

Deterrence and Marginal Groups*

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The critical importance of the criminal law as a threatening mechanism is restricted to those who must be threatened in order to secure their compliance. In regard to most "serious" crimes, the socialization process rather than the direct threat of a particular legal penalty keeps most people law abiding. Yet, in both the discussion of deterrence and the interpretation of movements in crime rates, this is often overlooked. The theoretical model dealing with "marginal groups" proposed here is designed to focus attention on this problem and enable us to comprehend and cope with it. It provides a frame of reference and an overall perspective for planning research in this field and for interpreting its results.

IN THE LITERATURE dealing with deterrence, those at whom the threat of punishment is aimed are usually referred to in general terms. This is unfortunate because, as J. C. Ball has said, "The usual failure to specify a particular population has resulted in considerable ambiguity."¹ Although the distinction he draws between "the criminal" and "the non-criminal population"² is not clear, it serves to

illustrate his point, which is a valid one. Very few writers indicate precisely the class of persons deterrent measures are thought to control.

Until recently, few writers distinguished between deterrence through intimidation or the communication of threats and what have been called variously the educative, moralizing, and habituating effects of punishment. Failure to draw this distinction might be thought to invalidate some of the statements cited below. However, in this paper we are concerned with the measurable effects of a particular level of penal policy rather than with whatever liberal education the institution of punishment may be thought to provide or whatever effects the fact of punishment of an act, independent of its level, are likely to produce.

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¹ J. C. Ball, "The Deterrence Concept in Criminology and Law," *Journal of Criminal Law, Criminology and Police Science*, September-October 1955, p. 349.

² *Id.*, p. 349.

Thus it seems likely that, when Blackstone wrote of punishment as "a precaution against future offences . . . effected . . . by deterring others,"³ the "others" he had in mind were merely the rest of the population regarded as potential offenders. And throughout the literature those "others" are designated by such phrases as "the community at large,"⁴ "society as a whole,"⁵ "society at large,"⁶ "the general population,"⁷ and "the common world."⁸ Other typical expressions are "would-be criminals,"⁹ "would-be offenders,"¹⁰ "possible offenders,"¹¹ "the prospective offender,"¹² and "the potential criminal."¹³ But it is not uncommon for writers to employ both types of expression as though their denotation were identical.¹⁴

On the other hand, there are those who draw a distinction. Thus the nineteenth century criminologist, Gustav Aschaffenburg, wrote of general deterrence as being "*deterrence of all the dubious elements in the*

people."¹⁵ (*Our italics.*) And a little later, G. F. Kirchwey spoke of deterrence as being inapplicable to "those of us who have high standards and much personal pride, and who are law-abiding anyway."¹⁶ A. C. Ewing writes of "the other members of society" as being "more numerous than the criminals."¹⁷ He maintains that "in fixing punishment for deterrent reasons," it is "the adventurous, irresponsible, and desire-controlled types which, to a large extent, make up the criminal class"¹⁸ whom we have especially to consider.

More recently, Jackson Toby suggested that deterrence is irrelevant to "the bulk of the population . . . who have introjected the moral norms of their society [and] cannot commit crimes because their self-concepts will not permit them to do so." He maintains that "only the unsocialized (and therefore amoral) individual . . . is deterred from expressing deviant impulses by a nice calculation of pleasures and punishments."¹⁹ Sprott says that "By and large most people are deterred by the effects of the socialization process which they have undergone and do not refer at all to the risks of legal punishment."²⁰ Leslie Wilkins also distinguishes between "criminals or would-be criminals"

³ W. Blackstone, *Commentaries*, 4th ed. (Oxford: Clarendon Press, 1768), Book 4, p. 11.

⁴ N. Morris, "Impediments to Penal Reform," *University of Chicago Law Review*, Summer 1966, p. 631.

⁵ *Id.*, p. 632.

⁶ Ball, *supra* note 1, p. 349.

⁷ H. Wechsler and J. Michael, "Rationale of the Law of Homicide," *Columbia Law Review*, May 1937, p. 731, n. 127.

⁸ Holmes in *McBoyle v. United States*, 283 U.S. 25, 27 (1931).

⁹ A. C. Ewing, *The Morality of Punishment* (London: Kegan Paul, 1924), p. 50.

¹⁰ L. T. Wilkins, "Criminology, An Operational Research Approach," *Society: Problems and Methods of Study*, A. T. Welford, ed. (London: Routledge and Kegan Paul, 1962), p. 324.

¹¹ Ball, *supra* note 1, p. 351.

¹² B. Wootton, *Crime and the Criminal Law* (London: Stevens, 1963), p. 97.

¹³ Ball *supra* note 1, p. 350.

¹⁴ *Id.*, p. 349.

¹⁵ G. Aschaffenburg, *Crime and Its Repression*, A. Albrecht, translator (Boston: Little, Brown, 1913), p. 251.

¹⁶ G. F. Kirchwey, "Crime and Punishment," *Journal of Criminal Law and Criminology*, January 1911, pp. 718-34, cited by P. Tappan in *op. cit. infra* note 23, p. 245.

¹⁷ Ewing, *op. cit. supra* note 9, p. 51.

¹⁸ *Id.*, p. 50.

¹⁹ J. Toby, "Is Punishment Necessary?" *Journal of Criminal Law, Criminology and Police Science*, September 1964, p. 333.

²⁰ H. J. Sprott, "Sentencing Policy," *Sociological Studies in the British Penal Services*, P. Halmos, ed. (Keele, Staffordshire: University of Keele, 1965), p. 36.

and "those of us who have never needed a deterrent."²¹

But among those who draw this distinction or recognize it, there appear to be very different estimates of just where the line should be drawn. Andenaes, for instance, raises the question, in regard to crimes against property, "whether there is not a *fairly large group* on the moral borderline who might go wrong, and whether they might not in turn draw others with them."²² (*Our italics.*) Tappan is somewhat more categorical. He agrees that "Some individuals who have experienced strong moral training in their early years would feel too great a discomfort in defying moral or legal norms to undertake a crime." But he goes on to say, "On the other hand, with the conspicuous confusion of values that marks our age, surely equivocal and conflicting personal moralities characterize a *very large proportion of the population*. This mass of men requires and responds in varying measure to the minatory controls of penal law." . . .²³ (*Our italics.*) Sprott, incidentally, appears to go even further (and perhaps to contradict himself) when, despite his doubts about "the influence of the general deterrent,"²⁴ he writes of "our desire to punish" as "a tactical move on the part of our inhibitory system to ensure that an awful warning be presented to the less reputable parts of ourselves, which are

aroused by the spectacle of someone doing what we would secretly like to do ourselves."²⁵ Similar considerations influence Ranyard West in his study of the psychological prerequisites of law and order, *Conscience and Society*, in which he speaks of "the potential criminal in every man" and says that "the normal man" is "always and essentially a potential law breaker."²⁶

Nevertheless, there can be no doubt that, in regard to any particular form of serious criminal activity,²⁷ the proportion of the population that can be realistically regarded as potential offenders will, at least in periods of relative stability, be limited. It would be misleading to suggest that none of the writers we have cited recognizes this. Professor Andenaes states explicitly that "one reason why discussion on general prevention is so often fruitless, and why there is such sharp disagreement is . . . that the protagonists generalize too much. . . . Psychological attitudes vary markedly in the different categories of law-breaking, and they can also vary markedly in the various groups and strata of society."²⁸ He goes on to distinguish different groups of crimes and the kind of variable response to penal policy which might be anticipated. Clearly, such factors as lack of motivation, lack of ability, and failure to recognize opportunities will inevitably preclude participation by substantial bodies of the population and should be taken into account. To do so, we need more than the inferences that

²¹ Wilkins, *supra* note 10, p. 323.

²² J. Andenaes, "General Prevention, Illusion or Reality?" *Journal of Criminal Law, Criminology and Police Science*, July-August 1952, p. 186.

²³ P. Tappan, *Crime, Justice, and Corrections* (New York: McGraw-Hill, 1960), p. 248.

²⁴ Sprott, *supra* note 20, p. 36.

²⁵ *Id.*, pp. 32-33.

²⁶ Ranyard West, *Conscience and Society* (New York: Emerson Books, 1945), p. 165.

²⁷ And in regard to some forms of "unserious" criminal activity also.

²⁸ Andenaes, *supra* note 22, p. 36.

can be drawn from movements in raw crime rates. We must also examine the distribution of criminal behavior and proclivities in society. In what follows, an attempt is made to focus attention on this problem and to provide a conceptual model which may enable us to comprehend and deal with it. We make no specific recommendations regarding research into deterrence, but rather suggest an overall perspective and a number of distinctions which must be recognized if research is to be effective.

We begin with a hypothetical example. Only five people in a community of two thousand attempt armed robbery during a given year. This figure provides the basis for a number of assertions: first, that very few members of the community engage in this kind of criminal activity; second, that in regard to the law relating to armed robbery, the five armed robbers are lawbreakers, the other 9,995 citizens are law-abiding, and each group is discrete and indivisible; third, that the large group of nonrobbers is the result of the existence and enforcement of the criminal law prescription of armed robbery. The first proposition is correct; the second is misleading; the third is absurd. Yet these three propositions together exemplify a picture which has to some degree held many thinkers captive, a model which has exercised and still exercises an extraordinary dominance over the ways in which many people think and talk about deterrence. It may be useful to use this example as a starting point in attempting to construct a model which comes closer to reality and directs attention to features which have often been obscured or overlooked.

THE CRIMINAL CATEGORY

Let us say that, during a certain period, there are five persons engaged in armed robbery in a given community. These persons may be said to belong to a particular criminal category. Of course, at any given moment, it is improbable that more than one of them will actually be robbing anyone (except in the case of a joint enterprise). But an armed robber does not cease to be one because he is merely living on the proceeds of his last coup or planning his next, or, for that matter, considering retirement from criminal activity. The category is notional and, except insofar as some members are fully "professional" armed robbers, not a fixed objective entity. The size and composition of the category will vary over time, for this configuration will be relatively impermanent. Next year, there may be six armed robbers in the community, with three of this year's five still with us, and three new recruits. Meanwhile, two of last year's members may have moved to another community or taken up burglary or gone to jail. The criminal category is an abstraction, and its members are definable not so much by what they are doing at any one moment as by what they have done and will do in the future. But, although it is an abstraction, it has reference to a definite pattern of behavior or set of objective behaviors. The great advantage of taking a category of persons participating in a particular form of criminal activity as a starting point for analysis is that, in breaking away from a more general concept like that of "the criminal population," we move closer to definable reality.

Nevertheless, it is necessary and possible to move even further away from the abstract and toward the concrete. The armed robber category is defined by the participation of its members in a particular activity which constitutes an infringement of a specific provision of the criminal law. It is a legal category. Although, for the purposes of exposition, we have in our example assigned a numerical value to it, in reality we cannot do more than hazard an informed guess as to the number of armed robbers active in any community at any time. Some additional information is available to us about the members of this category. Indeed, a good deal of information is available about armed robbers who have been convicted. There is no reason why, on the basis of arrest records, probation records, prison files, and special research, we should not construct a profile of the armed robber in terms of age distribution, race distribution, education, life style, area of residence, position on standardized psychological continua, orientation toward the social value system, and so on. But, because we have used the expression *criminal category* to refer to the entire group of persons participating in a given form of criminal activity, we need a new term to refer to those within that category who conform to the psychological and sociological differentiae we are able to abstract from the information available. For this purpose, we shall use the term *criminal group*.

THE CRIMINAL GROUP

It has been said that "the persons who go in for crimes against property may be a somewhat heterogeneous collection of individuals, but at least

their activities have something in common, and as a group they differ distinctly from the average of the population in age, sex distribution, social-class membership, and probably in temperament."²⁹ For armed robbers, we may expect to find a greater degree of homogeneity than among property offenders as a whole, but it seems reasonable to assume that the armed robbery group will break down into various subgroups. Thus, it is likely that, apart from "professionals," we may find a subgroup composed of young school dropouts who are sporadic amateur offenders. Insofar as we find such a subgroup with a *different* pattern of deviation from the norm, we shall be justified in thinking in terms of two (and probably in fact even more) distinct *criminal groups* engaged in armed robbery. The essential point about the concept of the *criminal group* is that its members are participants in a given form of criminal activity, and are different from the general population and similar to one another in physical, social, psychological, or attitudinal characteristics. It should be added that the group so defined is noninteractive: its members relate to a standard rather than to one another.

THE MARGINAL CATEGORY

We have defined a criminal category as the entire class of individuals participating in a given form of criminal activity. We use the expression *marginal category* to refer to the entire class of persons who are objectively on the margin of a particular form of criminal behavior or, in other words, the class of persons "next most likely" to engage in the criminal be-

²⁹ Donald J. West, *The Young Offender* (Harmondsworth: Penguin, 1967), p. 13.

havior in question. Like the criminal category, the marginal category is an abstraction, and its members are identifiable not by what they are doing, but rather by what, in certain circumstances, they are likely to do. But although it is an abstraction, it has reference to a *specific* behavioral possibility and therefore represents a lower level of abstraction closer to reality than such terms as "the non-criminal population"³⁰ or even "the potential criminal."³¹ The marginal and criminal categories can be viewed as making up a population distributed along a continuum; the distinction we make between the two is only a heuristic device. Indeed, the similarities between the demographic characteristics of criminal and marginal *groups*, in many situations, tend to confirm the conceptual validity of the continuum model. Here, too, it is possible to move further away from the abstract and toward the concrete but, in order to do so, it is necessary to introduce the expression *marginal group*.

THE MARGINAL GROUP

In our initial example, we have suggested that next year three of the 9,995 "law-abiding" citizens will become armed robbers. But even with the most complete information available, it will be impossible to predict accurately which three will make the change. It is quite likely, however, that with a great deal of information a sociologist could select a group of three hundred people and that the three potential armed robbers would be members of that group. The use of prediction techniques is already an established part of social science.³² If,

on the eve of the second night of the Los Angeles race riot, a criminologist had been asked to make a prediction regarding the likely composition of the coming night's group of looters, he could have examined the police reports and found that the previous night's looters were male Negroes residing in a certain well-defined area, generally employed or recently out of school. On the basis of this information, he could have predicted that many of the previous night's criminal group would again be active at sundown. He could also have predicted that any expansion of the group would probably be composed of Negroes, with similar characteristics and backgrounds, living perhaps slightly farther from the focus of the riots, and possibly having more stable home situations than the first night's looters. For many crimes—particularly when the criminal groups engaged in those crimes are very different from the general population—we can hypothesize that there will be, as in the looting example, a body of persons objectively on the margin of a particular form of criminal behavior, whether or not we can identify them, who not only are the "next most likely" to engage in that behavior, but also may be identifiable as being similar both to one another and to the criminal group—and different from the general population—in respect to physical, social, psychological, or attitudinal characteristics. We may call this group a *marginal group*. The marginal group will, of course, differ from the criminal group. Thus, it is possible that the juveniles in the

³⁰ Ball, *supra* note 1, p. 349.

³¹ *Id.*, p. 350.

³² For an excellent survey of prediction

studies in the field of criminology, see H. Mannheim and L. T. Wilkins, *Prediction Methods in Relation to Borstal Training* (London: H.M. Stationery Office, 1955), pp. 1-27.

armed robbery marginal group will have slightly better school records and inferior access to information about techniques and opportunities for armed robbery than juveniles in the armed robbery criminal group. In short, the marginal group may be expected to possess characteristics similar to the criminal group but to be different in some respects, either in kind or in degree.

AN OBJECTION

An objection could be raised on the relevance to reality of one of the key concepts we have introduced. In dealing with this objection, we will define our assertions more precisely. The objection refers to the manner of constructing the "profiles" required as the basis of the *criminal group* concept from data drawn from arrest records, probation reports, prison files, and similar sources. It could be said that any profiles derived from such data must necessarily be incomplete and misleading. As to incompleteness, it could be said that, since the level of unrecorded offenses greatly exceeds the number of known offenses,³³ we cannot know much about the persons responsible for crime. Indeed, even among recorded offenses, the chances of impunity are frequently so great that our knowledge must be extremely limited. Thus, in the case of armed robbery,

which we have selected for our hypothetical example, Radzinowicz has said: "When, as in the case today, 70 per cent of the perpetrators of some kinds of robbery escape altogether, any general statement about robbers based on consideration of those brought to justice and convicted must inevitably be of restricted penological and social significance."³⁴ And speaking in more general terms, he writes of "a 'dark figure' of offenders, even greater than the dark figure of unknown crime."³⁵ Yet, even when we come to deal with *known* offenders, what has been called "criminal case mortality" has been said to result in a situation where "the personal characteristics of the individuals contacted by law enforcement agencies other than prisons . . . are substantially unknown."³⁶ In addition to the fact that our information is incomplete, it might be argued that it is likely to be misleading and unrepresentative. In this connection, it could be maintained that, as Sutherland and Cressey say in their well-known textbook, "almost all persons have at some time deliberately committed crimes often of a serious nature"³⁷ and that the evidence of studies of self-reported crime in different parts of the world suggests that law enforcement agencies operate in a highly selective fashion so that only a biased and unrepresentative sample of

³³ See, e.g., L. Radzinowicz, *Sexual Offences* (London: Macmillan, 1957); J. D. J. Havard, *The Detection of Secret Homicide* (London: Macmillan; New York, St. Martin's Press, 1960); T. C. N. Gibbens and J. Prince, *Shoplifting* (London: Institute for the Study and Treatment of Delinquency, 1962); and *The Challenge of Crime in a Free Society*, report by the President's Commission on Law Enforcement and Administration of Justice, 1967, pp. 20-22.

³⁴ L. Radzinowicz, preface to F. H. McClintock and E. Gibson, *Robbery in London* (London: Macmillan; New York, St. Martin's Press, 1961), p. xiii.

³⁵ *Id.*, p. xi.

³⁶ C. C. Van Vechten, "Differential Criminal Case Mortality in Selected Jurisdictions," *American Sociological Review*, December 1942, pp. 833-39.

³⁷ E. H. Sutherland and D. R. Cressey, *Principles of Criminology*, 5th ed. (Philadelphia: Lippincott, 1955), p. 39.

offenders is prosecuted and convicted.³⁸ This raises further doubts about the value of "profiles" as evidence of the concentration of serious criminal behavior in small, unrepresentative sections of the population.

In answering this objection, it is necessary to make four points. First, the evidence regarding unreported crime, impunity rates, and criminal case mortality does not in itself constitute an obstacle to constructing criminal profiles. A problem arises only if there is reason to believe that the sample of offenders about whom we do have information is significantly biased and unrepresentative. Second, as pointed out by the President's Commission on Law Enforcement and Administration of Justice, the studies of self-reported crime have generally been of "juveniles or young adults, mostly college and high school students"³⁹ and consist largely of reports of "relatively petty delinquent acts."⁴⁰ This also applies to the celebrated study by Wallerstein and Wyle, which dealt with adult criminal behavior,⁴¹ as the authors explicitly acknowledge.⁴² Only a very small part of the behavior reported in these

studies is of such a nature as to be a part of what is called "the crime problem." Indeed, if Sutherland and Cressey's remark that "almost all persons have at some time deliberately committed crimes often of a serious nature"⁴³ is taken to imply almost universal participation in such serious crimes as willful homicide, forcible rape, aggravated assault, armed robbery, and burglary, the self-report studies do not support that conclusion. Third, while there is some evidence that law enforcement is biased and selective, in that socially disadvantaged persons are more likely to be apprehended and prosecuted than those in higher socio-economic groups,⁴⁴ two points have to be borne in mind. First, this evidence, as D. J. West has pointed out, "must be treated with some reserve, since innumerable studies of the characteristics of impoverished and socially alienated sectors of the community suggest that these classes have a high incidence of persistent delinquents."⁴⁵ Second, persons handled by law enforcement agencies do, in fact, constitute the crime problem as it is seen by those agencies, and it is this problem with which much penal policy-making is designed to deal. (They do constitute a significant part of the crime problem by any definition.) Fourth, it must be admitted that data derived from the sort of official sources we have mentioned may, in some cases, be unrepresentative. They are likely to be more unrepresentative in some cases than others. (In the case of homicide, for example, there is little reason to believe—

³⁸ See, e.g., Austin L. Porterfield, "Delinquency and Its Outcome in Court and College," *American Journal of Sociology*, November 1943, pp. 199-208; J. S. Wallerstein and C. J. Wyle, "Our Law-Abiding Law-Breakers," *Probation*, April 1947, pp. 107-12; R. L. Akers, "Socio-economic Status and Delinquent Behavior," *Journal of Research in Crime and Delinquency*, January 1964, pp. 38-46; J. F. Short and F. I. Nye, "Extent of Unrecorded Juvenile Delinquency," *Journal of Criminal Law, Criminology and Police Science*, November-December 1958, pp. 296-302.

³⁹ *The Challenge of Crime in a Free Society*, *supra* note 33, p. 43.

⁴⁰ *Ibid.*

⁴¹ Wallerstein and Wyle, *supra* note 38.

⁴² *Id.*, p. 112.

⁴³ Sutherland and Cressey, *op. cit. supra* note 37.

⁴⁴ Porterfield, *supra* note 38; Akers, *supra* note 38; Short and Nye, *supra* note 38.

⁴⁵ West, *op. cit. supra* note 29, p. 60.

although doubt is not, of course, precluded—that the sample of known offenders is significantly biased.) We are not saying that the approach we are suggesting can necessarily be directly applied but rather that it represents a procedural rule or a principle of policy which is correct, whatever difficulties stand in the way of its implementation. There are two alternatives. Either this perspective can be adopted and the possibility of differential response recognized, or it can be ignored. In what follows, we give reasons for preferring the first alternative.

MARGINAL GROUP ANALYSIS AND DETERRENCE

In what ways can the notion of marginal groups help us to analyze the problems of deterrence and provide a more illuminating basis for discussion than conventional patterns of thought? There are at least five respects in which the marginal group conception is directly related to the operation of criminal sanctions.

1. *The conception of a group of people on the margin of criminal activity (smaller than the general population) suggests that the utility of severe threats designed to prevent specific serious crimes depends on the effect of the threat on that limited marginal group.*

It seems likely that, in regard to most "serious" crimes, the great majority of persons are restrained from crime by processes other than response to the direct threat of a legal penalty; the socialization process keeps most people law-abiding. Thus, the critical importance of the criminal law as a threatening mechanism is restricted to those persons who must be threatened in order to secure their

compliance. In short, the notion of marginal groups directs attention to the fact that deterrent threats of particular penalties will be relevant to the response of a limited portion of the population.

2. *The predication of the existence of criminal and marginal groups significantly different from the general population suggests as a corollary that normal patterns of response to threats should not necessarily be anticipated from such groups.*

Clearly, insofar as these groups are distinguishable from the general population on various social and psychological criteria, it is reasonable to suppose that differences in response to sanction threats, which are a function of the discriminatory characteristics, are likely to be found. The concept of marginal groups suggests that the idea of general deterrence, conceived in terms of a holistic response by "the general population,"⁴⁶ is unrealistic. Clearly, the effectiveness of alternative sanction policies is likely to be determined by the response they evoke from the particular criminal and marginal groups concerned. Moreover, we should not expect all the groups involved in the same behavior to react in the same way, for there may well be differential group responses.

3. *Insofar as the concept of marginal groups focuses attention on the crucial differences between criminal and marginal groups, it also provides insight into the likely effects of changes in punishment policy.*

Differences between marginal and criminal groups are likely to be close-

⁴⁶ H. von Hentig, "Punishment," *Encyclopedia of the Social Sciences* Vol. XII (New York: Macmillan, 1934), p. 712.

ly related to the effect sanctions will have on the crime rate. For example, if a large part of the group, objectively on the margin of any offense is separated from the criminal group because of information and attention deficiencies, upward shifts in the level of punishment, which are attended by publicity, may well bring an increase in crime by drawing in members of the marginal group as participants. If, on the other hand, the fear of sanctions plays a significant role in separating marginal from criminal groups, the possible but not necessary result of an increase in the penalty level would be a decrease in the crime rate, due to the marginal group's less frequent engagement in the proscribed behavior, and a probable diminution of the criminal group where its patterns are closely similar to those of marginal group members. In such a situation, a lowered penalty might be followed by a higher rate of entry of marginal group members into the criminal group. In general, where most of the members of a marginal group are consciously conforming to the criminal prohibition and are not affected by information or attention deficiencies, an increase in punishment level and attendant publicity will not produce any marked additional tendency to movement of marginal group members into the criminal group.

But, whenever the marginal group is not both conforming and informed, changes in punishment policy might have differential effects on the level of criminal activity. In such circumstances, the size of a given marginal group, both absolute and relative to the size of the criminal group, may influence the magnitude of the various kinds of sanction effects. Thus,

where effects on a criminal group are the opposite of those on a marginal group, the different sizes of the different sets of marginal and criminal groups influenced will determine the net effect (and social value) of alternative sanction policies.

4. *In the postulation of criminal and marginal groups, the existence of a susceptibility to criminal behavior is implied which has significant penological implications.*

Construed broadly, the notion of criminal and marginal groups warns us that the criminal and marginal group members, who are deterred from particular types of crime, do not necessarily become repositories of civic virtue. Let us assume that the penalty for armed robbery is increased drastically while the penalty for all other crimes against property remains unchanged. Assuming that the armed robbery rate decreases, can we conclude that the penal policy has achieved its purpose? Have the actual and potential armed robbers been deterred from all crime or only from armed robbery? Have they perhaps merely switched their attention from armed robbery to burglary or petty larceny? It is conceivable, in some circumstances, that sanctions may have the effect of channeling behavior into outlets which could be worse than if the criminal group had been left undisturbed in its original pursuits. Insofar as penal systems have an effect on behavior, we must estimate, as far as possible, what the *total* behavioral effect of the threat and example of a penalty may be. The notion of criminal and marginal groups may help to identify, to locate, and, to some extent, to define a possibility which cannot be ignored in any thorough and balanced analysis.

5. *By focusing attention on particular categories of offenders and potential offenders, this approach provides a specificity and definition hitherto lacking in discussion of this subject.*

The labels "criminal" and "potential criminal" do not confer uniformity of character on those to whom they are applied; and the term "deterrence" refers to social phenomena of considerable complexity. It is, therefore, necessary to get away from omnibus terms and amorphous categories and concentrate on specific problems of limited scope, if we wish to make serious inquiries in this area. To expect to get simple compendious answers to general questions is to misconceive the matter at issue. Until our questions are specific we shall not get precise or significant answers. Marginal analysis, on the lines suggested, narrows the focus of attention in a helpful and logical way. It seeks specificity of perspective in recognizing differences not only among categories of crime, but among criminal and marginal groups.

MARGINAL GROUP ANALYSIS AND PREDICTION STUDIES

The value of this theoretical model is not, however, limited to the fact that it may induce sensitivity to the factors enumerated above. This approach is also valuable because, in an area where ideological considerations have long exercised an influence prejudicial to objectivity, it is essentially eclectic, empirical, and pragmatic. Involvement in the tiresome "feud sometimes of almost theological intensity," which Barbara Wootton sees dividing "those who favor sociological from those disposed to psychological

explanations,"⁴⁷ is avoided because, as with prediction studies, the choice of significant factors or variables is purely a technical matter, independent of any causal hypotheses or etiological theories. Selection is determined not by preconceived criteria of relevance but solely by the availability of data and by the degree of relationship found between available items and the criminal conduct under consideration.

Two points may be made to distinguish between the logic of prediction studies and the logic of what may be called marginal group analysis:

First, there is the question of the precision required to identify criminal groups and, second, there is the question of the social utility of such identification (even with a high degree of precision).

The first point is referred to by Mannheim and Wilkins when they say:

We first had to decide at what point we would regard our predictions as ceasing to give useful results. This point, we suggested, might well occur where, by using the table, we could not get two cases right for every wrong . . . where prediction would have been wrong in more than one in every three cases. . . .⁴⁸

In the case of prediction, such a result would not provide a reasonable predictive instrument to aid in making decisions about *the disposition of individuals* (in terms of whether they will or will not become criminals). But, in marginal group analysis, we are concerned with the *impact of the group* on the volume of crime, so that the ability to locate a group which

⁴⁷ Wootton, *op. cit. supra* note 12, p. 19.

⁴⁸ Mannheim and Wilkins, *op. cit. supra* note 32, p. 48.

has a substantial impact on crime is significant whatever the truth may be about how many or what proportion of the persons within that group will or might participate in crime because the marginal group might represent a significant proportion of the potential expansion of the criminal category.

The second point may be illustrated by the application of prediction techniques to parole practice.⁴⁹ In this case, where it can be shown by experience tables that individuals belong to a group where the ratio of successes to failures is high—with, let us say, violation rates of less than 5 per cent—the risk to the community involved in releasing such persons may (depending probably on the nature of the offense) be regarded as sufficiently small to justify disregarding it. On the other hand, in the case of persons belonging to groups where the proportion of successes is low, the risk to the community involved in releasing them will usually be regarded as too great. Not only this but the fact that it is possible to discriminate different degrees of risk will, above a certain level, have no practical application.

With regard to marginal group analysis, however, the situation is quite different. This is because, as we have said, we are concerned here not with the disposition of individuals but rather with a group response. A success rate of 20 per cent would be regarded as intolerably low for parolees, but if only 10 per cent of a criminal group are deterred from further offenses because of change in sanction policy, a substantial social

gain may have been achieved, depending on the other costs of change.

We repeat, however, that we are not suggesting that the value of this approach lies in its direct application to penal policy or its use for administrative purposes. We claim only that it provides a tool which may help to obtain analytical insight into the functioning of deterrence.

MARGINAL GROUP ANALYSIS AND RESEARCH

Finally, it is necessary to provide a concrete illustration of the relevance of marginal group analysis to research. For this purpose, it is possible to take as our text a recent study published under the title, "The Deterrent Influence of Punishment," by William J. Chambliss.⁵⁰ This study has been selected because it is the only one we have been able to find in which data have been collected in such a way as to make this sort of analysis possible. At first sight, because of the fact that Chambliss was dealing with such a relatively homogeneous group as faculty members at one university, it might seem that our approach would be inappropriate. Our interpretation suggests, however, that even where criminal groups are differentiated only in terms of shared attitudes, responses may be equally susceptible to this type of analysis.

Chambliss attempted to gauge the effect of a change in parking regulations at a midwestern university which increased the fine for second and third parking offenses and provided, for the first time, that "if a faculty member failed to pay his fine

⁴⁹In this connection see L. E. Ohlin, *Selection for Parole: A Manual of Parole Prediction* (New York: Russell Sage Foundation, 1951).

⁵⁰W. J. Chambliss, "The Deterrent Influence of Punishment," *Crime and Delinquency*, January 1966, pp. 70-75.

his right to park on campus would be automatically revoked, and if he parked on campus his car would be towed away at his own expense."⁵¹ His method was to conduct a self-report study (with records being checked to establish the validity of the data) of the faculty pattern of violation before and after the official policies changed. A sample of forty-three faculty members who had been on the campus for at least 2½ years

before the change were asked to report on their parking violations before and after the change. The sample was divided into those who answered "frequent" (five times or more), "occasional" (three or four times), "seldom" (once or twice), and "none" on a questionnaire item asking for a description of the number of times they parked illegally during the eighteen months before the change in policy. The reports of each

TABLE 1⁵²
RESPONDENTS BY REPORTED FREQUENCY OF VIOLATION
BEFORE AND AFTER CHANGE IN REGULATIONS
(June 1, 1953, to December 31, 1955, and January 1, 1956, to June 1, 1958)

Frequency of Violations	After Change				Total
	None	Seldom	Occasional	Frequent	
None (15)	15	0	0	0	15
Seldom (12)	0	12	0	0	12
Occasional (3)	1	0	2	0	3
Frequent (13)	6	4	1	2	13
Total (43)	22	16	3	2	43

group, covering behavior before and after the change in policy, were then tabulated as shown in Table 1.

These results led Chambliss to conclude that "an increase in the severity and certainty of punishment does act as a deterrent to further violation."⁵³ However, the most striking feature of these results is that the increase in the threatened punishment level appears to have no effect whatsoever on the rate of prohibited parking by those who had previously violated the regulations "once or twice." Apparently they went on to commit second or third or fourth offenses in every case. All the individuals who reported being "seldom" violators under the

old system remained "seldom" violators after the change in policy. Although they might be liable to increased penalties under the new system,⁵⁴ there was no change in the reported rate of behavior. It is also notable that this group represented 43 per cent of the total sample reporting some prohibited parking behavior during the years studied. In contrast to the behavior of these "seldom" violators is that of the "frequent" violators, a slightly larger group representing 46 per cent of the prior offender group. In their case, only two individuals reported

⁵¹ *Id.*, p. 72.

⁵² *Ibid.*

⁵³ *Id.*, p. 70.

⁵⁴ *Id.*, p. 71. The new rule provided that second offenses would be punished at three times the fine previously threatened and third offenses at five times the earlier penalty.

remaining frequent violators after the change in regulations; the rest reduced the frequency of violations and nearly half of the group ceased violating altogether.

This analysis illustrates very clearly the point made above about the wisdom of not conceiving deterrence in terms of a holistic response by a "general population." As we pointed out, the effectiveness of sanction policies is likely to be determined by the response evoked from particular criminal and marginal groups, and differential group responses should be anticipated. In this case, it seems likely that, if a marginal group existed, it was within the group of nonviolators. In the absence of effective sanctions, no marginal group became apparent. But, it is clear that the population in question was divided into at least two violating groups with different attitudes and, therefore, different characteristic responses to the punishment threat. Insofar as this is evident, in view of the homogeneity of the group as a whole, it is necessary to inquire whether the conclusion that "an increase in the *severity* and certainty of punishment does act as a deterrent to further violation" is a warranted inference from the facts. For the question which most obviously arises is whether the change in the behavior of the frequent offender group might not be attributable to the removal of what we have called "information and attention deficiencies" and to increases in threat credibility rather than to the upward shift in the punishment *level*. A number of circumstances pointing to this conclusion may be enumerated:

1. It is pointed out in the study that, whereas "frequent" offenders rarely paid fines ("no provision was made in the regulations for forcing

faculty to pay")⁵⁵ under the old system, "seldom" offenders did.⁵⁶ So that, if any group in the study would be likely to respond to the increment of threatened penalty alone, without any change in enforcement, it would have been this group which was most disposed to believe in the previous credibility of the threat system.

2. The fact that half of the "frequent" offender group reported no violations after the new regulations came into force, in spite of the fact that their first offense would have been punished at the same price level that operated before the change, suggests that the *increased penalty* per se was not a factor in reducing the frequency of violation. And, since the "frequent" violators who became "none" violators never fell victim to the new enforcement policy, it seems likely that their "beliefs" were altered by communication rather than direct experience with enforcement.

3. In view of the fact that the previous policy allowed faculty members to ignore any parking tickets they received,⁵⁷ the change in policy, which was well publicized, may have been the first indication that many faculty members had received that *their* parking behavior was *really forbidden* or that there was any prospect at all of their being punished for violation. Before this, it is quite possible that many of them thought that the parking regulations were seriously

⁵⁵ *Id.*, p. 72.

⁵⁶ *Id.*, p. 75: "seldom violators paid their fines during *both* periods where other categories of offenders did not. During the period before the change, sixteen persons violated the regulations occasionally or frequently . . . twelve of them had received tickets . . . ; but only *three* of them according to their own admission had paid a fine,"

⁵⁷ *Id.*, pp. 72, 75.

intended to apply to the larger student population but not to the faculty—a belief reinforced by the way in which the system was administered. The data would support the inference that the decrease in parking violations was a function of fuller information that the sanctions were applicable to the faculty and would be enforced. And, because this may have operated quite independently of any change in the threatened penalty, it is a mistake to infer that the results establish a deterrent effect stemming from severity of punishment. Indeed, it seems that the group of “seldom” violators, which did not experience any change in perceived enforcement (because of their prior willing compliance), displayed no reduction in prohibited parking. The prior “frequent” violators, on the other hand, could be seen to be so profoundly affected by a change from “no sanction” to “some sanction” that their behavior change cannot easily be seen as, even in part, a function of the level of penalty threatened.

CONCLUSION

We have put forward a theoretical model involving a relatively simple schema of terminology and classification. The function of such models is twofold. First, they provide a frame of reference or framework for analysis. Second, they imply certain procedural principles or rules of perspective to

bear in mind during the search for data and the interpretation of the results of investigation and research.

As to the first, we suggest that the model described above reflects, with less distortion than is usual in this field, actual relationships and connections between phenomena. As to the second, clearly it would be preferable that the perspective of marginal group analysis should be integrated into research designs. But the way in which this should be done must inevitably depend on the nature of the project and rules cannot be formulated *in abstracto* and may not often be feasible in historical research. The essential point, however, is one we made earlier. Either this perspective can be adopted and the possibilities we have described can be foreseen and allowed for, or it can be ignored. For even after the fact of research, the marginal group model can sometimes be used, as indicated above, in the interpretation of the data provided by studies. In either case, this approach may lend both refinement and realism by directing attention to the possible confounding effects of variables which are often overlooked—as when, for example, movements in the raw crime rate are assumed to be a result of the unitary effects of change in the level of punishment. For here, as elsewhere, the messages spelled out in the gross notation of the available statistical evidence can often be misleading.