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The Crime Controversy: Avoiding Realities*

David L. Bazelon**

I. INTRODUCTION

Speaking before the nation's police chiefs last fall, President Reagan said, "The frightening reality is that for all the speeches by those of us in Government—for all the surveys, studies, and blue ribbon panels—for all the 14-point programs and the declarations of war on crime—crime has continued its steady, upward climb and our citizens have grown more and more frustrated, frightened, and angry."¹

I must concur with the President's depressing picture. In the thirty-two years that I have been on the bench, the "war against crime" has been a high national priority. Nevertheless, crime—and the fear of crime—seem worse today than ever before. Recent polls indicate that crime ranks right after world peace and economic issues in the concerns of Americans.²

In recent months, many of our nation's leaders have offered a variety of "get tough" measures designed to put a stop to this national nightmare. I want very much to believe that these programs will break the long pattern of failure that the President described. I want very much to have faith that the words of wisdom, which our leaders have offered, will rescue us from our present terror.

Instead, I somehow feel like the mountain climber who slipped from the face of a very steep mountain. He was falling to what looked like certain death on the rocks below. At the last minute, he was able to grab and hold onto an outcropping bush. While hanging there, he looked up at the top of the mountain, and at the top

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1. Address by President Reagan to the International Association of Chiefs of Police, in New Orleans, Louisiana, at 2 (Sept. 28, 1981) [hereinafter cited as Reagan Address].

2. Democratic National Committee, *A Survey of the Political Climate in America and Voter Attitudes Toward the 1982 Election* 5 (Feb. 1982).

of his voice, he desperately yelled,

"Is anybody up there?"

There was no answer.

"Is anybody up there? Someone please save me!"

After a while, a voice boomed out,

"I'm up here."

"Who are you?", the mountain climber asked. "Save me, save me."

"I am the Lord, your God, and I can save you. Do you believe in me?"

The man cried out,

"I believe, I believe."

The voice replied,

"Then let go of the bush."

The man waited a moment, and then shouted,

"Is there anybody else up there?"

Should we have faith that the words of our leaders will save us from the nightmare of street crime? Can we really solve the problem through measures such as modifying constitutional rights and building more prisons?

In my view, most of the current proposals mask the painful facts and difficult choices our country must face before we can meaningfully address the "crime problem." As lawyers, we know that we cannot frame the issues—let alone resolve them—until we develop and consider all the relevant facts and competing considerations. As Gertrude Stein lay on her deathbed, a protégé beseeched her for a final bit of wisdom: "Please, Gertrude, tell me, what is the Answer?" Stein reflected a moment and then replied, "What is the question?"

We cannot evaluate proposed solutions to crime before undertaking a careful analysis of the problem. First, we must identify the precise kinds of crime that we mean to attack. Second, we must seek to understand and confront the realities underlying those crimes. Only then—with all the facts before us—can we make an informed judgment about the various proposals.

II. IDENTIFYING THE KIND OF CRIME TO BE ADDRESSED

Politicians and journalists speak rather generally about "crime in America" without specifying exactly what they mean. No one attending this symposium needs to be reminded that there are, in fact, several distinct types of crime, each of which poses distinct

problems and requires distinct remedies. Even though Attorney General Smith recently said that "[m]any of our plans are equally effective regardless of what kind of crime is involved,"³ only *one* type of crime instills the widespread fear reflected in the recent explosion of public concern. Violent street crime—the robberies, the rapes, and other forms of violence that plague city life—is what puts us in such fear for our property, our dignity, and our lives. Today, I address only these crimes.

There are, of course, other types of crime worthy of deep concern. White-collar crime, for instance, is a phenomenon of the gravest importance. Measured in dollars, it costs society untold billions—far more than street crime.⁴ White-collar crimes, however, are committed by the middle- and upper-classes. These people do not, by and large, threaten our physical safety or the sanctity of our homes. Nor do crimes of passion cause us to bolt our doors so firmly at night. That would be like locking the fox *inside* the chicken coop.

Of course, organized crime has a direct and substantial effect on street crime. The most obvious connection is narcotics. Nevertheless, current proposals to keep violent offenders off the street will have little impact on the chieftains who direct mob activities from executive suites. The power of organized crime will grow until its link to corruption in the political, financial, and commercial worlds is exposed. Moreover, ending organized crime will not necessarily eradicate street crime. Although the "mob" provides at least part of the *supply* of drugs and weapons with which street crime flourishes, the *demand* for these items seems so great that if one source is cut off, another is likely to take its place. To understand the reasons for that demand, we must look closely at the people who terrify city-dwellers across the country.

III. RECOGNIZING THE UNDERLYING REALITIES

The causes of violent street crime are complex and, of course, not completely understood. Nevertheless, only the blind or the willful can deny the clear association of this kind of crime with the culture of poverty and discrimination that is still tolerated in every American city. As a judge on the court of appeals, I have been re-

3. Interview with Atty. Gen. William French Smith: *The Reagan Way of Dealing with Crime*, U.S. NEWS & WORLD REP., Oct. 26, 1981, at 33.

4. See C. SILBERMAN, CRIMINAL VIOLENCE, CRIMINAL JUSTICE 45 (1978) (based on Department of Commerce studies).

viewing criminal cases in a typical metropolitan jurisdiction for more than thirty-two years. For almost twenty of those years, our court had jurisdiction over all criminal cases brought in the District of Columbia—local as well as federal. From my experience, I would warrant that more than ninety percent of the defendants in prosecutions for violent street crime come from the bottom of the socioeconomic ladder.

These defendants invariably are born into families struggling to survive—if they have families at all. They are raised in deteriorating, overcrowded housing. They lack adequate nutrition and health care. They are subjected to prejudice and educated in unresponsive schools. They are denied the sense of order, purpose, and self-esteem that motivates law-abiding citizens. With nothing to preserve and nothing to lose, they turn to crime for economic survival, for a sense of excitement and accomplishment, and as an outlet for frustration, desperation, and rage.

Empirical evidence confirms my experience. A recent study of ex-offenders revealed that “unemployment does increase arrests for both property and nonproperty crimes” and concluded that “[p]overty is apparently causally related to crime at the individual level.”⁵ In addition, the National Institute of Justice recently confirmed that our prison population is disproportionately black and young.⁶

No intelligent effort to deal with street crime can ignore these stark realities. It is in this respect that I differ most fundamentally with the approach of the current leadership.⁷ In his speech last fall, President Reagan, like many of his predecessors, seemed to ignore that virtually all the people who commit the kind of crime

5. Berk, Lenihan & Rossi, *Crime and Poverty: Some Experimental Evidence from Ex-Offenders*, 45 *Am. Soc. Rev.* 766, 784 (1980).

6. 1 NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, AMERICAN PRISONS AND JAILS 159 (1978) (survey of existing and future needs in correctional facilities on the federal, state, and local levels) (volume one presents in summary form the major findings of the survey).

7. My criticism in this area has not been drawn on party lines. Over the years, I have voiced similar concerns about the criminal justice policies of both parties. In fact, nearly twenty years ago I had a rather celebrated debate about these matters with Lyndon Johnson's chief law enforcement official, Attorney General Katzenbach. The Attorney General was an enthusiastic supporter of many of the civil rights and antipoverty programs of that era, and he was a good friend of mine. Nevertheless, he characterized as “ridiculous” my suggestion that there can be no criminal justice without social justice. Letter from Nicholas Katzenbach to David L. Bazelon (June 24, 1965), reprinted in Kamisar, *Has the Court Left the Attorney General Behind?—The Bazelon-Katzenbach Letters on Poverty, Equality and the Administration of Criminal Justice*, 54 *Ky. L.J.* 464, 490 (1966).

that I am now addressing come from the same culture of grinding oppression: "[I]t's obvious . . . that deprivation and want don't necessarily increase crime. . . . The truth is that today's criminals, for the most part, are not desperate people seeking bread for their families. Crime is the way they've chosen to live."⁸

The President based his explanation for crime on what he called "absolute truths"—namely, that "individuals are responsible for their actions,"⁹ and that "men are basically good but prone to evil."¹⁰ Crime, the President said, is a problem of the human heart: "Only our deep moral values—and strong social institutions—can hold back that jungle and restrain the darker impulses of human nature."¹¹ The President also observed that institutions like the family, the neighborhood, the church, and the school play an important role in providing young people with moral guidance and support.¹²

With great respect, however, the President does not seem to account for a fundamental reality: some segments of our society—far more than others—have no "strong social institutions" upon which to rely. I cannot improve on the comments of Chicago Sun-Times columnist Mike Royko on the President's speech:

You take some teen-ager in an affluent suburb. He has just returned from playing tennis or football after school. . . . He walks into a seven- or eight-room house in which he has his own room, equipped with a stereo and maybe his own TV set, and a closet full of nice clothes. . . .

. . . [A]fter having dinner with his father, who has a well-paying job, and his mother, who might work but might also be home every day, he goes in his room, looks in the mirror and asks himself:

"What is in my heart? Do I want to join a gang and go out and mug somebody on the street and pursue a life of violence and crime? Or do I want to go to college and become a CPA?"

Goodness, thank goodness, usually prevails over evil. So the lad does not go out and join [a street gang].

. . . [A] similar decision is made by a youth in one of the city's many slum areas. His home is a dismal flat or a congested housing project. Income is his mother's welfare check. School is a place where the most important thing you learn is not to turn your back on strangers. Security and social life are the other kids on the street—the gang. . . .

So he looks in the cracked mirror and asks: "What is in my heart? Do I want to become a CPA, or a physician, or a lawyer? Do I want to someday make \$50,000 or more a year? Do I want to go to Northwestern or Georgetown or maybe Yale? Hell no. I *want* to pursue the life of crime and

8. Reagan Address, *supra* note 1, at 5.

9. *Id.* at 6.

10. *Id.* at 7.

11. *Id.* at 8.

12. *Id.* at 7.

violence. I *want* to go out and mug somebody. I *want* to wind up doing 10 to 20 in [prison] so I can be with my friends. I want this because it is in my heart and has been there since I was born."¹³

I do not suggest, of course, that poverty or racism "equals" crime. As a matter of fact, only a tiny percentage of those who endure these social evils violates the law. What is amazing is that so many deprived Americans accept their lot without striking out. It seems fair to say that violent crimes among these people would be much more prevalent but for influences such as religion, welfare, and perhaps alcohol. I am stunned by those who point to the many docile deprived and say that "their conditions do not force them to break the law, why should those conditions force others to?" Society should be as alarmed by the silent misery of those who accept their plight as it is by the violence of those who do not. In any event, whatever approach to street crime is adopted, it is essential to acknowledge who the offenders are and where they come from.

IV. WEIGHING THE ALTERNATIVES

Having identified the kind of crime that causes public alarm and the kind of people that commit it, we now can consider some alternative responses to the problem. I believe that there are essentially two ways of approaching the problem of street crime. One consists of short-term programs for curbing the rise in crime. These programs generally propose changes in legal procedures and moderate expenditures on the criminal justice system. The long-term approach, on the other hand, requires a major and fundamental commitment to a more permanent solution.

A. *The Short-Term Approach*

The short-term approach reflects an understandable desperation for *immediate* protection. Whatever the ultimate response to crime, it may not be unreasonable to seek some means for curbing the rising violence now in order to buy the time needed to look for more humane and enduring solutions. Although the need is pressing, we must not be tempted to embrace measures whose superficial allure obscures their demonstrated ineffectiveness. Adopting these measures may result in compromising important constitutional values to no avail and—because of a failure to recognize the limits of the measures—in dangerously postponing the search for

13. Royko, *Evil Hearts and Minds*, Chicago Sun-Times, Oct. 1, 1981, at 2, col. 1.

meaningful and lasting approaches.

The recent report of the Attorney General's Task Force on Violent Crime typifies the short-term approach.¹⁴ The Task Force's proposals primarily are based on the theory that an increased certainty of punishment will deter criminals. The report, however, fails to achieve its goals because the principal recommendations—modifying legal procedures and spending some money on prisons—will have little effect on the certainty of punishment.

Today, the criminal justice system prosecutes, convicts, and incarcerates a larger proportion of those arrested for felonies than it did fifty years ago.¹⁵ Yet crime continues. Clearly, the uncertainty about punishment derives from the great unlikelihood of *arrest*. As the Task Force itself acknowledged, “[o]nly a small fraction of all crimes known to the police are solved by an arrest.”¹⁶ In fact, Justice Department studies indicate that only about six percent of serious crimes result in arrest.¹⁷ We cannot realistically expect to end crime by changing the machinery with which we process that small group of offenders.

For example, modifying the exclusionary rule—the doctrine that prohibits the use of illegally obtained evidence—may or may not be advisable for symbolic or other reasons. I take no position on the constitutional issues that such a modification would raise. Nevertheless, we defraud ourselves if we think we can meaningfully affect crime by changing a rule that, according to the General Accounting Office, makes a difference in little more than one percent of the cases.¹⁸

The Task Force also endorsed preventive detention—a rule that would allow judges to deny bail to dangerous defendants to

14. U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME: FINAL REPORT (1981) [hereinafter cited as TASK FORCE REPORT].

15. C. SILBERMAN, *supra* note 4, at 260-64.

16. TASK FORCE REPORT, *supra* note 14, at 7.

17. See FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS (1978) (only 20% of reported crimes result in arrest); LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES (1978) (only 30% of crimes are reported).

18. See U.S. General Accounting Office, Impact of Exclusionary Rule on Federal Criminal Prosecution, (April 19, 1979). This GAO study of federal prosecutions found that evidence was excluded because of illegal searches in only 1.3% of the cases. Similarly, another study concluded that the rule has “little impact on the overall flow of criminal cases after arrest.” Institute for Law and Research, 1979, A Cross-City Comparison of Felony Case Processing, *discussed in* D. GORDON, DOING VIOLENCE TO THE CRIME PROBLEM: A RESPONSE TO THE ATTORNEY GENERAL'S TASK FORCE 4 (NCCD 1981). For these studies and the reference in note 22, I am indebted to the staff of the National Council on Crime and Delinquency.

prevent them from committing offenses while awaiting trial.¹⁹ This proposal is the kind that tries men's souls. It has enormous appeal: we are all familiar with horrendous instances of crimes that some individuals commit while out on bail. Preventive detention, however, would have serious costs.²⁰

A policy of incarcerating individuals before they have been duly convicted would raise serious questions about our dedication to the presumption of innocence. My experience—and all that I have read on this subject—convinces me that it is well-nigh impossible to predict dangerousness with any accuracy. Some studies have estimated that to be sure of jailing a *single individual* who would engage in violence while on bail, we would have to detain as many as four to ten people who would not.²¹ Before we incur the substantial financial and constitutional costs of preventive detention, we should at least consider less onerous measures. For example, one possibility worth exploring is to achieve adequate supervision of individuals who are out on bail.

Ultimately, however, bail reform—like other changes in the criminal justice system—is not likely to affect the rate of violent crime significantly. Despite the celebrated horror stories, the fact is that relatively few defendants are arrested for serious crimes of violence while on bail. The most recent major study of the problem—conducted by the Lazar Institute—found that although about sixteen percent of those released on bail were rearrested before their trial date, only *two percent* were people who initially had been charged with violent crime and who were picked up during their pretrial period for either a property or a violent crime.²²

The principal recommendation of the Task Force is to spend two billion dollars on construction of prisons and jails.²³ Governor

19. TASK FORCE REPORT, *supra* note 14, at 50.

20. See generally A. VON HIRSCH, DOING JUSTICE: THE CHOICE OF PUNISHMENTS 22 (1976); Dershowitz, *The Origins of Preventive Confinement in Anglo-American Law* (pts. 1-2), 43 U. CIN. L. REV. 1, 781 (1974); Dershowitz, *Indeterminate Confinement: Letting the Therapy Fit the Harm*, 123 U. PA. L. REV. 297 (1974); Dershowitz, *Preventive Confinement: A Suggested Framework for Constitutional Analysis*, 51 TEX. L. REV. 1277 (1973); Dershowitz, *Imprisonment by Judicial Hunch*, 57 A.B.A. J. 560 (1971); Landes, *Legality and Reality: Some Evidence on Criminal Procedure*, 3 J. LEGAL STUD. 287 (1974); Zeisel, *Bail Revisited*, 1979 AM. B. FOUND. RESEARCH J. 769.

21. Studies of the problem are canvassed in D. GORDON, *supra* note 18, at 3 & nn.4 & 5.

22. See *Pretrial Release: An Evaluation of Defendant Outcomes and Program Impact: Summary and Analysis Volume* (unpublished draft) (Washington D.C.: Lazar Institute 1981) *discussed in* D. GORDON, *supra* note 18, at 3.

23. TASK FORCE REPORT, *supra* note 14, at 75.

Thompson of Illinois, co-chair of the Task Force, says that this proposal is based on the panel's conclusion that " 'we have to lock up more violent offenders and we have to keep them locked up.' "24 The facts are (1) the proposal will not accomplish that aim; (2) even if it could, here again, violent crime will not be significantly reduced; and (3) the cost of a genuine commitment to an "incapacitation" policy would far exceed two billion dollars.

Diana Gordon, President of the National Council on Crime and Delinquency (NCCD), has carefully evaluated this proposal. Ms. Gordon has determined that the two billion dollars which the Task Force proposed, at best, would reduce the current overcrowding by paying for some 38,000 new cells.²⁵ Those cells would house less than two-thirds of the *increase* in the inmate population experienced in the past three years. In fact, with more than half the states operating some prisons that have been declared unconstitutional,²⁶ the two billion dollars might be better applied to upgrading programs, rather than to building new cells.

A recently published Department of Justice study reports that the state prison population increased by fifty-four percent from 1972 to 1978.²⁷ The study predicts that the demand for space will continue to outstrip capacity.²⁸ Since publication of the study, the increase in crowding has worsened. The United States prison population grew by more than 20,000 inmates during the first half of 1981—adding more prisoners than during all of 1980.²⁹ Some state prisons now house about twice their rated capacity.³⁰ One study has conservatively estimated that we need eight to ten billion dollars immediately for construction just to close the gap that exists now.³¹

Even if this kind of money were spent to build new prisons, and even if every prison were filled with violent offenders, the rate of violent crime would barely diminish. In California, for example, prison populations have increased substantially in recent years after the adoption of tougher sentencing policies—yet reported crime

24. D. GORDON, *supra* note 18, at 7 (quoting Governor Thompson's comments at the August 17 press conference releasing the Report).

25. *Id.*

26. TASK FORCE REPORT, *supra* note 14, at 77.

27. 1 NATIONAL INSTITUTE OF JUSTICE, *supra* note 6, at 119.

28. *Id.*

29. U.S. OFFICE OF MANAGEMENT AND BUDGET, STATISTICAL REPORTER 45 (Nov. 1981).

30. *Id.*

31. 1 NATIONAL INSTITUTE OF JUSTICE, *supra* note 6, at 119.

has continued to rise.³² Similarly, the incarceration rate in New York increased eighty-seven percent while crime rates hit new highs.³³

A 1977 study in Ohio predicted that only about four percent of violent crime could be prevented by imposing mandatory sentences of five years on all persons convicted of felonies.³⁴ The same study demonstrated why tougher sentencing policies cannot be relied on to reduce crime: not quite eight percent of the reported crimes of violence resulted in convictions and thus even reached the sentencing stage.³⁵

B. *The Long-Term Choices*

In sum, changing legal procedures or building more prisons simply cannot end this national nightmare. If we really wish to do something about the problem, we must put polemics aside and choose between two basic paths. Both are costly; both might jeopardize important social values; and neither can assure success. No simple solutions are available.

1. Swift and Certain Punishment

One alternative is to make the cost of violating the law so great—and the prospect of punishment so certain—that would-be offenders, whatever their circumstances, would not dare to commit crime. As I have suggested, however, the assurance of swift and certain punishment cannot be achieved merely by changing rules of procedure or by spending two billion dollars on prisons. When one remembers who the offenders are, one sees how difficult it will be to deter them.

Thus, if we are to deter these people effectively, arrest must be made nearly certain and punishment frighteningly severe. I discussed this prospect with my good friend, Maurice Cullinane, the former, greatly respected Chief of Police of the District of Columbia—who has never been accused of being “soft on crime.” Chief Cullinane noted that he presided over a force with far more policemen per capita than any other in the country. Moreover, he noted that this statistic does not include the several thousand park, capi-

32. See generally D. GORDON, *supra* note 18, at 8.

33. *Id.*

34. Van Dine, Dinitz & Conrad, *The Incapacitation of the Dangerous Offender: A Statistical Experiment*, 14 J. RESEARCH CRIME & DELINQ. 22, 31 (1977).

35. *Id.* at 27.

tol, and other federal police visible all over Washington. The Chief told me that to achieve a real certainty of arrest, he would have to amass an enormous concentration of patrolmen in one particular area. Chief Cullinane believes that most of his counterparts across the country would agree with him.

Only the presence of a policeman on virtually every block could create the possibility of keeping crime under control. Furthermore, as Chief Cullinane said, crime suppressed in one neighborhood necessarily would burgeon in other, unguarded parts of the city. Of course, society could employ curfews, limit peoples' movements, and require identification. It could, in short, impose a regime akin to martial law.

If we succeed in apprehending most offenders, we must then be sure to keep them off the street long enough to neutralize the threat to our daily lives. The kind of incapacitation that might be necessary would not be cheap. In New York, for example, the NCCD has estimated that a 264 percent increase in state imprisonment would be required to reduce serious crime by only about ten percent.³⁶ In New York alone this would cost about three billion dollars just to build the necessary cells and another one billion dollars a year to operate them.³⁷ Imagine what this kind of money could do to alleviate suffering in New York.

Aside from being extremely costly, a crime strategy based on increased incarceration is fundamentally inhumane. Despite the efforts of the corrections profession, our nation's prisons continue to be dangerous and squalid. The homicide rate *inside* prisons is more than seven times greater than it is on the outside.³⁸ A recent in-depth study of one state system found that prisoners reported acute physical illnesses, the desire to commit suicide, and symptoms of psychological distress at much higher rates than probationers or parolees—let alone the population at large.³⁹ The evidence consistently demonstrates that prison sentences are followed by higher rates of recidivism than are nonprison sentences.⁴⁰

36. Cohen, *The Incapacitative Effects of Imprisonment: A Critical Review of the Literature* (1978) (National Academy of Sciences study of incapacitation and deterrence), discussed in D. GORDON, *TOWARD REALISTIC REFORM: A COMMENTARY ON PROPOSALS FOR CHANGE IN NEW YORK CITY'S CRIMINAL JUSTICE SYSTEM 5* (NCCD 1981) [hereinafter cited as *TOWARD REALISTIC REFORM*].

37. *TOWARD REALISTIC REFORM*, *supra* note 36, at 5.

38. The studies mentioned in this and the next two sentences are summarized and discussed in A. NEWTON, *THE EFFECTS OF IMPRISONMENT 135* (NCCD 1980).

39. A. NEWTON, *supra* note 38, at 139.

40. *Id.* at 150 nn.54-56 (citing M. LEVIN, *IMPACT OF CRIMINAL COURT SENTENCING DECISIONS*).

I presently serve on the Commission for Accreditation for Corrections, which is a hopeful effort by prison professionals to clean their own house. After a year and a half on the Commission, I have concluded that genuine prison reform will continue to elude us as long as the prisons remain invisible. Corrections professionals labor mightily with little or no public support. As the report of the New Mexico Attorney General concluded after that state's bloody prison riot last year, "elected officials have turned their attention to the ugly problems of the penitentiary only when the institution has erupted in violence and destruction."⁴¹ At least until the public is prepared to support fundamental changes in prison conditions, it is grossly inhumane for the attack on crime to rely at all on massive incarceration.

In short, it may be possible to deter some street criminals and to permanently lock up the undeterred. This path, however, should be chosen, only after confronting the enormous financial and social costs that it would require. Nor would such a program be a mere temporary expedient. Even as we put one generation of offenders behind bars, another will emerge from the hopeless subculture of the ghettos, ready to follow the model that their fathers and brothers have set. As time progressed, there would be no choice but to turn the screw tighter, to spend more money, and to move closer to a police state.

2. Attacking the Root Causes of Street Crime

The other basic path for attacking crime would consist of an effort to determine the causes of crime and a commitment to eradicating them. As I suggested earlier,⁴² not everything is known about the sources of criminal behavior. This fact, however, should only encourage further investigation. Why do some disadvantaged people commit crimes while others do not? Where in the development of certain individuals do social controls come apart?

Seeking the answers to these questions will be costly and time-consuming. When some of the answers are discovered, the price of

SIONS AND STRUCTURAL GUIDELINES (1973); Bartell & Winfree, *Recidivist Impact of Differential Sentencing Practices for Burglary Offenders*, 15 CRIMINOLOGY 387 (1977); Hopkins, *Imprisonment and Recidivism: A Quasi-Experimental Study*, 13 J. RESEARCH CRIME & DELINQ. 13 (1976).

41. ATTORNEY GENERAL, STATE OF NEW MEXICO, REPORT OF THE ATTORNEY GENERAL ON THE FEBRUARY 2 AND 3, 1980 RIOT AT THE PENITENTIARY OF NEW MEXICO (Sept. 1980) (prologue).

42. See *supra* notes 5-13 and accompanying text.

changing the relevant conditions may prove more than society is willing to pay. If the roots of crime lie in the breakdown of the heretofore private preserves of family, church, or school, we may have to reconsider our traditional ideas about the role of the state. It is possible that crime can never be solved without countenancing substantial government intervention in private institutions.

Accepting the full implications of what we know about street crime might require us to provide every family with the means to create the kind of home all human beings need. It might require us to afford the job opportunities that pose for some the only meaningful alternatives to violence. It might assure all children a constructive education, a decent place to live, and proper pre and postnatal nutrition. It might seek to provide proper day care or foster care to those children who suffer from inadequate family environments. More fundamentally, it would seek to eradicate racism and prejudice.

Attacking the roots of crime, then, may pose very serious threats to our values of individual autonomy, dignity, and privacy. It also might jeopardize all our conventional social and economic beliefs. Indeed, it may require nothing short of a revolution in the way we govern ourselves.

V. CONCLUSION

There is no quick, easy way to end the nightmare of violent street crime. Ultimately, we must choose between two highly unappealing strategies. Both would require a commitment of resources unlike any previously undertaken, and both would pose serious dangers to our democratic values.

Nevertheless, we do not make our choice easier by ignoring it. Tough talk and promises of a fast cure merely hide the choice from view. Unless we face the harsh realities about crime and confront the difficult alternatives for ending it, crime will grow worse, and the pressure to adopt ever-harsher measures will increase. We will inexorably choose a strategy for fighting crime, although we will not realize it. In the process, we will also choose the kind of society we want.

