots of delinquency rest in socioeconomic inequality, racism, and the current criminal justice value system. The greatest potential for a reduction in crime and juvenile delinquency comes from reform of these currently existing social conditions.

Pervasive alienation, boredom, powerlessness, worthlessness, and distrustful social relations can only diminish the quality of life and drive people to crimes. Thus, we can understand the crime people commit against their own, the extensive vandalism by juveniles of all classes, and the terrorizing of old people. These cannot be acts by people who live in real communities. They arise from lack of community and destroy further any remnants of community . . . Since 90 percent of all crimes are property related, we see that in each case people resort to crimes to optimize their economic conditions. Poor people steal, pimp, and so on because they make more money this way than they could by most legitimate jobs available (or not available) to them; organized crime finds a market for goods and services which guarantees high profits; and business people resort to white-collar theft, price-fixing, and so on in order to maximize profits (maximization of profits is the first priority of a capitalist economy) . . . Crime is a response to the total way of life created by capitalism and indicates the poverty of human relations and social conditions.⁷

Why do we need to alter radically the current juvenile justice system? If justice imputes justness, our system is not just. Obviously we have not been successful in either preventing or treating delinquent behavior. If we do something "for" a child, we are also doing something "to" that child. Good intentions do not excuse the stigmatizing experience of needlessly subjecting a diversity of culturally defined and proscribed youthful misbehavior to the juvenile justice system, at any stage.

Crime and delinquency are inherently political phenomena. This is so for at least two reasons: because public policy decisions of various sorts shape the social structures and value systems within which such behavior occurs; and because ultimately the substance of crime and delinquency laws is, as we have seen, a matter for political decisions . . . Public policy is created because segments with power differentials are in conflict with one another.

Public policy itself is a manifestation of an interest structure in politically organized society.⁸

Lemert (1971) estimated that one in every five or six male juveniles is referred to the juvenile court prior to reaching the legal age for adulthood (18). Far more juveniles are known to the police who are never arrested or brought into the court system. Since the children of the upper and middle classes are generally subject to a greater tolerance by the community for any predelinquent behavior they may exhibit, most of the boys brought before the juvenile court are from the poorest socioeconomic strata of society. Should you come from these poorer classes, your chances of appearing in juvenile court approximate 50 percent. Perhaps if our so-called ruling class is aware of the large numbers of poor, lower-class children coming into the juvenile justice system, it is understandable, if not defensible, that these juveniles are perceived as such a threat by social control agencies. FBI data collected for 1967 showed 1,340,000 arrests of juveniles under 18 in the United States. Communities should not expect the criminal law to solve what are essentially social problems. According to final 1981 Crime Index figures compiled by the FBI, arrests for all offenses except for traffic violations were estimated at 10.8 million. The number of arrests involving juveniles under the age of 18 increased less than 1 percent over 1980 but fell 9 percent from the 1977 total. Unfortunately, this statistic is more reflective of a declining teenage population than of decreasing teenage criminal activity. Twenty percent of the persons arrested for all crimes except for traffic violations in 1981 were under the age of 18—but a total of 37 percent were under the age of 21, and 55 percent were under the age of 25.

Radical noninterventionists do not expect delinquents to differ particularly from nondelinquents—except only that the delinquents have been processed through the juvenile justice system. Most delinquent misconduct is found at all levels of society; however, only the children of the poor tend to be caught up in the web of delinquency labeling and processing. Therefore, the delinquency-defining process should be the primary target for persons wanting to alter delinquency. This viewpoint advocates accommodating the widest possible diversity in juvenile behavior and attitudes. The middle class should not be permitted to mandate their societal values as the only acceptable standard of behavior. This policy mandate is an expansion of Lemert's policy of "judicious noninterven-

tion." However, there can be but one real solution to our juvenile justice problem, the radical/Marxist theorists argue—a humane socialist society which would eliminate the feelings of powerlessness and inadequacy of the young on a cross-cultural basis. No one group would be predestined to occupy the lowest paying, most menial jobs. Every job in society would be given dignity and all members of society would share in these jobs which must be performed. The elimination of competition, the guarantee of a decent living, the elimination of the excessive accumulation of private property and wealth would create a true democracy. For the present, the juvenile court system must be encouraged to continue in its current trend of a return to due process and full constitutional safeguards for juvenile offenders.

According to Empey, radical/Marxist criminologists believe that "delinquency is the product of a perpetual class struggle in which the ruling segments of capitalist society (1) define what delinquent behavior is, based on their particular self-interests; (2) create the social conditions which make delinquents out of the children of working-class people; and then (3) devise legal machinery by which to maintain control over these children. Therefore, the rules and practices that govern delinquency and the criminogenic conditions that produce it are products of the inequities and injustices of a capitalist social order. In this view of the sources of delinquency, radical theorists strongly imply that human nature is inherently good."⁹

Radical criminologists advocate recognition of a youth's right to live with the same constitutional guarantees as adults. The civil rights of children and adolescents (juveniles) are quite restricted.

The agenda of the juvenile justice system must be limited to deterrence and adjudication of criminal offenses committed by young people. The juvenile court should not be misused as an agency of social control—by attempting to uphold community moral or aesthetic standards of conduct. Conduct which is not punishable for an adult (status offenses) must not be punishable for a juvenile. There is a tendency for juvenile delinquency to develop along the edges of the class conflict in our society; the clash between the rich and the poor. Delinquency, like crime, is an indicator of basic societal conflict; thus this behavior is likely to remain resistant to any form of control.

Radical criminology is beginning to state a social policy which will consolidate its analytic identity around Marxist theory. Marxist theorists see the use of the family and school to ensure the continual perpetuation of the labor force. The capitalist mode of production guarantees the replication of the current class structure. The bourgeoisie is the dominant

*Edwin M. Schur, *Radical Non-intervention* (Englewood Cliffs: Prentice Hall, Inc., 1973), p. 20.

⁷Liazos, p. 339.

⁸Edwin M. Schur, *op cit*, p. 139.

⁹LaMar T. Empey, *American Delinquency: Its Meaning and Construction* (Homewood: The Dorsey Press), 1982, p. 423.

member of this social class structure. The bourgeoisie is the dominant member of this social class structure. Bourgeois domination is maintained by the passage of laws that uphold the special interests of the ruling class.

Contemporary Radical Criminology Movement

Radical criminology flourished within the political-cultural constraints of American universities during the late 1960's and early 1970's. The era of relative affluence following World War II generated sufficient funding for our government to develop social welfare programs and experiment with various crime prevention programs such as community-based corrections. Criminologists were beneficiaries of the windfall allocated for research and planning during the Johnson administration's Great Society and the Nixon administration's War on Crime. According to Platt, this was a period dominated by a liberalism that was openly hostile to Marxism. The premises of liberalism were severely shaken by the inner-city riots, the changes in the civil rights movement, the Vietnam war, and the associated social and economic turmoil of the 1960's and 1970's. This was the context in which radical criminology evolved.

Platt distinguishes the School of Criminology in Berkeley as the center of radical criminology during this time period. His magazine *Crime and Social Justice*, edited with Paul Takagi, was initiated there. Platt was influenced by Herman Schwendinger; under this influence *Crime and Social Justice* developed with Marxism as an essential theoretical component of its radical pluralism. Platt found the ideology of radical criminology short lived at Berkeley because of profound academic repression. The School of Criminology was actually closed in 1976 which resulted in the staff of *Crime and Social Justice* being dispersed throughout the country. This resulted in a lowering of the initially high standard which had been set by the editors.

The representation and dispersion of the School of Criminology at Berkeley fundamentally disrupted the consolidation and development of "radical" criminology in the United States . . . For a while, "radical" criminology became increasingly unguided and disorganized, reminiscent of Engel's description of the utopian socialists: "a mishmash permitting of the most manifold shades of opinion: a mishmash of the less striking critical statements, economic theories and pictures of future society." The terms "radical criminology" and "new criminology" were quickly coopted and diluted, for the most part emptied of their genuine radicalism, and used as a fashionable mantle to cloak

¹⁰Tony Platt and Paul Takagi, "Meeting the Challenge of the 1980's," *Crime and Social Justice*, Summer 1982, p. 2.

¹¹James Garofalo, "Radical Criminology and Criminal Justice: Points of Divergence and Contact," *Crime and Social Justice*, Fall-Winter 1978, p. 18.

everything from muckraking exposes to liberal reformism. Richard Quinney, who built his career as the leading "radical" criminologist in the United States, added to the confusion by publishing huge amounts of materials which were generally crude, undigested and dogmatic. Not surprisingly, the opponents of "radical" criminology seized upon Quinney's shallow scholarship and opportunistically equated it with Marxism.¹⁰

Fortunately for radical scholars, *Crime and Social Justice* prevailed and in 1978, editorial and administrative functions were centralized in Berkeley and San Francisco, where it has become a journal of ISLEC, the Institute for the Study of Labor and Economic Crisis. ISLEC is an independent research institute founded in San Francisco in 1977 as a reaction to the exclusion, harassment and censorship of all radical scholars, including Marxists, in the major established universities.

The economic and political climate of the 1980's has given the study of radical criminology a new perspective. The encumbrance of "stagflation" and declining production has been dumped on the working class in the form of dramatically cut social programs, business deregulation, expanded subsidies for the national and multinational corporations, and the emasculation of regulatory agencies. The cry of the middle class is for law and order; this will mean a significant growth in the rate of imprisonment for all offenders, not only juveniles, with the resultant deterioration in penal conditions due to overcrowding and elimination and watering down of social programs. We will see a steady increase in street crimes, of which the poor are increasingly the victims, with increasingly severe punishments especially for the poor minorities. There will be a related increase in corporate crimes. Radical criminologists use the existing social, economic, and political institutions as the reference point in defining juvenile delinquency and juvenile crime.

"Radical criminology involves a Marxist approach to the issues of crime and crime control . . . and radical criminology has a definite positive thrust in the form of commitment to economic, social and political change."¹¹ Crime is defined as a violation of political or human rights, such as individual dignity, physical comfort, adequate health care, shelter, the right to earn a decent wage, and the right to education. In a capitalist society, the concept of selling one's labor rather than the product of one's labor has brought demoralizing changes throughout society. Products and their value are controlled by large corporations rather than by individual workers. Our capitalist society defines serious crime as property crimes; and the offenders most often involved in the criminal justice structure will be from the lowest socioeconomic strata of society.

Most residents of juvenile correction facilities are there for property-related crimes. Most of the anti-

social conduct engaged in by corporations is defined as civil rather than criminal even though it may cost lives and a high degree of physical suffering, i.e., miners who are subjected to hazardous conditions, asbestos workers subjected to cancer causing agents, and persons injured by cars with unsafe components knowingly marketed by automobile manufacturers—all in the name of the sacred cost benefit analysis.

The skills and attitudes taught to those in the juvenile justice system are preparation for low-paying, low-prestige jobs; and even these jobs may be taken away in our shrinking economy. Our system degrades individuals while upgrading property and wealth. The result is a society in which juvenile delinquency is rife, but the institutions designed to cope with it are ineffective.

FBI statistics show that about 25 percent of crimes are committed by people under eighteen. Williams and Gold (1972) show that most (87%) juveniles commit chargeable offenses, with about 25 percent committing serious offenses. They also show that the rate of delinquent behavior is about the same for all classes . . . Delinquency results from social and economic conditions under capitalism (which includes the powerlessness of youth) and . . . only under socialism can we even begin to search for solutions. Certainly, the record of delinquency prevention and reform since the 1820's, one of continual failure, permits no other conclusion.¹²

Contradictions and Omissions of Radical Theory

Radical theory itself has come under criticism and question. Can the theory underlying a radical approach serve as a firm basis for new policy, or will radical criminology, like the reform movement of earlier days, find itself trapped by its own ideology? The following are some of the problems that face radical criminologists.

- (1) If capitalists are criminals and crime will disappear or be greatly reduced in a liberated society, won't the overthrown capitalists be defined as criminals; how will they be treated?
- (2) Is all crime and delinquency an artifact of political and economic oppression; isn't the delinquent label sometimes earned by offenders and can't their personal motivations aid in formulating an explanation of their acts?
- (3) If social order has always been characterized by conflict, under what conditions would law *not* be the instrument of some powerful group, whatever its name or goals?
- (4) Doesn't the obsession with class conflict ignore the fact that age and sex are more closely related to the commission of delinquent acts than any other factor?

¹²Alexander Liazos, "Capitalism, Socialism and Delinquency," *The Future of Childhood and Juvenile Justice* (Charlottesville: University of Virginia, 1979, pp. 337-338).

- (5) Doesn't this particular brand of conflict theory ignore the relation of peer pressure, learning disabilities, and increasingly wide-spread drug use to the commission of delinquent acts?

In spite of the difficulties posed by these questions, the proposals of the radicals for change have had some effect on the institutions of juvenile justice.

The revised standards for juvenile justice, reflective of the "just deserts" philosophy, have been formulated by a joint committee of the Institute of Judicial Administration of New York University and the American Bar Association (IJA-ABA, 1977) as follows:

- (1) Eliminate status and victimless offenses from the jurisdiction of the juvenile court;
- (2) Institute determinate sentencing;
- (3) Grant all of the procedural protections afforded adults;
- (4) Adhere to the principle of the least restrictive alternative.

The philosophy of "just deserts" is to see that justice is done; to ensure the protection of the community and to make children accountable for their crimes.

Conclusion

The stated intention of the 19th century reformers was to improve conditions for children. However, because of their social perspective, the reformers created a network of institutions within which to entwine the youthful offender. Social perspective also contributed to the definition and selective prosecution of particular juvenile crimes, which had the effect of broadening the behaviors considered criminal.

The radical/Marxist view is that the reformers were imposing the needs of the capitalist system on those in the lowest socioeconomic classes, those least able to fight back. For the radical criminologists, changing the social environment which engenders crime is the first priority. Changing the juvenile institutions which support oppression of lower class children is likewise a high priority for the radicals. Voluntary programs are favored over compulsory and collective action is undertaken instead of delinquency being approached on a one-to-one basis. Society must be changed—not youth. This outlook does not state that there are no delinquent criminal acts or actors to be punished within the context of the criminal justice system. It merely points out that much of the proscribed behavior punished by the juvenile justice system is exhibited cross-culturally, but punished only when exhibited by the lower socioeconomic classes.

It becomes increasingly clear that there is no one

great solution to the problems of delinquent misconduct. Instead, there is a need to reassess our views of youthful "problems." Stop-gap measures which should be expedited include the closing of brutal, overcrowded prisons and jails, an increased use of diversion, and any other pragmatic means of reducing the cruelties of the juvenile justice system imposed upon those unfortunate children caught up in it.

Although the radical theorists may not have all the answers for dealing with juvenile justice, some of their suggestions have been implemented. These changes have moved the system closer to the legal ideals upon which this country rests, but the shrinking economy and the resulting political drift to the right may seriously impede the kind of sweeping changes which radical criminologists support.

The Emergence of Determinate Sentencing

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THE EMERGENCE of determinate sentencing is a relatively recent phenomenon. It has only been since the U.S. Parole Commission (formerly Board of Parole) adopted parole guidelines in 1973 that several states have followed suit. Although this trend has been less pronounced for juveniles, a number of states have enacted or are considering legislation requiring determinate sentencing for juveniles as well as adults.

In this article we will explore several issues related to the movement toward determinate sentencing. Besides examining some of the definitional issues, the discussion will focus on an overview of this trend, arguments and counter-arguments for determinate sentencing, types and methods for formulating sentencing guidelines, and future prospects for determinate sentencing. While scant evidence is available for assessing the impact of determinate sentencing, there is some recent research which deals with issues related to it and this evidence will also be scrutinized.

Defining Determinate Sentencing

There is considerable disagreement over how to define determinate-indeterminate sentencing. For example, Dershowitz (1974:298) has stated, "A sentence is more or less determinate to the extent that the amount of time to be served is decided not by the judge at the time the sentence is imposed, but rather by an administrative board while the sentence is being served." This definition is deficient in at least one important respect. All sentences imposed by parole boards would automatically be ex-

cluded as determinate even if an inmate's sentence was determined shortly after incarceration. An alternative definition of determinate sentencing systems is: "(1) with explicit and detailed standards specifying how much convicted offenders should (i.e., ordinarily be punished), and, (2) to the extent they use imprisonment, with procedures designed to ensure that procedures designed to ensure that prisoners are informed early of their expected dates of release" (Von Hirsch and Hanrahan, 1981: 294). Like the previous definition offered, a problem with this one is the idea that sentences must be relatively fixed is ignored.

This leads to our proposed definition: *A sentencing system is determinate to the degree that (1) it is based upon explicit standards or guidelines which specify how much punishment an offender will generally receive, (2) the offender is notified of the punishment imposed before a large portion of the sentence is actually served, and (3) the sentence is relatively fixed (i.e., although it may be altered, the sentence served corresponds closely with the original sentence).* Examples of extreme forms of sentencing should further illustrate the difference between determinate and indeterminate penalty systems. At one extreme the convicted offender would receive a fixed sentence imposed by a judge which could not be altered. In other words, the actual sentence would be identical to the expected sentence. At the other end of the spectrum an offender would receive a sentence of one day to life and the actual time served could be anywhere within this range. The former is similar to determinate sentencing schemes in several states today, while the latter approximates indeterminate

sentencing for adjudicated delinquents in most jurisdictions because often incarcerated delinquents can be held to any point up to their age of majority. Thus, determinate-indeterminate sentencing can be viewed as on a continuum, although we would be hardpressed to find actual examples of the extremes. Instead, relative to one another, sentencing schemes are more or less determinate.

Determinate sentencing should not be confused with mandatory sentencing. Many states have recently enacted legislation requiring minimum sentences for offenders convicted of certain crimes. States which have passed laws mandating minimum sentences for criminals convicted of offenses committed with firearms are prominent examples. However, mandatory sentencing laws are not necessarily determinate because an offender could receive a sentence of 3 years to life, for example, under some of these statutes. This violates our definition because sentences such as this are not relatively fixed and imposed shortly after conviction. Likewise, guidelines or standards are not necessarily part of mandatory sentencing laws.

Impetuses for Determinate Sentencing

The promise of reducing sentencing disparity and the demise of the "rehabilitative ideal" coupled with the return to classical conceptions of punishment have probably been the primary reasons for the movement toward determinate sentencing, although several other impetuses will also be mentioned. These forces have not only led to growing disillusionment with indeterminate sentencing, but determinate sentencing has been increasingly viewed as an alternative.

Reducing Sentencing Disparity

The assertion that there is disparity in sentences imposed on "similarly situated offenders" is well documented (Bagley, 1979; Berger, 1976; Carey, 1979; Clancy, et al., 1981; Dershowitz, 1974; Forst, et al., 1979; Frankel, 1973; Greenberg and Humphries, 1980; Hoffman and Stone-Meierhofer, 1977; Kennedy, 1979; Perlman and Stebbins; Schulhofer, 1980; Singer, 1978; Van den Haag, 1975; Von Hirsch, 1976; Wilkins, 1980).¹

This generalization applies to variations in sentences between jurisdictions, differences in sentences imposed by judges with a single jurisdiction, and dissimilarities in sentences meted out by a single judge. Even though sentences are generally

strongly associated with the seriousness of the instant offense and criminal history (Gottfredson and Gottfredson, 1980), a number of other factors play a role in sentence decisionmaking of judges, parole boards, or other legislatively designated sentencing bodies. Guidelines can serve two important functions (Von Hirsch and Hanrahan, 1981). They can have the effect of reducing unexplained variation from sentencing norms because the sentencer must choose a sentence within a recommended range or explain the reasons for deviation from that standard range. More critically, sentencing standards ensure that the basis for policy decisions (for example, factors weighed in the guidelines) become explicit. The extent to which determinate sentencing has succeeded at achieving these objectives are issues which will be explored later.

The Demise of the Rehabilitative Ideal

Alone, sentencing disparity can probably not explain the trend toward determinate sentencing. In the 1960's and 1970's rehabilitation (or treatment) was coming under increasing attack. Rehabilitation is consistent with indeterminate sentencing because a system of indefinite sentences allows criminal justice officials to prescribe treatment which corresponds to the unique characteristics of each offender.

The "rehabilitative ideal" has been challenged on several grounds, but, most fundamentally, critics have questioned the effectiveness of rehabilitation at altering the behavior of convicted criminals. More than anything, the "Martinson Report" has probably been responsible for the continuing criticism of the efficacy of correctional treatment. In a summary of the report in which over 230 treatment studies up to 1967 were evaluated, it was concluded, "With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism" (Martinson, 1974:25, emphasis in the original). Martinson's assertion is consistent with other reviews of the efficacy of correctional treatment (Bailey, 1966; Brody, 1976; Greenberg, 1977; Robison and Smith, 1971; Romig, 1978).

The conclusion that rehabilitation has been largely unsuccessful has not escaped criticism (Adams, 1976; Glaser, 1979; Palmer, 1976). For example, the noted jurist David L. Bazelon views the current rejection of the rehabilitative ideal as "brutal pessimism" (Empey, 1979: 412):

Rehabilitation . . . should have never been sold on the premise that it would reduce crime. Recidivism cannot be the only measure of what is valuable in corrections. Whether in prison or out, every person is entitled to physical necessities, medical and health services, and a measure of privacy. Prisoners need

¹"Similarly situated offenders" are those convicted of comparable crimes with equivalent background characteristics (for example, criminal history).

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