

ON THE SYMBIOSIS BETWEEN CRIMINAL LAW AND CRIMINAL BEHAVIOR

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I am sincerely grateful to the society, the committee and those who nominated me for the Sutherland Award. It is especially meaningful to me because I came into criminology because of Sutherland. It was at UCLA that I was introduced to criminology by Donald Cressey, a Sutherland protégé, and as a graduate student I studied with other former Sutherland students and colleagues: Albert Cohen, Karl Schuessler and Alfred Lindesmith.

My passion for the study of crime, however, began much earlier. It was sparked when I got to know a group of prison inmates in Walla Walla, Washington.

Five years after the end of the World War II, I was a junior at John Marshall High School in east Los Angeles. At the end of the year my friend Billy Hummell and I decided to hitchhike to Alaska. With our teenage uniform of the day: leather jacket, white tee-shirt, duck-tail haircuts and ten dollars in our pocket we headed north. The ten dollars ran out in Seattle even though we were staying in fifty-cent-a-night flop houses on skid row. An area of Seattle I would come to know intimately a number of years later when, ironically, I returned to teach at the University of Washington and discovered the symbiotic relationship between organized crime, law enforcement and politics that was in Seattle, I only barely glimpsed on my first visit.

Billy and I never got to Alaska and had to settle for the less glamorous job of picking peas in Walla Walla. On the farms where we worked were trustees from the Washington State Penitentiary. I got to know them and discovered things about crime and prison inmates I had never known. I learned how inmates controlled significant sectors of the prison, how the prison administrators cooperated with the inmates to let them have this control, how the inmates were divided along racial and racist lines, that rape and violence were institutionalized in the prison and, most important, that to a man the inmates I got to know were planning to continue a life of crime on their release. Bank robbers, highwaymen, drug dealers, burglars and thieves, they spent their spare time planning the jobs

they would pull on release. When the summer ended I knew I wanted to be a criminologist.

At UCLA I took courses from Donald Cressey and was introduced to the works of Edwin Sutherland. Although this is not generally recognized, Sutherland's work was very radical for its time and in this sense he was the father of critical criminology. He argued in 1928 that criminal behavior is normal behavior. Criminals, he insisted, were not biologically, emotionally or psychologically different from noncriminals. Criminal behavior is learned, he argued, just as noncriminal behavior is. These ideas resonated with what I had learned from the inmates I met in Washington.

Sutherland also emphasized the importance of studying the law and its origins, pointing out the obvious: Without laws defining acts as criminal there would be no crime. In 1939 Sutherland continued his radical approach to criminology by insisting that the crimes of the corporations, white-collar crime, should be a major focus for criminologists. This was another very radical contribution to the field and one that, in my view, we have still generally failed to take as seriously as we should.

After college I was drafted into the Army and sent to Korea, where I spent eighteen months as a special agent with the Counterintelligence Corps. I was exposed to an immense amount of crime. But it was the crimes of the state and of the U.S. military that were the most egregious, not the crimes of the petty thieves and burglars or even what today would be called "terrorists." On arriving in Korea I was stationed near the 38th parallel, where refugees coming from North Korea were first brought for interrogation. The night I arrived interrogations were taking place in several tents. The suspects were being beaten, shocked with electrodes attached to their genitals, and kept without food or water.

I realized, because I was to be the detachment interrogator, that this was the way I was expected to conduct interrogations. I lay awake all night and in the morning confronted the detachment commander and told him that I would never tolerate torturing prisoners. I suspected that I would be court-martialed or shot. Instead I took over the responsibility of interrogating prisoners and the torture stopped. Interestingly, however, we did not get many prisoners after that. Later I learned that they were being interrogated by Air Force Intelligence using the same methods that I had put a stop to in our detachment.

In my work with counterintelligence in Korea I learned how U.S. soldiers murdered and raped Korean civilians during the war. After the war crimes committed by U.S. soldiers and the Korean military continued with the perpetrators enjoying almost complete immunity from prosecution. The U.S. was not so much spreading democracy or protecting the world from communism as it was supporting the despotic, brutal, and totally corrupt regime of Sigman Rhee in the name of freedom.

Today in Iraq we see the same or worse crimes being committed against Iraqi prisoners, citizens and suspected terrorists. Despite the pious statements of military and government officials that these are the acts of a "few bad apples" the fact is that these are crimes of the state and should be high on the list of crimes to be researched and explained by criminologists.

After eighteen months in Korea I was discharged and began my graduate studies at Indiana University, where Edwin Sutherland had taught. His students, Albert Cohen, Karl Schuessler and Alfred Lindesmith were still teaching there, as was his colleague in the law school, Jerome Hall. Following Sutherland's advice I took a minor in law.

On receiving the PhD I took a job at the University of Washington in Seattle. Perhaps it was because of my earlier experience that I was comfortable in the slums of the city. Whatever the reason, I was drawn to study the way police enforced the law where most law enforcement in every city takes place: in the lower class areas of the city. It was here that I discovered the importance of organized crime and the symbiotic relationship between organized crime, law enforcement, politics and the city's economy (Chambliss, 1988).

Everywhere I went to do research on crime after I left Seattle I found the same pattern of symbiosis between criminal enterprises, "legitimate" business, law enforcers, politicians and the economic system. From the slums and drizzling rain of Seattle to the steamy heat of Nigeria, to the polluted air of Bangkok, the poppy fields of Thailand and the freezing alleys in Oslo and Stockholm the story is always the same. Some of the worst offenders are the least likely to ever experience the sting of the criminal justice system because they themselves are the guardians of the law. Because between the law violator and the law enforcer there exists a symbiosis that functions to maintain a structured relationship that serves the interests of both.

The symbiosis between crime and the state is not limited to turning control of the prison over to the inmates, permitting atrocities by soldiers to control the population, the corruption of police departments or the state's complicity with organized crime. A symbiotic relationship between crime and the state has characterized criminality throughout the ages and includes even the most horrendous crimes imaginable. The comoros and mafias of Italy became the handmaidens of state oppression in the development of capitalism in the late 1800s. Empowering the mafia in Italy and Marseilles after World War II enabled the United States to suppress communist and socialist movements.

What these observations bring into sharp relief is a fundamental characteristic of crime, namely, the interdependence of crime and the criminal law. Here again Sutherland's genius was apparent when he

pointed out that in the last analysis the cause of crime is the fact that the government has defined certain acts as criminal. Pursuing the logic of this insight leads us into largely uncharted territory for it brings into sharp relief the connection between crime and the state as a dialectical process in which there is a constant restructuring of what is crime by state and government officials. It is the implications of Sutherland's observation that without criminal law there would be no crime that I would like to explore tonight. Nowhere is this dialectic between crime and the law more apparent than in the relationship between the American colonies and England in the seventeenth century.

SMUGGLING

In colonial America England created a nation of criminals by virtue of laws (the "King's Edicts") that, if obeyed, would have rendered the American Colonists permanently impoverished. In 1660 Charles II passed an edict stating that:

"On and after the First Day of April 1661, no sugars, Tobacco, Cotton, Wool, Indicoes, Ginger, Fusticks or other dying Woods of the Growth, Production or Manufacture of any English Plantations in America, Asia or Africa shall not be carried, shipped, conveyed or imported from any English Plantation in America to any Land, Island, Territory, Dominion, Port of Place whatsoever, other than to such other English Plantations as do belong to His Majesty. . .under penalty of the Forfeiture of the Said Goods, or the full value thereof, as also of the Ship with all her Guns, Tackle, etc." (First Navigations Act, 12, Charles II, c 18, 1660).

In 1663 these laws were expanded such that "No goods of the Growing, Production or Manufacture of Europe" could be imported except from English ports. (Law 15, Charles II, c 17, Sec. VI, 1663).

Under such an edict the colonists had little recourse but to violate the law, turning themselves into criminals and making the colonies centers of organized criminal gangs. If the king thought his edicts would reduce trade between the colonies and countries other than England he was sorely mistaken as lawmakers so frequently are:

"...laws that thus restrained trade and practically forced the colonists to turn smugglers, if they were to survive and build up commerce, were bound to lead, not to 'Maintaining a greater Kindness' but to hatred, ill-feeling, and, eventually, open rebellion" (Verrill, 1924:32).

Over the next 100 plus years the colonists carried on an extensive and highly lucrative trade in the West Indies. In 1759 a report from a British Navy captain reported that

“twenty-eight out of twenty-nine vessels in the harbor of Monte Cristi (Santo Domingo) were from the New England colonies. In May 1761, there were fifty ships in that port of which thirty-six were American, and it was not uncommon to see from one hundred to one hundred and twenty colonial vessels in the port at one time (Verrill, 1924: 32).

The British were forced to walk a tight rope in enforcing the laws due to international tensions between Spain and Britain but eventually the British did seize colonial vessels in the Caribbean, thereby enriching the government by some eight million pounds.¹ This act and the infamous “Molasses Act” attempted to exorbitantly tax the importation of molasses, sugar and rum. Smuggling was thus extended to even previously legal imports. One year after the passage of the Molasses Act the Governor of Massachusetts observed that “there never was, I believe, an uncorrupt customs officer in America in the twelve months” (Verrill, 1924: 34).

In New Orleans the brothers Jean and Pierre Lafitte arrived from France in the early 1800s and quickly became the toast of New Orleans society. They amassed a fortune by smuggling goods they purchased from the Baratarian pirates who lived in the marshland that stretched away from the city to the Gulf of Mexico (Saxon, 1930).

So influential were the Lafittes that during the War of 1812 both the British and the Americans offered Pierre twenty thousand pounds if he and his Baratarian pirates would help them. The United States went so far as to offer Pierre a commission in the Navy for his support. Patriots that they were, Pierre and Jean took the English money but accepted a commission in the American Navy and helped the Americans defeat the British at the Battle of New Orleans. After the war the Lafitte brothers disappeared. An item in a Baltimore newspaper in 1823 reported:

“A British sloop of war fell in with and captured a piratical vessel with a crew of sixty men, under the command of the famous Lafitte. He hoisted the bloody flag and refused quarter and fought until nearly every man was killed or wounded—Lafitte being among them.”

1. It is ironic that these laws allowing for the confiscation of property used in the course of smuggling set a precedent for the current spate of asset forfeiture laws permitting the confiscation of homes, cars, and other property of people accused of smuggling illegal drugs.

The article does not say which Lafitte was killed but it is probable that both brothers were aboard and were slain because neither is ever mentioned again.

American lawmakers in the 1920s who sought to prohibit the use of alcohol as well as those who have made it a crime to use some drugs but not others, would have been well advised to heed these historical examples. Had they learned a lesson from them, they could have anticipated that laws that fly in the face of the fundamental nature of the economy are bound to fail. Where the accumulation of capital and the consumption of goods and services is the sine qua non of the economy, prohibiting the production and distribution of goods and services (trade, alcohol, drugs, prostitution, usury) that are in demand can only lead to sophisticated means to circumvent the law, which in turn leads to widespread corruption and, ultimately, a loss of legitimacy. The demand for the products of colonial America was akin to the demand for what came to be defined as illegal drugs. The result in both cases was and is a wholesale disregard for the law and the institutionalization of smuggling, black-marketeering and a symbiotic relationship between organized crime, law enforcement, politics and the economy. One consequence of which is, to paraphrase the governor of Massachusetts, "Neither law enforcement nor politics has been uncorrupt since the war on drugs began."

It was the edicts of Charles II that made it a crime for the colonists to engage in the only profitable commerce available to them just as the antidrug laws made it a crime for America's poor urban dwellers 300 years later to engage in one of the few commercial enterprises open to them. The law, then, created the crime and ultimately a host of other crimes (for example, gang warfare and police corruption) along the way.

PIRACY

In addition to sharing with colonial smuggling essential characteristics of the relationship between the law and criminality, the history of piracy reveals other dimensions noteworthy for criminology as well. From the beginning of sea commerce, pirates preyed both upon ships carrying cargo to and from ports and on the ports themselves. International treaties as well as laws of nations dependent on commerce defined piracy among the most heinous of crimes. The Vikings who came out of Norway, Sweden and Denmark to maraud, pillage and slaughter along the coasts of England (in particular) but most of continental Europe as well were not the first pirates but they were the first to enjoy the protection of a nation state. So successful were the Norsemen that they eventually conquered much of England and created an empire that stretched from Sweden, Norway and Denmark to all of Northern England. As with the smugglers

in colonial America, the state played a crucial part in supporting the piracy of its sailors. In time of war, these same sailors were called to defend their country and were conscripted into the "Royal Navy" (Maclay, 1894; Jameson, 1923).

After the Norman Conquest and the loss of several crucial battles, the Viking period abruptly end. This did not, however, usher in the end of piracy. Nor did it mean the end of state support for piracy. Indeed, in the seventeenth and eighteenth centuries piracy played a major role in the struggles for economic and political dominance in Europe.

In England Francis Drake and Richard Hawkins were financed to go to Africa and transport slaves to the West Indies. But Spanish law prohibited the sale of any commodities to their colonies by foreigners. England, of course, ignored the laws, as did the colonists who purchased the slaves. During their voyages Drake and Hawkins discovered a more profitable enterprise than transporting slaves. They attacked the towns where the Spanish stored their gold and silver awaiting shipment to Spain, killing and raping women and children and burning villages. They discovered as well that small, fast sailing ships could easily overtake larger ships laden with gold and silver and steal the goods. So successful were they that on one of Drakes' voyages he brought back to England enough gold and silver to pay the expenses of the government for a full five years. When the Spanish complained the Queen informed them that Drake had been executed as a pirate. In fact he was sent to Ireland in a high level government position only to be called back when England and Spain went to war (Cummins, 1995).

In Charleston South Carolina a lawyer who left England in disgrace when he impregnated his maid became a rich slave and plantation owner by buying the goods of pirates and re-selling them. His daughter Anne fell in love with a pirate named Bill Bonny and went with him to Jamaica. Ever on the lookout for greener pastures, in Jamaica she fell in love with another pirate, Calico Jack Rackham.

England, in the meantime, signed treaties with other European countries agreeing to put an end to piracy. England offered pardons and a parcel of land to all Caribbean pirates who would agree to give up piracy. Bill Bonny agreed but Calico Jack would have no part of it. So he took Anne Bonny with him to sea. Calico Jack began drinking more and more heavily until finally the crew voted him out as Captain Sternbeck.

In some ways piracy was a historical anomaly. Pirate ships were governed democratically at a time when democracy was barely a matter discussed even among intellectuals. The captain of the ship was elected by the crew. He served at their discretion and the social relations on board a pirate ship were dictated as much by politics as they were by power. The captain had to produce: that is, find profitable prizes, adhere to the rules

of the pirate culture, be brave in battle, and merciless with the enemy. Failure to live up to any of these expectations could mean that the crew would take a vote and elect a replacement. If this happened, the former captain had three choices: to be put to sea in a boat with enough food and water for a few days survival, be thrown over board with no boat for his belligerence or become part of the crew and remain on board. If the crew were disgruntled enough the third option might not be offered.

The French pirate Louis LaCroix, whose nom de plume was "Bourgnefesse" (translated idiomatically as "half an ass" for one of his buttocks had been shot off in battle), ran afoul of three of his crew and had to kill them to save his captaincy. The circumstances tell us a great deal about the pirate culture. He and his crew had attacked a Spanish settlement and were in the process of plundering the town. By custom, the women of the town were fair game for whoever found them. Bourgnefesse happened upon three of his crew as they were chasing a 12-year-old girl. For reasons he could not explain, Bourgnefesse ordered them to stop pursuing her. The crew complained that this violated the rules by which they had the right to anyone woman (girl or child) they found and tried to kill Bourgnefesse. At which point he shot them. Bourgnefesse tells in his autobiography that he had fallen in love "at first sight" with the girl and took her with him back to his ship. While rowing to his ship with the girl, a cannon ball fired from the shore, killing her. The story did not end there. After her death the girl came to Bourgnefesse as a spirit, he claimed, and guided him on his voyages. At one point telling him to proceed in a most unlikely direction to find a "prize." When Bourgnefesse decided to follow her directions, his crew rebelled but he insisted. He managed to hold the ship together long enough for them to find the prize, which turned out to be one of the richest they had ever taken. Eventually the girl's spirit came to Bourgnefesse and told him that if he did not give up piracy she would stop visiting him. Bourgnefesse returned to France with the gold and silver he had stashed away, purchased an estate in the country and retired to the life of a gentleman, writing his memoirs. He does not mention in them if the spirit continued to visit him after his retirement.

Calico Jack Rackham was not so fortunate as Bourgnefesse. When he began making bad decisions the crew became disillusioned with him, voting him out as captain and selecting Anne Bonny to replace him. Anne, in turn took Mary Read, who had signed on as a cabin boy by disguising herself as a man, as her first mate. Anne and Mary were the scourge of the Caribbean for nearly three years until they were finally caught and tried in Jamaica by the governor of the island, an ex-pirate by the name of Woodes Rogers.

England's offer of a pardon and a plot of land combined with conscientious law enforcement greatly reduced Caribbean piracy in the

twentieth century only to see it re-emerge as a world-wide problem in recent years. Between January 1 and December 1, 2003 there were 313 reported piracies involving the loss of millions of dollars in cargo and ships (International Chamber of Commerce, 2004). As with most crime, these recorded piracies are but a small sample of how much actually takes place. The recorded piracies tend to be those that involve substantial losses to ship owners and are reported for insurance purposes. Ships attacked by pirates who simply rob the crew often go unreported as do the cases where private yachts are pirated and the owners killed. Lacking any evidence to the contrary, it is assumed that the boat and the owners were simply lost at sea in a storm or other accident. It is only on those rare occasions when the pirates are actually caught that we get a glimpse into the nature of contemporary piracy.

The case of the *Alondra Rainbow*, pirated in 1999, provides substantial insight into modern practices (Langewiesche, 2003; Burnett, 2002). The *Alondra Rainbow*, a freighter carrying \$10 million worth of aluminum ingots was boarded and successfully taken over by pirates in the Straits of Malacca off the coast of Malaysia, the most dangerous waters in the world for attacks by pirates. In 2003 over one-third (121 out of 313) of the world's recorded attacks occurred there. The Straits are also among the busiest shipping areas in the world, transporting goods to and from Southeast Asia. The combination of overcrowded shipping lanes and the narrow passage makes this area particularly amenable to piracy as the ships must proceed at low speeds.

The *Alondra Rainbow* was boarded at night by a crew of around ten pirates wearing ski masks. They held the seventeen-man crew at gunpoint, tied them up and took whatever cash, wrist watches and other valuables they had on them. Then they forced them to jump onto an old freighter that pulled up alongside. After which they were put into a lifeboat in the middle of one of the Straits. There was virtually no chance that a ship would stop to pick them up because ships captains know these straits are a favorite hunting ground for pirates. They were picked up, however, and were able to report the piracy to the authorities. Nonetheless, the *Alondra Rainbow* managed to disappear into the night and was not found for over a year after the piracy. .

The pirates proceeded to a predetermined destination where a buyer waited to unload half the aluminum. After unloading their cargo the *Alondra Rainbow*, under a different name, sought a buyer for the ship and the remaining \$5 million worth of ingots but before they could find one, they were caught and sentenced to prison in India.

As with the more conventionally recognized activities of organized crime—such as drug smuggling, gambling, prostitution and usury—the shadow figure who hired the pirates, told them where to attack the ship,

provided them with the ships to carry out the attack, paid their expenses, and profited from the sale of the stolen ingots was never identified. For that matter, no investigation was even undertaken to try to identify him. Neither was an effort made to identify the port authorities or the receiver of the stolen ingots. And, like the islands in the Caribbean in the 17th and 18th centuries that provided safe ports for English, French and Dutch pirates, the governments of the countries that today provide safe ports for pirates are not even acknowledged as part of the crime. Only the crew that was hired to carry out the piracy was ever punished.

My journey in criminology began in the pea fields of Walla Walla, Washington and was reinforced by the corruption and criminality of the American and South Korean military. From there to the ghettos of Seattle, the opium fields of Thailand, the streets of African, Asian American and European cities and the history of crime and criminal law, the wisdom of Edwin Sutherland's perspective has been a guide: The banality of evil, the ordinary and ubiquitous nature of crime and what a short step it is from legitimacy to criminality, from interrogation to torture, from fighting an army to shooting and raping civilians, from enforcing the law to a symbiotic relationship with criminal gangs. As Sutherland observed, the ultimate cause of crime is the criminal law. By applying this observation to a few case studies I hope to have shown how it can help illuminate the dialectic between the criminal law and criminal behavior.

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