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THE NEW CRIMINOLOGY: CONTINUITY IN CRIMINOLOGICAL THEORY

ROBERT F. MEIER*

In a recent essay, Francis Allen warned that "modern criminology is in danger of being enslaved by its own emancipation."¹ Professor Allen's despairing prognosis was occasioned by what he took to be unsatisfactory developments in the manner in which criminologists were selecting and approaching their work. The emancipation Allen referred to is that which had tied criminology to behavioral considerations; the enslavement is that which presently binds a new version of criminology to political considerations.

The search for political meanings and motives in the concept of crime and criminal behavior, which Professor Allen deplors, is thought by many to be a recent criminological development. Various called "critical," "radical" or "the new criminology," the approach explicitly rejects more established paradigms, which are claimed to be incompatible with an acceptable social and humanistic view of crime and its control.² There is, however, more to the new criminology than the simple assertion that crime is a political phenomenon, for such a statement would merely be tautological. Laws obviously are passed by political bodies, and these bodies are largely committed to the prevailing social system. This is the case regardless of the economic system within which the law-passing body operates.³

The new criminology seems to be offering the discipline a distinctive conceptual framework within which to conduct its work. I will argue here, however, that rather than presenting criminology with a novel theoretical alternative, the new criminology has taken some of the discipline's more established notions and rephrased them in political terms. Specifically, one finds in the new criminology elements of a social pathological view, extensions of early University of Chicago criminology, an uneasy reliance on functionalism, and an abiding faith in labeling theory and its applications.

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¹F. ALLEN, *THE CRIMES OF POLITICS* 13 (1974).

²I. TAYLOR, P. WALTON, & J. YOUNG, *THE NEW CRIMINOLOGY: FOR A SOCIAL THEORY OF DEVIANCE* (1973).

³van den Haag, *No Excuses for Crime*, 423 *ANNALS* 137 (1976).

The new criminology came forward incrementally; there was never a time when there was not a new criminology, and then a time when there was. The gradual development of the new criminology has culminated in recent years in the establishment of a specialized journal, a cadre of identifiable members and relatively clear boundaries of study.

Gresham Sykes has claimed that the "radical" criminology does in fact warrant the label "new" since it is comprised of more than a series of ideas differing only in emphasis from conventional criminology. Sykes maintains that

it does not appear that this new viewpoint in criminology simply grew out of existing ideas in the field in some . . . automatic process where pure logic breeds uncontaminated by the concerns and passions of the times. Nor does it appear that a flood of new data burst upon the field, requiring a new theoretical synthesis.

Sykes believes that the advent of a new criminology can only be understood as the result of the sociohistorical forces which he believes were at work in the 1960's. These include: 1) an increased cynicism concerning the motives of those in power, the credibility of official pronouncements and the institution of government itself; 2) the growth of a counter-culture which began to alter popular images of deviance and take more skeptical stances toward traditional bases of authority; and 3) an increasing politicalization of certain groups in American society which had accumulated enough power to dispute institutionalized discrimination and coercion.⁵

While this list may enumerate aspects of the external environment in which the new criminology arose, it does not account fully for its growth. Scientific paradigmatic shifts do not come about as a function of such mechanisms alone; they are also tied

⁴Sykes, *The Rise of Critical Criminology*, 65 *J. CRIM. L. & C.* 206, 211 (1974).

⁵See also Gibbons & Garabedian, *Conservative, Liberal and Radical Criminology: Some Trends and Observations*, in *THE CRIMINOLOGIST: CRIME AND THE CRIMINAL* 51 (C. Reasons ed. 1974); Reasons, *The Politicizing of Crime, The Criminal and the Criminologist*, 64 *J. CRIM. L. & C.* 471 (1973).

to internal intellectual developments in a discipline.⁶ While the time must be "ripe" for the growth and eventual acceptance of intellectual alternatives, so too must be the intellectual climate in which practitioners of a discipline operate.

The new criminology's challenge to traditional perspectives is best understood by reference to the general development of competing theories. Although there is some dispute about the matter, sociologists of science generally have come to believe that the acceptance of a new perspective or theory is heavily dependent on older views being unable to deal with crucial problems, although this inability does not seem to depend on the availability of empirical evidence which runs counter to the older theory. In this sense, theoretical growth of science is not cumulative, but awaits the ascension of theoretical alternatives to replace the "damaged," unfinished theories. External forces (such as those described by Sykes) might under such conditions seem to play a determining role in the acceptance of the new alternative by certain members of the discipline. But this explanation overlooks the importance of internal, or discipline-specific, factors which are experienced by scholars in their scientific work. If, as Kuhn and Lakatos claim,⁷ the eventual acceptance of a new theory occurs independent of empirical support, certain crisis situations present in a discipline portend the search for new theoretical views which will present practitioners with a different array of intellectual puzzles and justifications for their work, and which will point to the direction of subsequent research.

THE NEW CRIMINOLOGY

It is necessary to be cautious when writing about the new criminology. While the new criminologists ostensibly encourage open dialogues concerning the issues they raise,⁸ they appear to be generally suspicious of evaluative statements of their work, and are apt to view such attempts as intellectual distrac-

⁶T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1962).

⁷KUHN, *supra* note 6, at 81; M. POLYANI, *PERSONAL KNOWLEDGE* 292 (1958); Lakatos, *Falsification and the Methodology of Scientific Research Programmes*, *CRITICISM AND THE GROWTH OF KNOWLEDGE* 100-101 (I. Lakatos & A. Musgrave eds. 1970).

⁸The editorial statement contained in the new criminology's journal follows the traditional format for such declarations: "*Crime and Social Justice* welcomes contributions to all sections of the journal." 4 *CRIME & SOC. JUST.* 72 (1975).

tions. As one leading spokesman for the new criminology has put it:

We should welcome debates which allow us to publicize and discuss our perspective, but at the same time, must avoid cooptation and concentrate on extending and systematizing an authentically radical criminology.⁹

Taking the risk, I will try to summarize some main ideas of the new criminology. Since the purpose of this essay is not essentially evaluative,¹⁰ no attempt will be made to develop these ideas or to provide the kind of documentation offered by the new criminologists.¹¹

Like Sykes,¹² I find the new criminology to be centered around a view of a society dominated by an elite which uses the criminal law as a means of meeting and controlling certain threats to the elite's power and position. By employing the legal apparatus to define acceptable standards of conduct and to repress that behavior (and those persons) who violate

⁹Platt, *Prospects for a Radical Criminology in the United States*, 1 *CRIME & SOC. JUST.* 28 (1974). Note the similarity between the foregoing and the following exchange:

"I want someone to tell me," Lieutenant Schiesskopf beseeched them all prayerfully. "If any of it is my fault, I want to be told."

"He wants someone to tell him," Clevinger said.

"He wants everyone to keep still, idiot," Yossarian answered.

J. HELLER, *CATCH-22* at 68 (1961).

¹⁰Some evaluative statements have begun to appear. See F. ALLEN, *supra* note 1; E. THOMPSON, *WHIGS AND HUNTERS: THE ORIGINS OF THE BLACK ACT* (1975); E. VAN DEN HAAG, *PUNISHING CRIMINALS: CONCERNING A VERY OLD AND PAINFUL QUESTION* (1975); J. WILSON, *THINKING ABOUT CRIME* (1975); Carson, *Symbolic and Instrumental Dimensions of Early Factory Legislation*, in *CRIME, CRIMINOLOGY AND PUBLIC POLICY* 107 (R. Hood ed. 1975); Carson, *The Sociology of Crime and the Emergence of Criminal Laws*, in *DEVIANCE AND SOCIAL CONTROL* 67 (P. Rock & M. McIntosh eds. 1974); Gibbs & Erickson, *Major Developments in the Sociological Study of Deviance*, in *ANNUAL REVIEW OF SOCIOLOGY* 21 (A. Inkeles, J. Coleman & N. Smelser eds. 1975); Hirst, *Marx and Engels on Law, Crime, and Morality*, in *CRITICAL CRIMINOLOGY* 203 (I. Taylor, P. Walton, & J. Young eds. 1975); Sykes, *supra* note 4; Turk, *Prospects and Pitfalls for Radical Criminology: A Critical Response to Platt*, 4 *CRIME & SOC. JUST.* 41 (1975) (*see note 9 supra*); van den Haag, *supra* note 3; Walker, *Lost Causes in Criminology*, in *CRIME, CRIMINOLOGY AND PUBLIC POLICY* (R. Hood ed. 1975).

¹¹That I have been somewhat selective in choosing which points I consider essential to the new criminology will be obvious; the selection has been guided by the nature of the argument presented here.

¹²Sykes, *supra* note 4.

such standards, the powerful are able to maintain their privileged position.¹³ The powerful are thus seen as a self-interested lot who manipulate the legal structure to their advantage.¹⁴ The maximization of self-gain is the predominant motive guiding most, if not all, elite behavior in this system of social, political, and economic arrangements.

The meaning of crime in the new criminology is less to be found in the willful violation of legal statutes than in the conscious determination of standards which will serve the materialistic interests of those who are able to participate in the legal-definition process. Criminal behavior becomes defined as a function of social class position.¹⁵ The law of theft, for example, is said to have been established by those in power who have more to lose from thievery. The law is almost invariably broken by persons in the more powerless lower classes who experience greater temptation toward theft.

The new criminology perceives crime as an immutable feature of capitalist society and its system of political arrangements which guarantee the position of an exploiting elite. "To locate the study of crime within a broader quest for social justice demands that one understand the relationship between crime and the *maintenance* of privilege."¹⁶ The system of criminal justice is believed to be essentially coercive. The elite rule less on authority than on power. The powerless do not accept most criminal definitions on the basis of perceived legitimacy, but rather conform out of fear of force which the elite can bring to bear on deviance. This force, embodied by the police, courts, and correctional systems, serves the interests of the powerful by enforcing their rules.¹⁷ Since system functionaries are recruited largely from the powerless classes, the elite must coopt them into their ideology through the inculcation of a "false consciousness."

The new criminology implies that if the elite did not control the criminal definition-process, a radical

¹³B. KRISBERG, *CRIME AND PRIVILEGE* (1975).

¹⁴The term self-interest is most often used to denote selfishness, but there is a distinction: "Self-interest is the satisfaction of one's desires; selfishness is the satisfaction of one's desires at the expense of someone else." B. DUNHAM, *MAN AGAINST MYTH* 41 (1947), *quoted in* H. SCHWENDINGER & J. SCHWENDINGER, *THE SOCIOLOGISTS OF THE CHAIR* 190 (1974).

¹⁵Chambliss, *Functional and Conflict Theories of Crime*, 17 *MSS Module* 1 (1974). *See also* the revised version of this paper in *WHOSE LAW? WHOSE ORDER?* 1 (W. Chambliss & M. Mankoff eds. 1976).

¹⁶B. KRISBERG, *supra* note 13 at 30. [Emphasis added.]

¹⁷*But see* R. QUINNEY, *CRITIQUE OF LEGAL ORDER: CRIME CONTROL IN CAPITALIST SOCIETY* (1974).

restructuring of the criminal code would result. This view is a misinterpretation, however, since the new criminologists do not call for the decriminalization of offenses such as homicide, robbery and rape, about which there is substantial consensus regarding their seriousness and the necessity for control. Nor do they claim that a socialist economic system would obviate these acts. The confusion that has been generated in this regard seems to stem from the new criminology's tendency to cite with approval research on the elite-supported origins of non-consensual crimes,¹⁸ such as vagrancy, prostitution and the use of certain drugs.¹⁹ It is implied that since all laws derive from similar political processes, the prime mover for *all* laws is some powerful elite. In the process the distinction is blurred between laws which seem to protect the interests of most persons (consensual crimes) and those laws which protect the interests of a smaller segment of society (non-consensual crimes).

In summary form, the tasks of the new criminology have been: (1) to "demystify" criminal law, both in its origins and applications, since to do so will uncover the interests of the powerful; (2) to conduct studies of social control agencies, bureaucracies, and mass media to expose their complicity with an elitist ideology; (3) to propose new criminal definitions which, correcting the imbalance created by the elite's influence on legislation, will include violations of certain inherent rights; and (4) to put the new criminology's theory into practice (termed "praxis") by attempting to alter the existing economic and political arrangements of capitalism, which are believed to give rise to the present situation.

To examine the genesis of these ideas, I will concentrate on the main perspectives in criminology, roughly in order of their historical emergence. The "social pathology view" was the first to be embraced by criminology in this country. It was followed by the "Chicago school of criminology," then by "functionalism." The "labeling perspective" is the most recent of the major criminological approaches. The new criminology has borrowed selectively from each of these positions in a synergistic manner.

SOCIAL PATHOLOGY

The social pathology approach to social problems was based on an analogy which likened society to the

¹⁸J. HALL, *THEFT, LAW AND SOCIETY* (2d ed. 1952).

¹⁹Chambliss, *A Sociological Analysis of the Law of Vagrancy*, 12 *SOC. PROB.* 67 (1964); Roby, *Politics and Criminal Law: Revision of the New York State Penal Law on Prostitution*, 17 *SOC. PROB.* 83 (1969); T. DUSTER, *THE LEGISLATION OF MORALITY* (1970).

functioning of a biological organism. Social problems were those conditions which interfered with the "normal" (i.e., "desirable") workings of society.²⁰ Problems such as poverty, mental illness, prostitution, and crime were condemned because "everyone knew" them to be wrong. The social pathological view, which came to prominence in the early years of this century, was congruent with the personal ideologies of its scholar-advocates.²¹ The social pathologists were recruited largely from small midwestern communities and were imbued with a sense of the importance of religion, as well as a distrust of urban life. This "sacred provincialism" resulted in a moralistic approach which not only called attention to the existence of the "evil" of crime, but also provided the element of moral censure requisite to speed the correction of criminal behavior.

Though the new criminologists overtly reject the social pathological approach to crime, they have retained a number of its major features. The social pathologists were concerned with the *individual pathology of criminals*; the new criminologists deal with the *political pathology of capitalism*. In the new criminology, it is no longer the individual criminal who is considered pathological (nor is the criminal's illegal behavior necessarily considered pathological). It is rather the social and political system which is said to maintain the conditions which produce the criminal and his behavior. The concept of pathology is thus transferred from the actions of a powerless criminal to the behavior of a powerful elite. Consequently, the notion of pathology is aversive to the new criminologists not on principle, but on the basis of its misplaced application; simply put, the wrong sources have received the pathology label.

The theoretical problem that this class emphasis creates for the new criminology is often unrecognized but is nevertheless substantial. The location of "causes" of his behavior and the amount of influence ascribed to those causes have implications for the image of the deviant. If deviance is said to be produced by forces external to the individual, he is personally less responsible for his actions. In the new criminology, the word "powerless" represents not only a person's inability to participate effectively in political and economic decisions which might affect his life, but is also an appropriate adjective to describe his lack of responsibility for his own

gists seem to subscribe to what Hollander²² has termed "selective determinism." While the actions of the mugger are deemed to be determined, those of the price fixer are not; while the actions of the murderer are the result of a repressive society,²³ the actions of the corrupt politician are not.

There is a related view, which might be termed "socialist utopian vision," which holds that once people have enough of the basics, such as the right kind of work and attractive opportunities for living and learning, there will be no materialism and hence no crime. While there may be some measure of truth in this claim, it is not self-evident and it has not been empirically demonstrated.

Declaring the actions of the powerless to be attributable to morality and those of the powerful attributable to materialism suggests a duality which can be resolved only by making materialism a function of power. If self-interest is defined in terms of power, then only the powerful can act from this motive. In this manner, the new criminologists invert the premise of the social pathologists. The pathologists claimed moral eminence only for the elite, whose forward vision and proficiency were necessary for a smoothly running, progressive society. The powerful were the moral, political, and economic leaders, while the powerless attempted to debase the lofty intents of the elite.

The selection of those persons, behaviors, and conditions considered pathological was made by the pathologists on moralistic grounds bolstered by elements of social Darwinism. The content of the new criminology is also ruled by moral, rather than scientific, bases. "Liberal" criminology has used the criminal law to define its boundaries: acts defined in the statutes have formed the basis for criminological inquiry. The new criminologists reject such a notion and call for the criminalization (or, at least, the study) of acts which are not presently criminal in a strict legalistic sense. Racism, sexism, imperialism and other forms of repression have been added to the new criminologists' agenda.²⁴ It is argued that the discipline of criminology should be humanistically behavior. It is in this sense that the new criminolo-

²²Hollander, *Sociology, Selective Determinism, and the Rise of Expectations* 8 AM. SOCIOLOGIST 147 (1973).

²³A recent editorial in the new criminology's journal dedicated that issue to one of the former staff members of the journal, Mary Gay, who had been killed by her husband. The moral outrage such an act might otherwise generate was tempered: "Mary Gay was beaten to death by a man—her husband, who like her was a victim of a cruel system." 4 CRIME & SOC. JUST. 64 (1975) (dedication).

²⁴Schwendinger & Schwendinger, *Defenders of Order or Guardians of Human Rights?* 5 ISSUES CRIM. 123 (1970).

²⁰THE SOLUTION OF SOCIAL PROBLEMS (E. Rubington & M. Weinberg eds. 1971).

²¹See H. SCHWENDINGER & J. SCHWENDINGER, *supra* note 14, who disagree with the well-known analysis of this issue contained in Mills, *The Professional Ideology of Social Pathologists* 49 AM. J. SOC. 165 (1943).

oriented; that is, that criminology should serve the powerless by studying conditions which inhibit or destroy the free expression of uniquely human rights and values. New criminologists do not deny that the problems they choose to study are morally determined; indeed, they proclaim that problem-selection based on any other criterion has never existed.²⁵ They maintain that they are merely being more candid about exposing their values than traditional criminologists, who often hide beneath a sea of liberal rhetoric. In this way the new criminology, rather than eschewing pathology, openly embraces it. What has changed are those conditions considered pathological, rather than the process by which such an identification is made.

CHICAGO CRIMINOLOGY

Chicago sociology²⁶ moved the concept of pathology from the individual to the group level; it was no longer *persons* who were *pathological* but *communities* (or, more precisely, "natural areas") that were *disorganized*. This disorganization was the result of a conflict of conduct norms among residents which produced ambiguous or contradictory standards of behavior. The concept of social disorganization further shed its pathological connotation in the work of Edwin H. Sutherland who talked of "differential social organization" in his general theory of crime.

Marx stressed the notion of political conflict. The fact that Marx had little to say about crime and law could mean either that he had scant interest in the subject, or that he had little insight into how this particular behavior related to the political conflict he described. The new criminology's use of the term "conflict" with respect to criminal behavior appears to derive from the Chicago tradition, rather than from Marx. That the proletariat and the bourgeoisie are in conflict over political power does not automatically lead to the conclusion that the powerful "create" crime, even though they may indeed control the means which produce definitions of crime. And even if that conclusion were demonstrated to be correct, it would not necessarily account for the powerless group behaving more criminally than the powerful unless crime were defined in terms of power, which would make this true by definition.

The Chicago theorists specified the relationship between crime and conflict, characterizing conflict in nonpolitical terms. Their theories, however, never

reached the societal level of generalization.²⁷ What distinguishes the new criminology from previous structural theories is its emphasis on the relationship between political and economic factors on the one hand, and social and legal factors on the other. The roots of such a view can be traced to the work of Willem Bongers.²⁸ The new criminologists pay an intellectual debt to Bongers,²⁹ but find more contemporary meaning in the writings of prison inmates, revolutionaries, and other political dissidents such as George Jackson, Angela Davis, pre-1975 Eldridge Cleaver, Franz Fanon, Malcolm X and Bobby Seale.

Firsthand documentation of the repressive nature of the capitalist society has come to be empirically valued in the new criminology. But the use of such documentation is not singular to the new criminology; the Chicago theorists found substantial meaning for their work in similar kinds of reports.³⁰ Indeed, the utility of such accounts for both the Chicago theorists and the new criminologists is remarkably similar. Both are interested in the process whereby a person comes to commit a criminal act. What has changed is the location of the causes of behavior. One wonders whether the new criminologists would find a political meaning in Shaw's jackroller, and whether Sutherland would have been able to locate aspects of differential association in the life of Malcolm X.

The new criminology, as I have indicated, calls for a critical reappraisal of legalistic or state definitions of crime. Most of what is presently against the law, it is believed, probably should be outlawed, but there also is much that is neglected in these provisions. The most systematic statement of this issue is by the Schwendingers³¹ who call for a redefinition of the term "criminal" to include those conditions which violate basic human rights and potentials. This call

²⁷This was accomplished by the functionalists; see text accompanying notes 38-43 *supra*.

²⁸W. BONGER, *CRIMINALITY & ECONOMIC CONDITIONS* (1916).

²⁹The payment, however, is usually awkward since Bongers has been considered to have used a "totally unMarxist" approach in his work. I. TAYLOR, P. WALTON & J. YOUNG, *supra* note 2, at 298, quoted in Gibbs & Erickson, *supra* note 10, at 37-39.

³⁰C. CONWELL, *THE PROFESSIONAL THIEF* (E. Sutherland, 1937); C. SHAW, *BROTHERS IN CRIME* (1938); C. SHAW, *THE JACK-ROLLER* (1930). More recent examples from this tradition can be found in W. CHAMBLISS, *BOX MAN: A PROFESSIONAL THIEF'S JOURNEY* (1972); B. JACKSON, *OUTSIDE THE LAW: A THIEF'S PRIMER* (1972).

³¹Schwendinger & Schwendinger, *supra* note 24.

²⁵Krisberg, *Teaching Radical Criminology*, 1 *CRIME & SOC. JUST.* 64, 65 (1974).

²⁶R. FARIS, *CHICAGO SOCIOLOGY* (1967).

for criminalizing certain acts of governments and corporations, however, does not derive directly from the new criminology, which has merely broadened and made more political one of the more enduring debates in criminology.

That the new criminology "discovered" the political nature of law is untrue, and may be an example of what Sorokin has called "intellectual amnesia."³² In 1933, for instance, the Bureau of Social Hygiene, under the auspices of the Social Science Research Council, published a report dealing with the feasibility of establishing an institute of criminology. This document, known as the Michael and Adler Report,³³ set about to review what was then known about crime and to make recommendations concerning the possibility of an institute from which public policy planning might be made. The report noted that it was necessary for the law to keep pace with changing conditions: "It appears to be desirable that the behavior content of the criminal law should keep abreast of changes in behavior patterns or, at least, that it should not lag too far behind."³⁴ Michael and Adler also note that: "It is highly questionable that 'sociology' and what is called 'political science' are independent of each other."³⁵

A few years later, Thorsten Sellin, under the auspices of the Social Science Research Council, set out to articulate some research directions for criminology.³⁶ Sellin called for a redefinition of the traditional parameters of criminological inquiry and maintained that focusing on the violations of conduct norms would provide theoretically better substance for criminology. Sutherland later entered this arena in defense of his then newly-minted concept of white-collar crime. Anticipating adverse reactions from those who believed that the criminal law was the only basis for the appellation "criminal," Sutherland defended his position against the legalist, Paul Tappan, in an exchange that anticipates much of the Schwendingers' work of a generation later.³⁷

FUNCTIONALISM

That the new criminology should be "functionalist" is an outgrowth of the problems it deals with and

³²P. SOROKIN, *FADS AND FOIBLES IN MODERN SOCIOLOGY* 3-20 (1956).

³³J. MICHAEL AND M. ADLER, *CRIME, LAW AND SOCIAL SCIENCE* (1933).

³⁴*Id.* at 26.

³⁵*Id.* at 83 n.26.

³⁶T. SELLIN, *CULTURE CONFLICT AND CRIME* (1938).

³⁷Sutherland, *Is 'White Collar Crime' Crime?* 10 *AM. SOC. REV.* 132 (1945); Tappan, *Who Is the Criminal?* 12 *AM. SOC. REV.* 96 (1947).

the general approach taken toward their solution. Functional analysis, identified with persons whose ideas on crime are deemed to be theoretically and politically conservative, is a technique which explores the underlying dimensions of problems, looking for latent functions of features which have manifest dysfunctions. Merton's³⁸ analysis of political machines, Bell's³⁹ study of organized crime, and Davis's⁴⁰ investigation of prostitution all contain a similar theme: that while these problems are manifestly dysfunctional for society, they all exhibit latent functions which fuel and account for their existence. The new criminology, too, uses this style of research when examining the nature of crime and the functions of the criminal law. Its concentration on the society's elite foreshadows the conclusion that crime is manifestly functional for the elite, allowing them to use force to maintain their power, and latently dysfunctional in fomenting proletariat resentment and conflict.

Robert Merton is probably the most well-known functionalist. Merton and the new criminologists both stress social class position as a determinant of criminality. Merton notes that a denial of access to certain cultural goals and the ensuing frustration that this engenders is not randomly distributed, but is concentrated in the lower classes.⁴¹ While Merton views the location of crime in the lower classes as problematic and in need of explanation, the new criminology sees it as natural and politically inevitable. This does not mean that official estimates are necessarily accurate indicators of criminal behavior (although such a position is not entirely incompatible with the new criminology), but rather that there is a lack of correspondence between the manifest and latent functions of the figures. Rather than informing us about the "correct" distribution of criminal behavior, official crime statistics covertly instruct us in the actions of agencies of social control, the class-based definition of crime, and the image of what is to be considered criminal. The political nature of criminal statistics is revealed only by understanding their latent functions.

If official records of crime are suspect, so too are the motivations of those who construct those records—the agents of social control.⁴² On the manifest

³⁸R. MERTON, *SOCIAL THEORY AND SOCIAL STRUCTURE* 72 (1957).

³⁹D. BELL, *THE END OF IDEOLOGY* 115-58 (1960).

⁴⁰Davis, *Prostitution*, in *CONTEMPORARY SOCIAL PROBLEMS* (R. Merton & R. Nisbet eds. 1966).

⁴¹R. MERTON, *supra* note 38, at 131-94.

⁴²J. YOUNG, *THE DRUGTAKERS* 174 (1971).

level their motivations are objective: to document violations of the normative demands of criminal law. On the latent level, however, we find that the criminal justice system operates against the best interests of the poor and powerless because it *intends* to do so.⁴³ This process of uncovering politically latent meanings is what is meant by "demystifying" the criminal law; that is, exposing the latent meanings and intentions in capitalist society. Once we are able to see below the powerful system of privilege maintenance, the new criminology maintains, we will uncover the real political plan.

The new criminology and Merton also share a common image of a criminal. Within Merton's perspective, the offender is one who has been unable to compete equitably with others who are better placed in society. But Merton's portrait of the criminal is only half drawn. We are able to glimpse something of the total picture in the "decision" of the criminal to "innovate" (as Merton defines it), but we are presented with the behavior rather than the person. Thus, we are told of the structural antecedents (culturally prescribed goals and unavailable means), the resulting personal frustration this generates, and the behavioral outcome (innovation); we are given nothing of the deviant himself, aside from his probable lower class status.

The new criminology presents a similarly incomplete picture of the offender. It locates a set of structural antecedents (capitalism), the resulting personal (*i.e.*, political) frustration this arouses, and the behavioral outcome (a political act, defined by the elite as crime). We are given little information about the deviant himself aside from his lower class position. If Merton gives us a glimmer of a frustrated person acting out of the same motivations for success as everyone else, the new criminology presents a more romantic, and at times heroic, image of the offender. In the new criminology, offenders seem like Robin Hoods. Merton and the new criminologists agree on one thing: Merton's materialistically frustrated innovators and the new criminology's politically defiant freedom fighters would act differently given a choice in the social structure. These criminals are driven to their crimes, not attracted by them.

POLITICS AND LABELING

In one of the most widely cited works in the sociology of deviance, Howard S. Becker⁴⁴ defines

deviance relativistically: no behavior is inherently deviant since deviance is not a quality of an act, but the response of others to that act. "The deviant is one to whom the label has successfully been applied; deviant behavior is behavior that people so label."⁴⁵ The nature of the reaction is a function of social groups who create deviance by making rules whose infraction constitutes deviance, and who respond in terms of the rules they have created.⁴⁶ This reaction is not random, but rather is patterned and purposely given only to certain kinds of acts. This is why it is essential to return to the rule creation process to see whose rules are being broken. Becker informs us that

people are in fact always *forcing* their rules on others, applying them more or less against the will and without the consent of those others. . . . Differences in the ability to make rules and apply them to other people are essentially power differentials (either legal or extralegal).⁴⁷

Such rules are said to be the "object of conflict and disagreement, part of the political process of society."⁴⁸ Becker identifies certain groups which are particularly involved in creation of deviance, and calls the members "moral entrepreneurs."⁴⁹

In addition to his emphasis on rule creation, Becker stresses the importance of the administration of those rules. Labeling theory shows that not only is rule-making concentrated in the hands of select groups, but that the application of criminal labels is not a random phenomenon. Since rules are not made to apply to all equally (they prohibit behavior that is largely indigenous to the lower classes), it is not surprising that the application of the law should follow social class lines.⁵⁰

⁴⁵*Id.* at 9.

⁴⁶*Id.* at 9-10.

⁴⁷*Id.* at 17-18.

⁴⁸*Id.* at 18.

⁴⁹*Id.* at 147-163.

⁵⁰From the labeling tradition the uses of official criminal statistics have been most seriously questioned. These statistics point clearly to the conclusion that "street" crime is heavily concentrated in lower socio-economic groups. While this conclusion has been attenuated (but only mildly) by self-report and victimization studies which suggest a slightly more even distribution of this behavior throughout the class system, the claim is made that official statistics are relatively accurate estimates, not of criminal behavior, but of the actions of social control agencies. It is not evident whether there really is more crime in the lower classes, thus forcing the police to concentrate their efforts there, or whether the police concentrate their efforts there for other reasons. See Kitsuse & Cicourel, *A Note on the Uses of Official Statistics*, 11 *Soc. Prob.* 131 (1963).

⁴³Sykes, *supra* note 4.

⁴⁴H. BECKER, *OUTSIDERS* (1963).

Richard Ericson,⁵¹ writing on the English new criminologists, has observed that the new criminology has been defined in terms of what it is not, rather than what it is.⁵² Ericson also notes the new criminology makes extensive use of labeling theory not only to orient members intellectually, but also to utilize the "blaming quality" labeling theory provides. This quality arises from the configuration of "causes" of deviance that labeling theory alleges. As Becker and Horowitz have stated:

If sociology allows for a choice on the part of human actors, then it can blame, by the way it assigns causes, any of the people involved since they could have chosen not to do what they did. This has consequences for the political character of sociological analysis.⁵³

The deviant in labeling theory is one whose behavior, at least in its secondary aspects, has been determined by the reactions of others. If he is not to blame for this condition, the audience which reacted to his behavior and thus perpetuated his deviance is much less innocent.

The political nature of the new criminology, summarized in the term "praxis" is, of course, inescapable. In the dual role of scholar and activist, the new criminologists have set for themselves an ideal of practicing what they preach. The new criminology offers not only a new theoretical alternative to traditional criminology, but also seeks to provide scientific legitimacy to socialist political activism. Critics of the new criminology have charged that it is little more than "rhetoric." This charge is sometimes dealt with by turning it back onto the critic: "The problem of 'rhetoric' is . . . bothersome because the cry of 'too much rhetoric' itself can be a rhetorical device that obscures the real issues posed. . . ." ⁵⁴

The rhetorical charge is a serious one, however, and cannot be dismissed in so cavalier a fashion. If the new criminology's claims to truth are based on nothing more than a particular set of values and moral positions, resolution of differences with opponents may not be possible. Acceptance of the new criminology can then take place only in like-minded persons, who do not perceive a general theoretical

alternative. The new criminologists, not denying the rhetorical nature of their scholarship, indicate that this is the major reason why academic criminology has been unreceptive to their ideas and why some new criminologists have been denied university tenure. As one group of new criminologists points out: "To say that socialists are necessarily unscientific is the form that red-baiting takes in the university."⁵⁵ Thus, tenure problems encountered by two well-known criminologists have resulted, say the new criminologists, from their particular political views rather than the quality of their scholarship.

Is this marriage of scholarship and political activism unique to the new criminology? It would appear not. The issue was identified and discussed prior to the present advent of the new criminology, particularly in the works of C. Wright Mills,⁵⁶ Robert Lynd,⁵⁷ Howard Becker,⁵⁸ and Alvin Gouldner,⁵⁹ all of whom advocated vocationally-relevant scholarship. While these persons may be thought of as sympathetic intellectually to the new criminology, their writings cannot be construed as being part of the new criminology.

The overlap with labeling theory can be summarized as follows: in both the new criminology and labeling theory one sees concern with (1) the creation and function of rules; (2) the enforcement of rules (laws) for the benefit of the rule makers; (3) the effect of the application of rules in the form of social control for individuals; and (4) the politicalization of deviants who see through the guise of the law to the true nature of their own repression.

SUMMARY AND CONCLUSIONS

In addition to providing a valuable framework within which to study rule making and rule application, labeling theory contributed to the new criminology the idea that political considerations could be fused to "scientific" information so that knowledge and politics constituted two aspects of the same thing. The foundations of praxis and the concern with power and society lead inevitably to considerations of the creation and application of rules. Because label-

⁵¹Ericson, *British Criminology: A New Subject or Old Politics?*, 16 CAN. J. CRIM. & CORRECTIONS 352 (1974).

⁵²See also S. COHEN, *THE IMAGES OF DEVIANCE* 16 (1971); A. GOULDNER, *THE COMING CRISIS IN SOCIOLOGY* 20 (1970).

⁵³Becker & Horowitz, *Radical Politics and Sociological Research*, 78 AM. J. SOC. 58 (1972).

⁵⁴Krisberg, *supra* note 25, at 65.

⁵⁵Marzotto, Platt & Snare, *A Reply to Turk*, 4 CRIME & SOC. JUST. 3, 44 (1975). See note 10 *supra*.

⁵⁶C. MILLS, *THE SOCIOLOGICAL IMAGINATION* (1959).

⁵⁷R. LYND, *KNOWLEDGE FOR WHAT?* (1939).

⁵⁸Becker, *Whose Side Are We On?* 20 SOC. PROB. 239 (1967).

⁵⁹Gouldner, *The Sociologist as Partisan: Sociology and the Welfare State*, 30 AM. SOCIOLOGIST 103 (1968).

ing theory, for one reason or another, concentrated on the consequences of the application of rules, the way was cleared for the new criminology to focus on rule-making as a substantive study area.

Criminology's interest in labeling theory also arises, in some measure, from the theory's ability to generate testable propositions which are derived from an intuitively appealing but not self-evident irony: social control efforts contain within them the basis for their own justification.

The new criminology also begins with an irony, but one derived from functionalism. Functionalism's irony is that while problems have manifest dysfunctions, they also have latent functions, and these latent functions help explain the persistence of those problems. The new criminology extends this idea, but with a twist. The new criminology (1) performs the functional analysis not for society as a whole, but only for the elite of that society, and (2) reverses the characterization of manifest and latent contributions. What is functional and dysfunctional largely depends on the amount of power one possesses. The new criminology pays little attention to the practical functions and dysfunctions of crime, especially for the powerless who have to bear the brunt of victimization and repressive measures.

The Chicago school was the first to legitimize (1) the explanatory concept of conflict (although it was defined slightly differently here), and (2) the use of first-person accounts of crime and empirical evidence in support of theoretical positions. Within the work of the Chicago school took place the beginnings of discussions about the criminal law and its content and scope.

The pathologists identified the genesis of social

problems as stemming from personal and group inadequacies. The deviant was immoral and his behavior in need of correction. The new criminology, in its return to the pathological position, finds in the actions of the elite a different location for what is considered pathological. But if the pathologists' approach to crime was dictated by the sacred, the new criminologists employ secular (political) criteria for their determination. The pathological stance is maintained; it is only that new villains are identified.

The stuff of the new criminology is deeply rooted in criminological theory. This is neither praiseworthy, nor an indictment, since the utility of criminological theory is founded on other criteria. The developments in criminology and, indeed, in all other disciplines, are rarely wholly creative. The synergistic goal of the new criminology may be nothing more than a spirited eclecticism with fancy (and presently fashionable) political terms.

If much of the history of criminological theory in the United States can be seen as a reaction to pathology⁶⁰ (and that reaction has been increasing in recent years),⁶¹ the new criminology is likely to draw sharp criticism. Francis Allen's fear, noted at the outset of this article, is neither a conservative lament nor misplaced antagonism. If criminology is indeed in danger of being enslaved by its own emancipation, it would appear its captive will be in the form of an old, rather than a new, jailer.

⁶⁰Matz, *Becoming Deviant*, 20 SOC. PROB. 103 (1969).

⁶¹Liazos, *The Poverty of the Sociology of Deviance: Nuts, Sluts and 'Preverts'* SOC. PROB. 103 (1972); Thio, *Class Bias in the Sociology of Deviance* 8 AM. SOCIOLOGIST 1 (1973).