



United States Department of Justice  
BICENTENNIAL LECTURE SERIES

<sup>x</sup>  
"EQUAL JUSTICE UNDER LAW"



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### Acknowledgements

As part of its observance of the American Revolution Bicentennial, the Department of Justice sponsored a series of lectures, each relating to the theme "Equal Justice Under Law." Seven prominent figures in the legal profession spoke at various schools and historical sites throughout the country, on topics of enduring importance to our nation. Their words are presented here as a reminder of a fundamental principle of our heritage—liberty and justice for all.

The Department of Justice gratefully acknowledges the contributions of all those who participated in the Bicentennial Lecture Series program. The cooperation and enthusiasm of the seven lecturers, the local coordinators and the Department of Justice Bicentennial Task Force was greatly appreciated.

### "CAN THE LAW MAKE US VIRTUOUS?"

PRESENTED BY  
JAMES Q. WILSON  
AT THE  
BOSTON ATHENAEUM  
BOSTON, MASSACHUSETTS  
8:00 P.M.  
FRIDAY, SEPTEMBER 24, 1976

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History is kind toward the United States. If the centennial observance of American independence had been held a dozen years earlier—in 1864, rather than 1876—it could scarcely have been celebrated at all. The nation was locked in a bitter civil war and feelings were hardly conducive to nostalgic reveries. If the bicentennial had occurred in 1966 rather than 1976, it would have been observed, if at all, apologetically, as we were then a nation rent with another form of fratricide, the devastating urban riots. Somehow, we always seem to pull ourselves together just in time.

Or so it would seem. Though riots have abated, crime has not. Though our cities are no longer in flames, they are far from safe. The angry citizens who once roamed the streets of Detroit have been replaced by youthful gangs that rob and beat at random and very nearly at will. The South Bronx has become the scene of police-youth encounters that have earned for its precinct station house the sobriquet, Fort Apache. The evacuation of many older central city areas by the middle classes, both white and black, has become almost complete.

Twenty years ago few Americans thought crime was a major problem. In 1949, the Gallup survey found that among residents of cities with populations of a half million or more, only 4 per cent listed crime as the major problem; far more were concerned about poor housing, traffic congestion, high taxes, and similar matters. Ten years ago residents of large cities put crime and unemployment together at the top of the list of major urban problems. Today, crime is alone at the head of the list. Among the big cities, 31 per cent mention crime, delinquency, drug abuse, and related matters. Even more troubling, citizens of the smaller communities now share these concerns: among residents of cities with populations between 50,000 and 500,000,



crime heads the list. Crime is the most important problem for nonwhites as well as whites, for the well-educated as for the poorly-educated, for the poor as well as the affluent. The proportion of persons believing that there is an area near their homes where it is not safe to walk alone at night has risen from 31 per cent in 1968 to 45 per cent in 1975.<sup>1</sup>

The fear of crime has become nationalized, so much so that the popular attitudes no longer correspond to the actual risks of victimization. Older persons and those living in small towns fear crime in about the same proportions as younger persons and those living in large cities, even though the objective risk for younger people and for big-city residents is much greater. In part, this disparity between concern and risk may reflect the application by citizens of different standards as to what constitutes adequate safety. In part it may reflect differing levels of ability at coping with crime (a young man can run faster than an old woman). And citizens may not always have been correct in their perceptions of what is happening to crime rates. Though they are indisputably right in believing that the crime rates rose dramatically during the 1960s, they are wrong in thinking that violent crime has increased in the most recent period. Between 1973 and 1974, the actual rate of victimization by violent crime, as measured by Census Bureau interviews with some 65,000 households, remained more or less constant. For example, the chances of being robbed, especially robbed in a way that produced an injury, did not increase between 1973 and 1974.<sup>2</sup> Since the prospect of being robbed is quite high, citizens might be forgiven for erroneously supposing that it is getting higher. The most important political fact, however, is that crime is a nearly universal concern, acute for those who are its likely victims but real enough even among

those who are not. The American people do not believe their leaders have dealt adequately with this problem and in this disappointed hope is to be found much of the current dismay over the value and efficacy of government.

If crime rates have not improved, public rhetoric on the subject has. The presidential elections this year were the first in my memory in which few, if any, absolutely silly statements were made on crime. At worst, no one mentioned it; at best some temperate and sober views were expressed. No longer do we hear demands that the Supreme Court be impeached or the Bill of Rights repealed; just as happily, we no longer hear confident speeches about how crime can be reduced by increasing expenditures on social programs. Whether this good sense will prevail during the general election campaign is hard to say—the temptation to talk nonsense during such times is almost irresistible.

In all this, official views have slowly caught up with popular ones. Crime is taken seriously. Crime waves are no longer blamed on civil rights activists, American foreign policy, or the stultifying effect of middle-class values. Few responsible persons are any longer confident that we can, by plan and for large numbers of persons, rehabilitate convicted offenders. Concepts such as deterrence and incapacitation, once thought to be retrogressive, are now taken seriously as necessary parts of any criminal justice system. Where once it was thought that the threat of fines and jail terms would only alter the behavior of Southern sheriffs bent on denying to blacks their right to vote or the plans of corporate executives determined to pollute the atmosphere, it is now widely suspected that such sanctions might modify the behavior of ordinary robbers and burglars as well. Fewer public officials are as confident as they once were that some favored police tactic—foot patrol, for example—or

some modish police reform—sending officers to college, for example—will have much of an effect on crime rates or even police efficiency generally.

The quality of scholarly research on crime is much improved. For example, after decades of assuming that changing the costs of crime made little difference in the rate at which crime occurs, recent research by many different scholars using a variety of data has shown repeatedly that there is a strong negative association between the rate at which crime occurs and the rate at which some sanction (arrest, imprisonment) is imposed on offenders.<sup>3</sup> These studies are not conclusive: it is always possible that it is not sanctions that deter crime, but crime that deters sanctions. This would be the case, for example, if rising crime rates so swamped the police and courts that they could no longer arrest and sentence offenders at the same rate as previously. I happen to think, for reasons too complex to discuss on this occasion, that these alternative explanations are not generally correct and that in fact the obvious implication of our research is also the correct one—namely, other things being equal, crime is less common when penalties are swifter and more certain. My own research on robbery rates in large cities, for instance, suggests that a 10 per cent increase in the chances of being arrested for robbery will, other things being equal, lead to a 3 per cent reduction in the rate of serious robberies.<sup>4</sup>

The convergence of opinion around the importance of the criminal justice system has been accompanied by a lowering of expectations as to how much we can accomplish with the policy instruments at our disposal. And to many people, myself included, those lowered expectations seem almost a counsel of despair. Suppose that by some combination of youth employment programs, improved police patrol methods, swifter, surer, and

fairer sentences, and better correctional programs we were able to reduce the robbery rate in Detroit by 15 per cent. That would mean that instead of about 20,000 *reported* robberies (and probably 40,000 actual ones), we would have only 17,000 reported robberies—more than twice as many as occurred during 1974 in all of England and Wales, a country of more than fifty million inhabitants. Detroit would continue to be, in the eyes of its citizens, a threatening environment in which the natural and necessary communal instincts of a people were thwarted by reciprocal fear.

Even obtaining that gain would be exceptionally difficult. The probability that a robbery in Detroit will result in an arrest is very low—only six chances in a hundred. Of those arrested, about half are released without being prosecuted. Programs to provide legitimate alternatives to crime are difficult in a city near the fiscal breaking-point and with a single dominant industry whose fortunes fluctuate cyclically.

We are slowly learning how to think about crime but not how to do much about it. Knowledge is not power, or at least not the power to do good. Having cleared from our minds—I hope—some things that were not true, we are left with a rather short list of things that are both true and useful. I confess to being unhappy with that state of affairs. Predatory crime is chiefly the result of the behavior of young males living in big cities. Everyone knows that and everyone agrees that we cannot change young people into old ones or males into females. Only with great difficulty could we move them out of big cities and into smaller ones. And so we dismiss these facts and move on to things we can do, such as offering jobs, hiring police, and inventing new correctional programs. As practical persons, little else seems possible. The bolder and more optimistic among

us will argue for more programs to prevent young males from getting into crime, but when pressed they will have to concede that most of the counsellors, teachers, psychiatrists, and youth workers employed to produce crime prevention have achieved very little.

No statement that I and others have made on crime control policies is more disturbing to some than this assertion that the causes of crime and delinquency are beyond the reach of direct governmental intervention in a free society. The implication is that those accepting this view will favor only repressive measures to deal with crime and will actively oppose, or give tacit support to those who oppose, meliorative policies. I believe such criticism, taken literally, is wrong. I know of nothing that requires one to choose between being kind and getting tough. An enlarged sense of justice entails both benevolence and discipline. That the deterrent and incapacitative effects of the criminal justice system should be strengthened does not mean that the poverty-reducing, job-providing programs of the welfare state need be abandoned or even reduced. Furthermore, the evidence of the last fifteen years shows conclusively that public expenditures on social melioration have increased by more than expenditures on law enforcement, both in total dollars and in percentage terms. The federal government in particular has shown itself ready to take on a great variety of social programs, the annual cost of which is now in the vicinity of \$300 billion; it has made only a limited commitment to law enforcement programs, the total federal expenditure on which is currently less than \$3 billion.<sup>5</sup>

In a more profound sense, however, the criticism is a telling one. Stated somewhat differently, the argument is this: The worth of any regime is to be measured by its ability to produce virtue in its citizens. A society with

a high, sustained rate of crime and disorder is not a virtuous society; a government that does not take seriously these aspects of the life of its people that produce this disorder is not a virtuous regime. The aspects of life that are at the root of crime are not, in any simple or direct sense, poverty; they are an array of familial, peer group, and neighborhood conditions which lead both to poverty and to crime. If a government decides, because of the secularism of its citizens, the inhibitions of its constitution, or the constraints on its leaders, that it will not attempt to exercise a tutelary influence over the familial and communal life of its citizens, then that government is forsaking one of its greatest responsibilities and thereby forfeiting a major part of its claim to legitimacy. Only a thoroughly materialistic state, so this argument goes, could confine itself to social melioration by means of spending money, especially in view of the fact that many serious crimes became less common during the 1930s, a period of economic hardship, and much more common during the 1960s, a period of affluence.

The rejoinder to this view is well known: America is a secular regime that has constitutionally foresworn religious instruction. The regime is designed to protect liberty, not to induce conformity, and in the protection of that liberty it explicitly relies on the spontaneous mobilization of self-interest to operate the machinery of checks and balances on which our form of government depends. Furthermore, even with the vast expansion of the regulatory powers of the state, it is not yet legally or politically free to intrude into the family. The domain of personal privacy is reasonably secure and jealously guarded. Crime may have been reduced in the People's Republic of China, but to achieve in this country a comparable reduction by similar means would be regarded as unacceptable. In short, the message that the modern

statesman gives to people concerned about the decay of public morality is the same that Harold Macmillan was reputed to have supplied: if you want morality, go see the archbishop.

Is our choice actually so bleak? Is there no constructive course of action between exhortation and law enforcement, no policy that can improve on welfare programs that are, at best, irrelevant to crime, or on criminal justice programs that offer the hope of only marginal gains?

We cannot begin to think about this possibility without first understanding the complex social processes that intervene between easily visible facts (poverty, ghettoization, poor school achievement) and equally visible behavior (crime and delinquency). If we can understand these relationships, we can better explain how crime could increase during a period (such as the 1960s) of rising prosperity, decreased poverty, and greater personal freedom and why income-maintenance and job-creation programs alone are not likely to reduce crime. (These may be—and in my opinion, are—desirable programs for other reasons.) What I am about to say is not a set of well-tested, generally-accepted scientific propositions. It is my summary distillation of what I think are the implications of the best research so far completed, though some of the authors of that research may place a different interpretation on their findings.

The great fact of this century has been the urbanization of our population. Poor persons living in rural areas and on farms have often been violent—many of the famous Depression-era gangsters came from such backgrounds, and family feuds in the backwaters of our country have a permanent place in American folklore. But the general crime rates of rural and small-town

persons have always been low, in part because of a lack of opportunity (there is not much to steal) and in part because of the strength of the controls exercised by the extended family and communal pressures. The migration of persons to the big cities did not, contrary to popular impressions, produce an immediate weakening of the family system or of the traditional values brought by these migrants, just as trans-Atlantic immigrants did not during the lives of the first generation in America experience a collapse of Old World values. Many studies have amply confirmed this: among persons arrested for crimes in Philadelphia and among persons arrested as rioters in Detroit, it was not the recent migrant who was over-represented, but rather the next generation of persons born and raised in the city.<sup>6</sup>

The children and the grandchildren of migrants to the city inevitably break loose from the constraints of rural and small-town values, but for the majority of these offspring the rebellion takes noncriminal forms—changes in lifestyle, in mode of self-expression, in career aspirations. For some, and disproportionately for those in the largest slums, the very concentration of young people experiencing together, and in large numbers, the freedoms and challenges of the city produces new social systems in which testing the law, proving one's manhood, and defying adult and traditional value systems become mutually rewarded activities. What may result is the "subculture of violence" of which Marvin Wolfgang and Franco Ferracuti write, especially whenever the migrants have come from areas in which a frontier tradition of violence as a means of asserting self-respect exists.<sup>7</sup> Thomas Pettigrew and R.B. Spier have shown, for example, that the homicide rates of migrants living in northern states can be predicted with remarkable accuracy knowing the homicide rates of the southern states from which these people migrated.<sup>8</sup>



The American South shares, with many Latin nations, exceptionally high homicide rates that have persisted over many decades. In 1962 the South had a homicide rate that was over four times greater than that of New England; ten years later, in 1972, it was still almost four times higher. Chile, El Salvador, and Mexico can claim the dubious distinction of having a homicide rate that is two to four times greater than that of the United States.<sup>9</sup>

For most young people, even those coming of age in the worst slums, involvement in crime is a modest and limited episode in the general process of asserting their autonomy. Marvin Wolfgang and his colleagues found that, of nearly ten thousand boys born in Philadelphia in 1945, over a third had at least one serious contact with the police but only 6 per cent had five or more contacts. These 627 boys, however, were responsible for over half the offenses committed by the entire cohort.<sup>10</sup>

Some families seem unable to cope at all with the strains of living in this environment. The rate of family disintegration in central-city neighborhoods is one of the most pervasive, best-documented, and least-discussed features of contemporary life. It is not discussed because one measure of family disintegration—the rate of female-headed households—reveals that the problem is disproportionately, though not exclusively, a problem of black families. Many blacks have objected to discussing this matter because of the fear that whites will use the problematic nature of many black families either as evidence for their inferiority or as an excuse for opposition to programs aimed at aiding black communities. It has been over a decade now since the issue was raised by Daniel P. Moynihan and then smothered by his critics.<sup>11</sup> Since then matters have become steadily worse. We can no longer afford to maintain our silence on this

problem, but at the same time we must state the issue as carefully as possible to avoid being misunderstood.

Several things must be said first to put the problem in perspective. First, were the Census Bureau to have conducted similar studies in 1900, I have little doubt that it would have found that conditions now characteristic of black families were then typical of many white families. Indeed, had not my maternal grandfather, James Quinn, had the good fortune to live in Sulphur Springs, Texas, instead of the Irish slums of Manhattan or Charlestown, he would have been exposed to the same process of broken families and deserting fathers that now characterizes much of the South Bronx or mid-town Detroit. Second, intact families, white or black, can be as abusive, as uncaring, as inconsistent in the way they raise children as broken ones; unfortunately, but necessarily, the Census Bureau can count only the broken ones. Third, to identify the problem is not to justify inaction toward it.

Since 1950, the proportion of white families that are female-headed has increased somewhat, from 8.5 per cent in 1950 to 10.5 per cent in 1975. The proportion of non-white families that are female-headed during this period doubled—from 17.6 per cent in 1950 to 35.3 per cent in 1975. Only about half the black children in America live in families with both parents present. Nearly two thirds of all the poor black children live in female-headed families. Fifteen years ago, only about a quarter were in that condition.<sup>12</sup>

As Travis Hirschi has written, "the fact that delinquents are less likely than nondelinquents to be closely tied to their parents is one of the best documented findings of delinquency research."<sup>13</sup> My own research suggests that the proportion of female-headed families

of whatever color in a city is strongly associated, independently of income and employment, with the rates for various serious crimes. This does not mean that such families "produce" criminals. It only suggests that such families are less able than intact ones to cope effectively with the frightful pressures on children that are encountered in central-city neighborhoods.

I cannot possibly speak on these matters with the knowledge, persuasiveness, or eloquence of Eleanor Holmes Norton, the distinguished black woman who is Commissioner of Human Rights in New York City. A year ago she addressed the annual conference of the National Urban League in these words:

The repair of the black condition in America disproportionately depends upon the succor of strong families which can defend against the forces that prey most menacingly on unprotected black men, women, and children . . . . The single-parent households that disproportionately prevail in our community put often intolerable pressures on our women and our children . . . . I am well aware that a child living alone with a black mother may well be getting excellent care and guidance, that . . . the black woman is often capable of coping quite well. But . . . the streets of Atlanta and Detroit and Chicago are rough competition for a black man and a black woman struggling together. Those treacherous streets can overwhelm a woman or a man trying to raise children alone.<sup>14</sup>

The crucial factor is not whether a family is "broken" or female-headed, but the pattern of abusive neglect and inconsistent discipline that produces children who display a kind of amoral individualism toward others. It happens that this amoral individualism characterizes many, but not all, broken homes; it is also a feature of many

two-parent homes. White families that are morally bankrupt may find it easier to remain nominally intact; black families, given the conditions of American society, experience greater difficulties in staying together.

The institution that, next to the family, most closely touches the lives of us all is the school. In much research, difficulties in school—truancy, indifference to studies, low achievement levels—turned out to be the best predictors of who will be delinquent.<sup>15</sup> This does not show that schools have failed but only that what families lack, schools rarely supply. If the family experience has taught children to distrust adult expectations and standards, the school often re-enforces that alienation by insisting on a protracted period of conformity to values that lack familial support and on extended participation in unrewarding activity. At the turn of the century, 85 to 95 per cent of the children who entered high school dropped out before finishing it and many never even entered. Today, over 80 per cent of all children complete high school, and virtually everyone enters it. But it is not clear that our ability to keep children in school longer has been an unqualified social success. Delbert Elliott found that boys from lower income families who dropped out of school before finishing had only one third as many contacts with the police as they did before dropping out. Leaving school, he speculates, enabled them to pursue things they found rewarding—jobs, wives—that school prevented.<sup>16</sup>

A young person who was taught by his family that conformity to rules and the control of self-gratification are unrewarding (because rules are enforced capriciously and rewards distributed arbitrarily) will enter school completely unprepared to accept a system that depends for its very existence on young people believing that adult rules are legitimate and deferred impulses are fairly rewarded.

For such students school will be a frustrating experience against which they will display deep hostility. Only a few decades ago, however, such youth would have simply left school, and the discipline the family did not provide and the school could not supply would have been enforced, if at all, by the workplace.

Today we manage quite poorly the transition from school to workplace. The barriers we erect to inducting young persons into the workforce are formidable, all the more so when one realizes they were designed with the best of intentions. Schools often do not prepare students for real jobs in a real world. They sometimes use "vocational education" as a disciplinary procedure to isolate the troublesome boys, thereby insuring that serious attempts at job training will be thwarted from within and stigmatized from without. We insist that employers pay inexperienced young persons the minimum wage, currently \$2.30 per hour, even when many cannot do things that would justify such an expense. (We then express surprise that employers are reluctant to hire teenagers.) Apprentice programs in unions often restrict entry into skilled trades. Many employers require a high school diploma for beginning on-the-job training, when in fact such training would be more useful if it came earlier in the student's life as either part of a school experience or independently of it.

If something approximating the social processes I have described account for much of the predatory crime in cities, it becomes easier to see why conventional social programs, especially those that change only the aggregate level of income and employment in society, will have so little an effect, and perhaps even an undesirable effect, on crime rates. Jobs created for inner-city youth, for example, must have several partially inconsistent characteristics: they must be sufficiently simple so that

persons with low school achievement can manage them, sufficiently lacking in responsibility so that employers will hire for them persons with records of truancy, school disciplinary infractions, and juvenile delinquency, and yet sufficiently well-paying and prestigious so that young persons will value them over the money to be made in street hustles and in spite of the respect that comes from being a member of a gang that looks down on the conformity exemplified by holding a conventional job.

Or consider income maintenance and welfare programs. If welfare moneys are paid only to women with dependent children and no husband, there will be an incentive for fathers to desert. If, on the other hand, welfare funds are paid at reasonably generous levels to poor families whether or not they are intact, there will be an incentive for women who like children but not husbands to have the former but not the latter. Many of these women who would prefer not to be dependent on men make excellent mothers and raise splendid children but others will be persons not well-equipped to cope with such responsibilities alone.

None of this means that job-creation and income-maintenance programs are unwise, only that they should be evaluated primarily in terms of other objectives—lowering adult unemployment rates, insuring a decent standard of living for all, and eliminating the discrimination against the working poor in our present welfare laws. These other goals are highly desirable, and well-conceived programs aimed at attaining them are worthwhile even if they have no effect—indeed, even if in the short run they have an adverse effect—on the crime rate.

But it is not necessary to abandon at this point the search for public programs that are designed to alter the social processes that produce, not only crime, but other

pathologies as well. Such programs must, however, be aimed more at the management of complex institutions than merely the provision of resources, and unfortunately we are not very adept, as a government, at such institutional fine-tuning. A complete description of possible initiatives would take me beyond the confines of both my time and my competence; let me, nevertheless, allude briefly to a few.

*The ghetto:* Several studies have indicated that persons with a given income or occupation are more likely to commit crimes when they live in large slums than when they live outside those slums.<sup>17</sup> Though slum areas are less densely settled today than was once the case and though many inner-city families live in much improved housing, slum crime rates are vastly higher than elsewhere. The reason is in part the conditions of street life in the slums that I have already mentioned. But it is also in part a consequence of the success enjoyed by so many middle- and working-class families, black and white, in moving out of the slums. The result has been to leave behind the elderly, the poor, and the predators, with the latter less constrained than formerly by communal control exercised by middle-class residents. It is fruitless to hope to induce the middle-class to return to these areas and thus restore its presence, leadership, and tax money to the ravaged slums that now remain. What can be done, however, is to facilitate and even encourage the exit of those who remain. Victims, surely, would benefit from a chance to live elsewhere and young people are less likely to be inducted into the predatory life if they live in small slums (or even better, but much harder, no slums) than in large ones.

*The family:* We cannot and should not intervene directly in familial matters, but perhaps we can provide more and better options. Welfare laws should not reward desertion.

That fact is now widely recognized and some changes have already occurred in that direction. More needs to be done. Further, the presently risk-free nature of desertion in many places rewards, not only materially but also symbolically, that cultural folk hero, the carefree, exploitive male, for whom women are objects, children are nuisances, and self-gratification is the ultimate goal. Finding and holding accountable father deserters may be worth what it costs even if the financial restitution obtained does not equal the welfare money that would otherwise be spent on dependent children. We might also explore creating, for poor families, options in the management of troublesome youth that have traditionally been open to more affluent families. The suburban family with a rebellious son has always been able to send him off to a private school, often one specializing in instilling discipline and self-control. The poor, inner-city family must cope with the boy unaided, which usually means that he is lost to the streets.

*The school:* Some inner-city schools have managed to produce high levels of both order and achievement. Thomas Sowell has given us an excellent account of black schools that have done exceptionally well in a community environment that seems to have defeated most public schools.<sup>18</sup> We need to learn from these successes and duplicate them in other places insofar as circumstances permit. The school can serve better as a route into the workforce if it is integrated more closely with actual employment opportunities. Training for a job occurs primarily on the job, not only in the acquisition of skills but in the development of those habits of work that make employment both possible and remunerative. For school to operate in isolation from the workplace, and in ways found irrelevant by many young people, means that the prospects for useful skills or habits being created are reduced and the

chances of heightened disorder and delinquency are increased. If school and job were closely related, perhaps wages in the latter could be linked to satisfactory grades in the former.

*The job:* The barriers to higher employment of young persons should be reduced. At one time they were substantially lower than now as shown by the fact that in the 1950s, before the current crime wave, teenage and young adult unemployment, even for blacks, was much lower than today. Of course, with the slow subsiding of the postwar baby boom and the onset of the products of the current baby bust, the number of young people looking for jobs will decline and thus youthful unemployment will probably lessen. But in addition, we must re-examine the publicly-maintained barriers to employment—restrictive union apprentice programs, a high minimum wage, and the many subsidies that make not working almost as attractive as working. I do not profess to know what exact combination of policies might be better, but I am struck by the fact that young Americans can claim that the job market holds no opportunities for them when young foreigners find the opportunities here so great they are willing to immigrate to this country in large numbers, and even to do so illegally.

How much less crime might we expect if all these things were done? No one can say. In the near term, probably not much. Such programs would, after all, only create better opportunities for being law-abiding, they would not compel it. And some of the social processes we might wish to change may be either beyond our reach (parental behavior in the first years of a child's life) or only marginally related to crime (inhibiting male desertions of families). Crime has risen, after all, in many countries, such as England, where there has been no increase in broken homes (though probably there has been an unmeasured

increase in family decay).<sup>19</sup> Among the reasons for crime are freedom and affluence, and society is of no mind to reduce either.

Law enforcement is not only a necessary supplement to programs aimed at reducing the causes of crime, it is essential in and of itself because it is the only tutelary power at the command of the modern secular state. Laws are not enforced simply because they deter us from crime—most of us need no such enforcement because our obedience to the law is induced by our own sympathies and a prudent regard for the opinions of others. And of the many who are not so inclined, only a fraction can be deterred by the threat of punishment, though that fraction is certainly worth deterring. Nor is the law enforced solely, or even chiefly, to separate the criminal from the rest of society—at any given time, only a small fraction can be so incapacitated (though there are real gains to be had from even separating the few). We enforce laws primarily in order to do justice: to affirm our belief in the rightness and importance of law itself, to allocate rewards and penalties fairly among the law-abiding and the law-breaking, and to satisfy under public auspices an instinct for vengeance that, if left to private arrangements, would, by giving power to the strong and the selfish, make the preservation of individual liberties fragile and uncertain.

To teach the young—to teach ourselves—right conduct by enforcing, fairly but firmly, the criminal laws is an indirect, however essential, method for insuring the possibility of civil society. The greater we extend the range of personal liberty, the more widely we spread the fruits of affluence, the more fully we embrace the secular world, the more seriously must we employ the formal powers of the state to achieve what family and neighborhood no longer can.



Crime has increased and our willingness to employ the criminal justice system to control it has declined in large part for the same reasons: the growth of affluence and freedom have weakened informal social controls, stimulated the desires and widened the opportunities of the young, curbed the discretionary power of the police and the prosecutors, and generated neighborhood opposition to the construction of those facilities—prisons, halfway houses, drug treatment centers—whose existence is more necessary as the responsibilities of the family become less inclusive.

Whatever the gains to be had from better law enforcement and better ways of intervening in the social processes of the inner city, they are likely to be modest and to leave us far from our goal of assured domestic tranquility. The forces with which we now contend—a culturally-diverse society whose members seek personal advantage and liberty in a complex urban milieu—have been a part of our nation's history since at least the time of Andrew Jackson and have accounted for many past crime waves—in the 1830s, the 1880s, the 1920s—and will continue to account for more in the future. Indeed, the more we achieve, the more intense the problem for those left behind. As de Tocqueville wrote a century and a half ago,

When inequality of conditions is the common law of society, the most marked inequalities do not strike the eye; when everything is nearly on the same level, the slightest are marked enough to hurt it. Hence, the desire for equality always becomes more insatiable in proportion as equality is more complete.<sup>20</sup>

Of course there are compensating gains: over the long term a more middle class society is a more law abiding one, at least with respect to violent or predatory street crime. In the very long term, these changes will make our persons safer though perhaps our property no more

secure. In the near term, the prospects are not happy: the pursuit of private advantage, the protection of liberty, the claims of self-expressiveness will lead us to the bitter frustrations of finding crime amidst plenty, of being unable to invent social programs that can more than moderate disorderly tendencies, and of making us at once more desirous and more fearful of law enforcement.

Can the law make us virtuous? No; certainly not alone. But if we endorse secularism, liberty, and affluence, and if we embrace self-gratification, then the law is all, other than self-restraint, that remains, and self-restraint has never been the leading feature of the tumultuous American character.

<sup>1</sup>Data on public opinion about crime are from Michael J. Hindelang, *Public Opinion Regarding Crime, Criminal Justice, and Related Topics*, Analytic Report No. 1, National Criminal Justice Information and Statistics Service, U.S. Department of Justice (1975) and from *Gallup Opinion Index*, October, 1975.

<sup>2</sup>*Criminal Victimization in the United States: A Comparison of 1973 and 1974 Findings*, National Criminal Justice Information and Statistics Service, U.S. Department of Justice (May, 1976).

<sup>3</sup>These studies are summarized in James Q. Wilson, *Thinking About Crime* (New York: Basic Books, 1975), chap. 8. A critique of them can be found in Daniel Nagin, "General Deterrence: A Review of the Empirical Evidence" (Carnegie-Mellon School of Urban and Public Affairs, manuscript, August, 1975).

<sup>4</sup>James Q. Wilson and Barbara Boland, "Crime", in William Gorham and Nathan Glaser, eds., *The Urban Predicament* (Washington, D.C.: The Urban Institute, 1976), pp. 197-201, 220-230.

<sup>5</sup>*Statistical Abstract of the United States, 1975*, pp. 160, 280.

<sup>6</sup>Leonard Savitz, *Delinquency and Migration* (Philadelphia: Commission on Human Relations, 1960), and Robert M. Fogelson and Robert B. Hill, "Who Riots? A Study of Participation in the 1967 Riots," *Supplemental Studies for the National Advisory Commission on Civil Disorders* (Washington, D.C.: GPO, 1968), p. 235.

<sup>7</sup>Marvin E. Wolfgang and Franco Ferracuti, *The Subculture of Violence* (London: Tavistock, 1967).

<sup>8</sup>Thomas F. Pettigrew and R.B. Spier, "The Ecological Structure of Negro Homicide," *American Journal of Sociology*, vol. 67 (May, 1962), pp. 621-629.

<sup>9</sup>Daniel Glaser, *Strategic Criminal Justice Planning* (Rockville, Md.: National Institute of Mental Health, 1975), pp. 125, 129.

<sup>10</sup>Marvin E. Wolfgang, Robert M. Figlio, and Thorsten Sellin, *Delinquency in a Birth Cohort* (Chicago: University of Chicago Press, 1972), p. 88.

<sup>11</sup>Cf. Lee Rainwater and W. Yancey, *The Moynihan Report and the Politics of Controversy* (Cambridge: MIT Press, 1967).

<sup>12</sup>Bureau of the Census, *The Social and Economic Status of the Black Population in the United States, 1974* (Special Studies P-23, No. 54, July 1975), pp. 107, 111, 113. Some data also from special tabulations from the Census Bureau.

<sup>13</sup>Travis Hirschi, *Causes of Delinquency* (Berkeley: University of California Press, 1969), p. 85. See also Glaser, *op. cit.*, pp. 47-51, and Jackson Toby, "The Differential Impact of Family Disorganization," *American Sociological Review*, vol. 22 (October, 1957), pp. 505-512, and Thomas P. Monahan, "Family Status and the Delinquent Child," *Social Forces*, vol. 35 (1957), pp. 250-258.

<sup>14</sup>Eleanor Holmes Norton, "Remarks" to the 65th Annual Conference of the National Urban League (July 30, 1975, mimeo).

<sup>15</sup>Glaser, *op. cit.*, p. 44.

<sup>16</sup>Delbert S. Elliott and Harwin L. Voss, *Delinquency and Drop-out* (Lexington, Mass.: Lexington Books, 1974).

<sup>17</sup>J. P. Clark and E. P. Wenninger, "Socioeconomic Class and Area As Correlates of Illegal Behavior Among Juveniles," *American Sociological Review*, vol. 27 (December, 1962), pp. 826-843, and Glaser, *op. cit.*, pp. 64-67.

<sup>18</sup>Thomas Sowell, "Patterns of Black Excellence," *The Public Interest*, no. 43 (Spring 1976), pp. 26-58.

<sup>19</sup>James Q. Wilson, "Crime and Punishment in England," *The Public Interest*, no. 43 (Spring 1976), pp. 3-25.

<sup>20</sup>Alexis de Tocqueville, *Democracy in America*, ed. by Phillips Bradley (New York: Alfred A. Knopf, 1951), vol. II, p. 138.

**END**