THE ROLE OF CIVIL SANCTIONS IN SOCIAL CONTROL: A SOCIO-LEGAL EXAMINATION

by

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Abstract: This chapter examines the concept of social control in discussions of crime and deviance. Discussions of informal social control identified the ways in which the management of deviance emerged and was embedded in social relations: it was unplanned, unconscious, automatic, private and often diffuse. This was then contrasted with formal social control, most closely associated with the criminal justice system which was planned, specific, public, and oriented to specific individuals for their punishment or rehabilitation. Many theorists (for example, Durkheim and Black) argue that formal social control will gradually take over more of the responsibility of crime control in contemporary society. Durkheim also points to the shift from repressive to restitutive law. Current interest in crime prevention again focuses on social relations as sources of crime management in addition to punishing offenders. Using civil sanctions (including insurance) to encourage, influence, require and even coerce people to modify what are perceived to be opportunities for crime commission is an example. Crime management is more indirect, more private and more diffuse, thus having similarities with earlier descriptions of informal social control. This chapter examines new developments in crime control, including the establishment of alternative tribunals that are less formal than criminal courts and that provide opportunities for community participation, mediation and negotiation; situational crime prevention initiatives; and the greater role of insurance.

INTRODUCTION

Social control has been a central concept in sociological discussions of crime and deviance for the past century. However, it has undergone a number of transformations, most recently in the wake of the writings of Foucault (1979, 1981, 1991). This has led to new interest in the topics of discipline and governance, apart from the institutions of social control, particularly the police, courts and prisons. This chapter maps various changes in theories of social control and identifies new directions in social control mechanisms in contemporary society. It does not propose that these new directions are evolutionary, purposive, instrumental or intentional but seeks to identify some general trends that are occurring in the shadow of traditional criminal justice concerns with punishment and crime control. Among recent developments are the increasing use of civil remedies for crime control purposes, greater input by victims and the community into the criminal justice process, and more opportunities for mediation and negotiation in less adversarial tribunals. There appears to be less faith in rehabilitation as a goal of criminal sanctions, and more policies and programs are oriented to crime prevention. Current developments are neither necessarily alternative social control strategies, nor do they inevitably replace or extend state-centered social control. Empirical investigation is essential to gauge the conditions under which new initiatives for social control emerge, and to examine the relationships between different ideologies and practices of social control.

Using civil remedies to control criminal or antisocial behavior has a long history; what is new is the vast expansion of the kinds of responses to deviance and the admixture of civil and criminal sanctions. Civil remedies — for example, compensation, restitution and apology — can be incorporated directly into the criminal justice process by replacing imprisonment and other criminal penalties. Second, many matters previously dealt with by the criminal justice system are now referred or delegated to or dealt with in such alternative tribunals as youth courts and local courts where there is greater scope for mediation and negotiation, the process is less adversarial, and there is more opportunity for participation by victims and less involvement of legal personnel. These new fora are sponsored by the state but involve members of the community in tandem with criminal justice officials. Third, the decriminalization of some offenses — for example, possession of small amounts of cannabis — has led to the greater use of expiation notices and on-the-spot fines without criminal proceeding. Fourth, there has been an expansion of administrative law, including local government regulations and ordinances, li-

censing procedures, orders to cease and desist from certain behaviors, and the statutory establishment of specialized crime investigation and prosecution agencies, all of which aim to curb antisocial, harmful and criminal activities but emerge outside or in the shadow of the criminal justice system. Administrative law and civil remedies are also being used to control corporate crime where establishing individual culpability may be difficult or impossible. It is more relevant to talk about the regulation of behavior to achieve conformity than about the social control of deviant activities. The expansion of regulatory action encompasses those deviating from some social norms, including criminal laws, as well as those who conform and have no intention of engaging in illegal activities.

Trends signaling a general movement away from the criminal justice system's monopoly on formal social control for some offenses have variously been termed decarceration, informalism and privatization. Social contract theory underpins the themes of community, apology, restitution and conciliation: crime and anti-social behavior breach individuals' responsibilities and obligations to the community, especially the victim(s)', and social control is needed to restore the status quo. At the same time, there is a return to classical conceptions of crime and punishment: crime is viewed as an outcome of rational action in the context of criminogenic opportunities, and sanctions are equated with the seriousness of the criminal offense. A further important component in contemporary approaches to crime management is insurance and the increasing expectation that potential victims of crime will insure themselves against the risk of victimization.

The following discussion examines sociological approaches to social control and locates new criminal justice programs within this context. The central point is that social relations remain key aspects of crime control and management, but these relations are not necessarily intimate or personal. Crime management is more indirect, private, diffuse and oriented to communities as the location of social control, thus having some similarities with earlier descriptions of informal social control. A significant difference is that contemporary crime prevention programs and attempts to incorporate the community into the criminal justice process are explicit, consciously planned strategies for establishing order rather than emergent qualities of the social setting.

SOCIAL CONTROL

Traditional approaches view social control as an essential integrative mechanism that is necessary for social order. For Parsons

(1951), the theory of social control "is the analysis of those processes in the social system which tend to counteract the deviant tendencies, and of the conditions under which such processes will operate" (p. 297). Social control is contingent upon norm-breaking behavior. It reacts to and seeks to eradicate or contain deviance, and is something positive and ameliorative that facilitates social life. In the 1960s labeling theorists pointed out the lack of consensus on criminal laws and the relativity of deviance, and in the 1970s more critical theorists focused on the oppressive elements of social control. While sanctions might be functional to the continuation of social life at a macro level, or to reestablish social order, the individuals subject to social control experience sanctions as oppressive and often discriminatory. Rather than reflecting a general consensus, social control — especially the criminal justice system — actually reinforces the interests of dominant segments of society, and is used to control those whose interests and activities are defined as contrary to the former. Countless examples of sociolegal research point to the abuse of police powers, the lack of due process, the alienating experience of the trial process and the inhumanity of prisons. Since the 1970s there has also been renewed attention to informal social control within the private sphere of family relationships. Investigations of the plight of women and children subject to both economic and physical discipline and control meted out by fathers and husbands has led to social movements aimed at reforming the justice system's responses to domestic violence, child abuse and rape.

A primary concern among researchers has been to distinguish formal from informal social control, and to identify different kinds of sanctions and the social conditions in which different forms of social control prevail. Formal social control refers to broad institutional expressions of collective or accepted definitions of appropriate behavior, while informal control refers to interpersonal influence or evaluations of conduct related to group membership (Radcliffe-Browne, 1952; Roach Anleu, 1995a). Informal social control predominates where little individualism or privacy exists, strong primary relationships prevail and the community or extended family retains primary authority. It is embedded in social relations; emerges in social situations; and is unplanned, unconscious, automatic and personal (Nader and Metzger, 1963; Schwartz, 1954). Formal social control, analytically constructed as the antithesis of informal control, usually engages specialized officials with the authority to apply sanctions following a trial process. The central concern is with the rule of law, which entails enforcing the rules and punishing the offender who is protected in varying degrees by due process. Different types of social control can operate in the same social setting. For example, in the

criminal justice arena much of the processing of cases occurs outside the court and involves informal relationships and expectations among criminal justice officials (Blumberg, 1967; Mack and Roach Anleu, 1995).

Social Control and Social Structure

Changing forms of social control and approaches to punishment are linked with other dimensions of social structure, in particular, market relations and state formations. A stark and controversial statement of the relationship between types of social control is Black's (1976, 1993) behaviorist theory. For Black law is governmental social control that prescribes the normative life of a community, and includes legislation, litigation and adjudication. Law varies inversely with non-legal social control, and includes etiquette, custom, ethics, bureaucracy and medicine. Governmental social control increases as societies become more complex and the style of law moves from penal to compensatory, therapeutic and conciliatory (Black, 1976; 1993). The penal style of conflict management, most closely aligned with the criminal justice system, refers to prohibitions, violations, guilt and punishment of an offender. In contrast, the compensatory style, associated with civil laws, emphasizes the consequences of the conduct rather than the conduct itself, and focusing on obligations, damages, debts and restitution. The therapeutic style deals with individuals deemed to be experiencing abnormalities, while the conciliatory approach seeks to restore social relationships. Increasingly, compensation is becoming the common mode of conflict management in modern societies, including within the criminal justice sphere (Black, 1987).

Durkheim (1938, 1973) is interested in the ways in which types of law reflect and indicate the prevailing social solidarity. He describes differences between repressive and restitutive law, with the former more prevalent in small-scale, structurally simple societies with a strong collective consciousness and the latter predominant in societies that are larger and more heterogeneous, with a more abstract collective consciousness that allows for greater individual variation. Criminal acts offend the collective consciousness and are dealt with by repressive sanctions that aim to punish an offender with some proportionality between the crime and the punishment. Durkheim states that "penal law prescribes only sanctions and says nothing about the obligations to which they relate" (Lukes and Scull, 1983:43). In contrast, restitutory law is concerned with obligations, rights and duties between individuals; the sanctions — in the form of damages, orders to perform specific tasks or requirements to cease or

desist from some activities — are not expiatory but aim to restore the status quo. Contract law, torts and administrative law are all concerned with the regulation of personal status and the associated obligations between particular sectors of society rather than between the individual and society. By definition transgressions of restitutory law do not deeply offend the common consciousness (Lukes and Scull, 1983).

In his essay entitled "Two Laws of Penal Evolution," Durkheim (1973) attends to the role of state/governmental power and proposes the law of quantitative change as follows: "The intensity of punishment is greater the more closely societies approximate to a less developed type — and the more the central power assumes an absolute character" (p. 285). He says that the apogee of absolute monarchy coincides with the period of the greatest repression, that is, punishments become less severe as one moves from the most primitive to the most advanced societies. The law of qualitative changes posits that: "Deprivations of liberty, and of liberty alone, varying in time according to the seriousness of the crime, tend to become more and more the normal means of social control" (Durkheim, 1973:294). There is not in reality a general weakening of the whole apparatus of repression; rather, one particular system weakens but is replaced by another, which despite being less violent and less harsh does not cease to have its own severities. For Durkheim, punishment is an expressive institution; its essence is emotion that arises when the collective conscience has been offended (Garland, 1990). Punishments often become a site of collective outrage and political contestation, providing opportunities for citizens to make claims about their perceptions of crime and the kind of society or community they seek.

Reintegrative Shaming

Braithwaite's (1989) theory of reintegrative shaming represents a recent elaboration of a perspective on crime control .that proposes the move to restitutive law as an important resource in crime management. It is an example of incorporating civil remedies — especially restitution and apology — into the punishment process. Communitarian philosophy underpins the theory in which crime represents a violation of social relationships, mutual obligations and collective responsibilities (Braithwaite, 1989). This is a valuable antidote to conceptions of crime as rational, pragmatic and hedonistic action. Rather than viewing punishment as ostracizing and only dealing with the offense, that is past actions, sanctions and responses will help restore an individual's obligations to and ties with the community. "Reintegrative shaming means that expressions of community disap-

proval, which may range from mild rebuke to degradation ceremonies, are followed by gestures of reacceptance into the community of law-abiding citizens" (Braithwaite, 1989:55).

The community can be represented by the state /criminal justice system or it might be more local, consisting of families or neighborhoods, including victims. This provides scope for restitution, reparation, apology and compensation contrasting with the classical approach in which official responses to criminal behavior only involve punishment for the offense, which is usually stigmatizing and where victims have little or no input into the sanctioning or rehabilitative processes. Shaming by the state is less potent than shaming by proximate communities, although effective state shaming is one of the factors that assist societies to maintain low crime rates. Their effects are complementary: reintegrative shaming often is achieved via state punishment, which delivers most of the shame combined with reintegration facilitated by intimates (Braithwaite, 1989). For Braithwaite, social control is effective to the degree that it is expressive and has a moral, denunciatory component (Scheff, 1990).

Some criminal justice policies do incorporate community input into state crime control and punishment structures. Examples include neighborhood watch schemes and community initiatives to rid neighborhoods of specific crimes, including illicit drug trading and property damage. Perhaps the most explicit incorporation of reintegrative shaming has been in juvenile justice systems with the establishment of family group conferences. In New Zealand, the Children, Young Persons and Their Families Act 1989 provides for the integration of Western and Maori approaches to juvenile offending, the involvement of family members in decision making, victim/offender mediation and victims' participation in negotiations over possible penalties in family conference settings (Morris and Maxwell, 1993). Similarly, in South Australia the Young Offenders Act 1993 establishes family conferences that aim to bring together the people most affected by the young person's behavior, especially the victim(s) of the offense and family members, in a relatively informal, non-adversarial setting that emphasizes negotiation and mediation rather than adjudication. Here victims, family members and the police are the proxies for community. Family conferences formalize the opportunity to make. amends: to apologize, provide compensation and remedy the harm done. They are also supposed to offer an educative experience and to instill a sense of responsibility. Family conferences have the authority to punish young people who admit offenses, but there is no guilt-producing process or testing of evidence. The Young Offenders Act says nothing about the interests, needs or welfare of the young person being paramount but is concerned instead with responsibility,

the involvement of victims, and the perceived interests and concerns of the community, especially regarding protection and security (Roach Anleu, 1995b). The Act minimizes the input of social workers and the department of Family and Community Services, thus reflecting disfavor with welfarist approaches. The other side of these developments is that families and communities must take greater responsibility for the criminal activities of their members. The extent and nature of these responsibilities is a subject of great contention.

Discipline, Power and Control

Much contemporary interest in social control arises from Foucault's (1979, 1981, 1991) key concerns with discipline, power, knowledge, punishment, regulation and governmentality. Current broad understandings of control are not restricted to examining criminal deviance or punishment as the exclusive domain of the state and its legal institutions. In *Discipline and Punish* (1979), Foucault establishes his perspective on punishment as a set of power/knowledge techniques located in a field of political forces, as well as mechanisms for administering the bodies of individuals and through them the body politic. Foucault (1979) views punishment as a set of disciplinary mechanisms, with discipline being a type of power that may be taken over by such specialized institutions as penitentiaries or other authorities that use it to reinforce or reorganize their internal mechanisms of power. He describes a movement from the discipline blockade, characterized by the enclosed institution to, at the other extreme, the discipline mechanism, which entails generalized surveillance. Disciplinary mechanisms tend to become deinstitutionalized and broken down into flexible methods of control, which are exercised by the human sciences adopting a therapeutic model.

Notably educationalists, followed by the medical, psychiatric, psychological, social work and counseling professions, have made the family the privileged locus of emergence for the disciplinary question of the normal and the abnormal (Foucault, 1979). The disciplines function as diffuse, multiple and polyvalent throughout the whole social body; their distinctiveness as techniques for assuring the ordering or administering of human multiplicities derives from their being economical, relatively invisible and provoking little resistance. Historically, juridical frameworks — formally, at least — are more egalitarian as they acknowledge legal rights and due process, and provide various protections for the person defending criminal charges. However, the disciplines are non-egalitarian and asymmetrical. Foucault (1979) nonetheless underestimates the power of law

that in many jurisdictions seeks, with success, to curtail the role and authority of some professional occupations. Informed consent requirements, legislation regulating some medical practices and judicial decisions on negligence have evoked open conflict between law and medicine.

The rise of the disciplines in criminal justice policy has been primarily concerned with rehabilitation of the offender, rather than punishment for a crime, which remained a dominant ideal until the late 1960s. Human services personnel — psychiatrists, psychologists, social workers, educationalists and probation and parole officers — provided presentence reports to the court evaluating the needs of the offender, and made recommendations for her or his treatment or punishment. Classification of offenders in terms of their perceived needs was an essential aspect of correctional policy. Wide discretion enabled sentencing judges to impose a penalty most appropriate to offenders and their individual situation as assessed by non-judicial personnel. Community-based corrections — especially parole, probation and work orders — were viewed as less stigmatizing than imprisonment and more suitable for most offenders as they enabled the offender to remain in the community and to repair broken social relationships. These strategies also required the establishment of a casework (therapeutic) relationship with probation and parole officers, who are often trained in psychology or social work. Counseling was a linchpin in the quest for an individual to modify his or her criminal behavior and become a conforming citizen. The rehabilitative ideal marked a shift from an ideology emphasizing punishment for a crime to one oriented to treatment and regulation of the criminal offender; social control is now concerned not just with the criminal offense but with offenders and their criminality. The identity of those engaged in social control has in the process become less clear and the tools of control and punishment less visible (Simon, 1993).

Debate continues about the extent to which, or even whether, non-penal punishments are alternatives to or an extension of state control, albeit in a diluted form (Cohen, 1985). Punishment, once centralized in the prison, is diffused, and the power to punish has become fragmented and less visible. The punitive and juridical functions of the probation officer, the psychologist, the psychiatrist, the social worker and the medical practitioner are less visible and less identifiable than those of criminal justice personnel. Cohen (1979) argues that expansions of community-based forms of punishment blur the boundaries between inside/outside, guilty/innocent, freedom/captivity, punishment/treatment and imprisoned/released (Cohen, 1979). Diversion of most people from the formal justice sys-

tern expands the amount of official intervention and increases the total number of people coming into contact with the criminal justice system, including those who have not been convicted of criminal offenses, for example, the offender's family and friends. Rather than limiting social control and preserving individual liberty and autonomy, the growth of community corrections widens the net, disperses social control, extends and diffuses juridical functions, and blurs the boundaries between the community and imprisonment (Foucault, 1979).

Foucault (1981) suggests it is not that the institutions of justice tend to disappear or that the disciplines supplant judicial authority, but that increasingly, the judicial institution is being incorporated into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory. Thus, rather than thinking about formal social control mechanisms as synonymous with a criminal justice system concerned only with punishment (or rehabilitating individuals convicted of criminal offenses), it is more relevant to consider how populations, or sub-populations, are subject to governmental and other regulatory forces (Hunt, 1993).

Governments attempt to unify and centralize various forms of regulation in their quest to manage populations. In this process, legal techniques increasingly are directed toward setting up the procedural mechanisms of a wide variety of systems of surveillance (Hunt and Wickham, 1994). This entails incorporating nongovernmental (including market and voluntary sectors), as well as governmental resources and institutions in the quest for crime control. Governments may command that third parties assist with law enforcement; for example, requiring financial institutions to report large transactions is an attempt to identify and deter money laundering and embezzlement. Governments also place an onus on a range of professional occupations — from tax advisers and auditors to general medical practitioners — to report suspected law infractions and the relevant legislation attaches penalties for a failure to do so (Grabosky 1996).

The concept of governmentality describes the dramatic expansion in the scope of government facilitated by the emergence of the human sciences, which provide new mechanisms of calculation, especially statistics, that enable particular kinds of knowledge about populations (Foucault, 1991; Hunt and Wickham, 1994). Statistics on crime rates, numbers of convictions, guilty pleas and the size of prison populations, for example, are correlated with geographic and demographic data to become critical components in contemporary criminal justice (or law and order) programs and policies that constitute a major aspect of governments' mandate. Criminological researchers advise which areas of a city or neighborhoods experience high crime

rates, and identify which categories of people — in terms of age, sex, employment, marital status, geographical mobility and socio-economic status — are at risk of criminal offending or victimization. Based on such knowledge, governments can attempt to regulate populations via legal and quasi-legal forms of intervention in order to achieve such specific ends as crime control or crime prevention (Hunt, 1993).

SITUATIONAL CRIME PREVENTION

Situational crime prevention is an important perspective in contemporary discussions of crime control, and policy makers have adopted crime prevention programs with alacrity. New programs emerge alongside, not necessarily replacing or providing alternatives to, traditional crime control pursuits. The underlying theory is that criminal events occur within opportunity structures. Proponents concentrate on the circumstances or situations in which criminal activities are conducted and not on the sociopsychological characteristics of offenders. Cohen and Felson's (1979) routine activity approach assumes criminal inclination, and examines the ways in which the spatio-temporal organization of social life affects opportunities for criminal activity and facilitates individuals' realization of their criminal tendencies. They propose that the convergence in time and space of potential offenders, suitable targets and an absence of capable guardians is conducive to predatory crimes. Mobility afforded by cars; the increase in empty residences because household members are away at work, school or on vacation; and light, portable electronic durables all increase the opportunities for predatory crimes and the risk of victimization (Cohen and Felson, 1979).

Opportunity theory has always been a central perspective in criminology that has been important in giving a sense of the social structure of criminal activity rather relying on the personal, individualistic characteristics of offenders (Birkbeck and LaFree, 1993). What is new is that rather than looking at the opportunities from a macro perspective, there is more specific identification of situational opportunities and recommendations on how to modify them. Situational crime prevention approaches are policy-oriented and provide explicit and practical suggestions on reducing the risk of victimization. Advocates of this approach conceptualize criminal activity as the outcome of rational decision making in the context of perceived available opportunities and the lack of adequate social control (Clarke, 1980, 1992; Gottfredson and Hirschi, 1990). Accordingly, a strategy to prevent or manage crime must modify the spatial, temporal, social and physical opportunities, thereby indirectly affecting

criminal behavior. Clarke offers 12 techniques of situational crime prevention that involve increasing potential offenders' effort, increasing their risks and reducing their rewards (Clarke, 1992).

Crime prevention also entails attention to geographic and spatial locations — liot spots' — where crimes frequently and are likely to occur, for example, some neighborhoods, specific kinds of buildings or sites, and such public spaces as parks or beach foreshores, shopping malls, public transport systems and central business districts. Behaviors deemed to be ancillary to or even causing criminal deviance, for example, alcohol consumption, are also targeted. Situational crime prevention programs rely on the collection of data about crime problems, input by criminologists and evaluation research (Clarke, 1992). Statistical information correlates crime rates with a range of such independent variables as neighborhood, location and building type in order to formulate crime profiles that then lead to discussions about probabilities and the distribution of crime risks. The categories — that is the specific situations calculated as presenting criminogenic opportunities — then become subject to regulation/governance/surveillance. Those same locations or situations are also the sites of conformity: the same opportunities may be taken for legitimate or illegitimate pursuits. Regulating or modifying these situations also affects conforming behavior and individuals who do not intend to engage in criminal or antisocial activity. A stark example of this is the way in which Disney World, the quintessential American leisure and fun park, melds childhood fantasies and uninhibited enjoyment with surveillance, crowd management and private corporate policing to achieve conformity and control. Physical barriers and constant direction from well-known Disney characters'reduce opportunities for individuals' free movement and disorder. Social control is embedded in the very structure of Disney World and thus goes unnoticed by most visitors (Shearing and Stenning 1992).

At a practical/policy level, this method of social control parallels a shift away from punishing or rehabilitating individuals for breaking the law to regulating the behavior and activities of various people in specific locations with the aim of crime prevention. This involves identifying and reducing criminogenic places constituted by situations, opportunities and conditions. Current crime prevention programs that seek to modify opportunities are less concerned with wider economic and social causes of crime, the motivational factors preceding criminal activity or the politics of crime control. There is little attention to the definitions behind criminalizing some activities but not others, or to the kinds of activities deemed to be antisocial and subject to crime prevention strategies.

Altering opportunities for criminal activity can also involve regulating the activities of individuals (third parties) who are not engaged in criminal activity, but who because of their relations with potential offenders can actually but unintentionally enhance criminal opportunities. Their facilitation of crime can be inadvertent and unconscious. This approach also involves using administrative laws and regulatory codes initially established to achieve other non-crime related goals, for example, protecting the rights of tenants vis-à-vis property owners, public health and safety, and protecting employees from dangerous or unhealthy workplaces. Examples of regulating the activities of third parties in the quest to modify crime locations or situations include:

- *Property owners:* Various planning, health and housing regulations can be used to require property owners to maintain their premises, especially if they are rental properties, in order to reduce the likelihood that they will become crime sites. Green (1996) evaluates the Specialized Multi-Agency Response Team program, a central tactic of which is administering civil codes to ensure that property owners take responsibility for properties showing evidence of drug and disorder problems. Representatives from city agencies inspect drug nuisance locations and enforce local housing, fire and safety codes where necessary. This allows the police to improve the physical appearance of problem places and create an environment where people are less able or willing to engage in illegal activity. Thus, the program extends the responsibility for crime control into the realm of non-offending third parties (Buerger and Mazerolle, 1998).

- *Business owners:* Local government regulations can specify who may purchase certain goods or services as a way of rendering criminal activity more difficult. For example, some industry codes of practice limit access to and possession of spray paint that can be used to deface property. Some local councils in Adelaide, Australia have appointed crime prevention officers whose tasks include establishing a graffiti register to document tags and suspected culprits, and conducting random checks on shops selling graffiti tools to obtain compliance to an industry code of practice (Cowham, 1996). Administrative laws, including health and safety legislation and the granting or withdrawal of licences, also regulate behavior to reduce the incidence of criminal or illegal activity. In some jurisdictions it is an offense for alcohol to be sold to an intoxicated person. The South Australian

Liquor Licensing Act 1997 specifies that: "If liquor is sold or supplied on licensed premises to a person who is intoxicated the licensee, the manager of the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence" (sec. #108 [1]), with a maximum penalty of AUS$20,000. The legislation also provides for defenses to potential allegations regarding its breach. Other crime prevention activities include reducing cash holdings, installing security personnel and video surveillance cameras, making entry (and exit) more complicated, and attaching security tags to goods.

- *Potential victims:* Increasingly, the onus falls on individuals to minimize their chances of becoming a crime victim. Police and insurance companies expect home and business owners to have appropriate and adequate security and not to act negligently, for example, by leaving a door or window open. Much of the responsibility for the management of such property crimes as house break-ins and household burglary has shifted from the police to insurance companies. As victims of burglaries will get little satisfaction from the criminal justice system due to the very low clearance rate for these crimes, insurance policies are necessary to provide some compensation and security.[1] This means, of course, that those who cannot afford adequate or any insurance are unlikely to recover their stolen goods or be compensated for any loss due to theft. Interestingly, to some extent criminal justice officials (and others) have always considered female victims of sexual assault and rape as responsible for failing to minimize the opportunities for the offense.

- *Guardians:* The establishment of family group conferences in some juvenile justice systems aims to reinstate parental discipline and encourage young people's law-abiding activities. Parental responsibility laws, where they exist, seek to ensure that parents take disciplinary or corrective action by making them liable for the damage caused by their children (National Crime Prevention Council, 1996). For example, in New South Wales, Australia, the Children (Parental Responsibility) Act 1994 provides that in some cases where a court finds a child guilty of an offense instead of imposing criminal penalties it may require the child to submit to parental (or other guardian) supervision and require that the parent(s) undertake to guarantee the child's compliance with requirements specified by the court. The legislation also criminalizes pa-

rental behavior in stating that: "A parent who, by wilful default, or by neglecting to exercise proper care and guardianship of the child, has contributed to the commission of an offence of which the child has been found guilty, is guilty of an offence" (sec. # 9[1]).

Crime as Risk

The growing reliance on probability, opportunity reduction and loss prevention signals a trend toward an insurance or actuarial model of social control. This model tends to treat crime as a fortuitous event the effects of which can be spread across communities of risk takers (Reichman, 1986). Risk becomes something calculable when it is spread across a population and insurers identify populations (or risk categories) by correlating relevant characteristics, so that individuals are categorized according to the same characteristics they share with others in the classification (Ewald, 1991). Property insurance operates to manage the consequences of criminal activities by spreading the risks across categories of non-offenders, that is, potential victims. The categories that insurers create are not moral communities engendering a sense of collective solidarity among members, but artificial actuarial groupings compared and ranked according to knowledge and predictions about risk (Ewald, 1991; Simon, 1987; 1988).

Managing crime risks shifts the focus of control from the offenders to potential victims. From an insurance viewpoint the spreading of the risk requires individual policy holders to conform with certain criteria, some of which will relate to being individually responsible for reducing crime risks. There is also pressure (financial incentives in the form of lower premiums or more advantageous policies) for potential victims to modify their own behavior, often taking the form of regulation and social control, in order to reduce the risk of victimization. Before property insurance is granted, homeowners must ensure that their home has a certain level of security indicated by locks, the marking of electrical goods and a monitored alarm system. Alternatively, insurance companies can create incentives by offering rebated premiums to householders who install a burglar alarm or adopt other (legal or approved) self-protection mechanisms.[2] For example, the NRMA insurance company in Australia offers a 6% discount on home contents policies for homes in urban areas —defined as high risks for burglary — where an alarm has been installed. The discount is not available in areas not defined as high risk (NRMA 1996).

Some property owners in high-crime areas may be considered a bad risk and denied insurance altogether, and are faced with the

"choice" of coping with victimization themselves, relying on the criminal justice process or relocating. Insurance companies are able to require that individuals modify their behaviors to reduce risks. Companies thereby constitute agencies of regulation and social control.

While insurance spreads risk across a collectivity, it is the responsibility of individuals to obtain insurance. Given that the clearance rate for housebreaking is so low, this type of crime is more likely to be managed via insurance than the criminal justice system. This trend is an example of the deregulation or privatization of crime management. Only those who do not have access to insurance — either because the insurance company deemed the person (or more accurately, deemed characteristics of the person) an unacceptable risk, or because the person could not afford insurance payments — will have to depend on the criminal justice system for compensation, justice and recovery of their stolen goods. This reliance on insurance also creates new opportunities for fraud, which companies manage by hiring insurance adjusters to validate the bona fides of a claim. Victims of a crime can also be suspects.

The language of probability, statistics, and actuarial categories appears neutral and not discriminatory or exclusionary (Simon, 1987). Yet categories and forms of classification are the outcome of political and value-laden decisions. As many crime prevention programs target inanimate objects — buildings, consumer goods, public transport systems and geographic locations — arguably they do not discriminate against particular individuals or selectively police some segments of society. However, some types of people are more likely than others to be present, perhaps for non-deviant activities, in the locations targeted. The impact of many crime prevention programs that focus on the prevention of street crime and what is perceived as antisocial behavior in public places falls most heavily on the more marginalized: poor, unemployed, young and indigenous people. These programs often emphasize safeguarding property and maintaining public order, especially in visible locations including parks, shopping precincts and beaches (White and Sutton, 1995). As different social groups use public space differently, programs to alter opportunities for criminal activity also alter the availability of resources for the users of the public space. Crime prevention initiatives can reduce (perhaps intentionally) the presence and visibility of these people in public and semi-public spaces. Their effect is then exclusionary (White and Sutton, 1995).

Unresolved Issues

Situational crime prevention programs do not provide a panacea for the existence of crime in society, and they raise some general issues about social control and crime management. Critics question programs' implications for citizens' rights, their linkages with conservative political philosophies and the increasing privatization or deregulation of governmental/collectivist/welfare activity, and point out potential enforcement problems. Crime prevention initiatives potentially compromise individual rights, as the behavior and activities of a wider range and greater number of people — not just those engaging in criminal deviance — are subject to regulation and surveillance. The confidential relationship between professionals and their clients is being transformed as a result of increasing legal obligations to identify and report suspected law infringements or evasions and even to detect fraud on the part of the clients to avoid possible civil action (Grabosky 1990; Partlett and Szweda 1991). This increases the need for professional indemnity insurance to manage the risks of such legal action.

Individuals may be subject to surveillance — even stigmatized as perpetrators — without having been convicted by a court and without the opportunity to either defend their actions or deny any accusation against them. They may have little opportunity to effectively demonstrate their innocence. This is especially true where non-offending third parties are convinced or coerced into taking actions designed to minimize disorder caused by other persons, or to or reduce the probability that crime may occur (Buerger and Mazerolle, 1998). The establishment of administrative agencies and personnel to administer various statutory codes and regulations also will have fewer protections than those provided by the criminal law. The power of decision makers can be challenged by claims that natural justice was denied or that the enforcers acted beyond their sphere of legitimate competence and designated authority. However, challenging the decisions of administrative agencies is very costly and can involve protracted cases in the civil courts.

A second concern is the affinity between criminological theories and criminal justice policies based on a model of crime as rational action and conservative political agendas and ideologies. O'Malley (1994) proposes that the ascendancy of post-Keynesian, neo-liberal political rationalities provides a much better explanation for the popularity of situational crime prevention than do arguments about its efficiency or its necessity to counter rising crime rates. He argues that approaches to crime control as risk management that underpins situational crime prevention "deals hardly at all with individual of-

fenders, is uninterested in the causes of crime, and generally is hostile or at best agnostic toward correctionalism" (O'Malley, 1992:262). The focus on individuals as rational decision makers in criminogenic situations shifts concern away from more macro conditions that have traditionally been central sociological concerns for understanding so-called everyday or ordinary crimes, namely, the class structure, inequality, education, unemployment, poverty, value systems and cultures or sub-cultures. More recent sociological attention to questions of gender and masculinity and the ways in which they are institutionally structured are not amenable to analyses of individuals making choices in given situations. Attention to the social, economic and political causes of crime and criminalization and social amelioration via long-term collective welfare programs has been displaced by enthusiasm for the situational manifestation of crime and the appeal of short-term programs to rid areas of criminal deviance. There is also a debate about the extent to which crime prevention programs merely displace or diffuse criminal activity (Green, 1996).

Third, the enactment of new codes and regulations to reduce criminogenic situations raises the specter of enforcement. Crime prevention programs may be politically inspired, which means that funding for enforcement may be tenuous and dependent on demonstrable and quick effects. A study of housing code inspection in three industrial cities in the northeastern U.S. finds that much of the failure of these codes derives from inadequate resources. Negotiation is central in regulatory enforcement, which is seen as exchanging information and forbearance for compliance (Grabosky and Braithwaite, 1986). The application of the formal law by inspectors who, like police, are field operators involves considerable discretion and renders the law in action simplified, liberalized and often arbitrary. Most inspections occur in response to complaints rather than as part of the systematic enforcement of relevant codes. A major problem is that not all urban properties are owned by wealthy people and maintenance of property to the code can be very expensive (Ross, 1995). Ross (1995) concludes that housing code enforcement provides an ineffective counter to problems of urban decline because it cannot address the fundamental causes of blight: poverty, racism, crime, drugs and inadequate school and social control institutions. In other words, deteriorated housing and the appearance of neglect do not cause crime suggesting that using such codes as a way of preventing crime in specific situations cannot deal with the causes, only the manifestation or location, of crime. Nevertheless, attempts to improve the appearance and condition of a neighborhood by effectively enforcing housing and other codes can be carried out successfully by citizens and residents even in poor and disadvantaged areas. Reduc-

tions in burglary rates, property damage and drug dealing have resulted directly from improvements in local environments (Wilson and Kelling 1982; 1989).

It is salutary to contemplate Durkheim's (1938) discussion of a society of saints, where he cautions that "faults which appear venial to the layman [sic] will create there the same scandal that the ordinary offence does in ordinary consciousness" (p. 68-69). Because crime exists in all societies (although its form or expression changes), it contributes to social cohesion by offending collective sentiments; it unites people in shared indignation and outrage. Concerns over the amount of graffiti, drug-related crime in neighborhoods, and anti-social behavior have all become pivots on which to assert the value of community as an antidote to individualism and hedonism. Often the ideology underpinning crime prevention programs and concerns about community security and safety without question assume that the community is a collective good that will have a therapeutic and healing effect (Lacey and Zedner, 1995).

CONCLUSION

Current interest in crime prevention again focuses on social relations as sources of crime management, in addition to punishing offenders. But the social relations are not necessarily intimate, personal or familiar. Crime management is more indirect, private and diffuse, thus having some similarities with earlier descriptions of informal social control. Crime prevention programs and attempts to incorporate the community (or at least some members of it) into the criminal justice process are explicit, consciously planned strategies for establishing order rather than emergent qualities of the social setting. The criminal justice system and criminal sanctions are incorporating more elements from civil law, thus blurring the distinction between criminal and civil law (Cheh, 1991). This reconfirms Durkheim's (1973) predictions that more and more areas of life will be subject to restitutive law, and that the punitive role of the state will decline as crimes come to be seen as conflicts between private individuals — perpetrators and victims — instead of offenses against the entire conscience collective. Additionally, increasing reliance on insurance to prevent crime risks and to curtail the consequences of crime indicates further privatization of crime control.

The role of the state is not declining in an absolute sense. Many of the crime prevention programs are initiated by state officials, require public funding and involve changing relations between criminal justice personnel and other agencies responsible for obtaining compliance to building or health and safety codes, for example. This indi-

cates some privatization or deregulation of crime management, as well as a greater reliance on the community (however constructed in criminological and governmental discourse) in tandem with the activities of the state. In this context, privatization has two meanings: greater input by communities, neighborhoods and families as well as more reliance on the market, especially insurance, in order for individuals to manage the risk of victimization themselves.

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NOTES

1. For example, in Australia in the period 1991-92, the clearance rate for break, enter and steal offenses reported to the police was 11% (Roach Anleu 1995a).

2. Similarly, in the medical sphere individuals are increasingly expected or required to take responsibility for their own health and illness. Insurance companies adjust policy premiums, or even deny them, based on such lifestyle factors as tobacco use, alcohol consumption and sexual practices (Petersen, 1996).