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CRIME AND DEVIANCE

Tibamanya Mwene Mushanga

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An Introduction to Criminology

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DEDICATION

My late sons and daughters

FOREWORD TO THE REVISED EDITION

Crime, in the majority of developing countries especially those of Africa below the Sahara, has become a real social problem. All types of crimes are on the increase.

A larger percentage of sociologists, criminologists and criminal lawyers believe that the rise in crime rates and criminal diversity are due to the rapid social change that is taking place in these countries.

The social change that is taking place is also responsible for rapid urbanization, alienation, marginalization, the breakdown of cultural values and social control.

Modernization coupled with the on-going process of globalization is the main factor responsible for crime increase.

Other factors that significantly contribute to crime increase include unemployment of the youth, wider spread of poverty, political instability and inexperienced, greedy and shameless dictators who are busy amassing wealth instead of planning for the improvement of their people. With the global war on terror, there has emerged more sophisticated methods aimed at oppressing suspects and an increase in the number of cases of torture worldwide. Whether it be in Kampala, Nairobi, Baghdad, London, Guantanamo Bay, Cuba, or Cairo, the reported cases of torture at the hands of government agents have increased exponentially. These types of crimes no longer fit into a predefined demography; it's purely a global challenge on the future of human rights. Indeed, the question of the haves and the have-nots does not arise since the most heinous crimes of political killings, corruption, and the abuse of human rights are committed by the haves. The problem of crime is part and parcel of Africa's major problem, and that is the problem of leadership.

Political and other leaders need to know that crime is contagious, and that in order to control it, they must set the example and any moment they are believed to be involved in any form of crime, they set a very bad example to the masses and their followers.

Crime increase is most noticeable in property crimes, violent crimes such as homicides, rape and child sacrifice.

Practically speaking, every African leader who has come to power since the departure of colonialists, swears to eradicate corruption, however after five, ten, twenty years down the road, nothing gets done to fight corruption and wallowing in the stolen.

New crimes that have appeared on the crime arena include drug trafficking and drug use, forgery of currency notes, and of other documents such as passports, driving and trading permits. Genocide or ethnic cleansing has also been on the rise in many parts of the world and Africa has not been exempted. The books of history will always remember chilling stories of brutal death from Rwanda and Darfur. Mass destruction of human beings is a new form of criminality as happened in Rwanda in 1994 in which it is alleged, about 800,000 people mostly Tutsi lost their lives, and in Darfur in South-Western Sudan; the killing of people in northern Uganda by the Lord's Resistance Army of General Joseph Kony and the endless political instability in the Democratic Republic of Congo which has claimed thousand of lives.

Human sacrifice is yet another crime, not quite new, that is on the increase. Reports of killings of people with albinism are frequent in Tanzania and Burundi, giving rise to a new form of business, that of trade in human body parts the use of which is claimed to bring love, give good life and bring wealth.

Instead of devising the ways and means of educating the people to abandon primitive beliefs, the Church and Mohammedan leaders in Uganda, in March 2009, declared 40 days as a period of fasting and prayer for the ending of human sacrifice in the country.

Overall thus, since this book was last published some twenty odd years ago, all forms of criminality have increased. The *modus operandi* of old or traditional crimes have evolved and have therefore called for more innovative preventative measures.

Human trafficking and slavery have been re-introduced in some parts of West Africa and Asia in the same way they were fostered centuries ago.

What is most perplexing and most disturbing is not that crime is on the increase, but that, for all intents and purposes, nothing seems to be happening in the way of controlling that increase.

Crime is a process which if not interrupted can grow out of proportion and retard development thereby perpetuating under development and backwardness. The very foundation of any democratic government is the guarantee of safety of life and property.

In the absence of such a premise, all efforts at development will effectively be negated.

The fight against crime does not stop at rhetoric, but calls for serious commitment, determination and transparency. It is simply not enough for governments to churn out statistics that tend to reflect the successes of the fight against criminality. The people need to be confident that their lives and property and those of their loved ones are protected. Complacency and condonation of criminality must be vigorously fought in order to create a culture of accountability and to restore the sanctity of human life and prosperity.

Finally, I want to express my gratitude to three young men: first my son, Ndyabarema Mushanga, who has revised some parts of the book; secondly, Mr. Peter Birungi, who has time and again undertaken to facilitate my travelling to and from Kampala for treatment and in preparation of this book; Mr. Ambrose Hoona Kab, for the interest and effort he put in the publication of this book and lastly my granddaughter, Sheila Kyomugasho, who has read and re-read various parts of this book in preparation for its publication.

PREFACE

The main objective of the first edition was to make available a simplified, readily available introductory reader not only for the students of Criminology, but also for the general reader who may be interested in the problems of crime, crime control and prevention.

In nearly all nations of the world, crime is reported to be on the increase, and crime of violence in relation to politics and property such as insurrection and armed robbery are becoming a serious social problem, especially in poor countries. In Africa, and more so in East and Central Africa, crime ranks high next to poverty as an enemy of the people. Crimes of violence, homicide and acts of collective violence are becoming increasingly common. Corruption runs high in nearly all public organizations. The rule of law has been replaced by the rule of the powerful in nearly all states in Africa. Human Rights are being flouted as tortures continue to be practised in many countries. The result of all this is that life in Africa is lived in misery and not enjoyed; for crime and poverty have joined forces to make the life of the African miserable, nasty and short.

It is, however, regrettable to note that in spite of the fact that crime is increasing at an alarming rate, very little is being done to curb it; in some countries, leaders behave as if they are not aware of its existence. The reality is that crime rate is rising, and it is going to continue in this upward trend unless steps are taken to prevent it from engulfing entire communities. Crime is like cancer, when it is still localized, it is difficult to detect, yet if detected, it can easily be dealt with, but once it has spread far and wide, it becomes easier to see but impossible to eradicate.

It is now ten years since I publicly called for the establishment of an institute of criminology in East Africa. This call had remained unheeded and yet crime is eating into the very foundation of our societies. I have been researching into various criminal activities and their impact on society. We cannot continue to delude ourselves that crime does not constitute a major social problem. The problem is already immense and will require the combined effort of all concerned, the universities, the institutes of social and biological

research, the law enforcement agencies, the non-governmental organizations and indeed all sections of public sectors affected directly or indirectly must come together to declare war on crime and poverty. Failure to take remedial measures will encourage crime to manifest itself through violence, economic sabotage and political instability. Cancer and crime are both killers. In fact crime claims more lives than cancer, hence the need to take it seriously.

I wish to acknowledge the assistance rendered to me by many people in and outside Uganda, among them the following: Professor Johannes B. Clinard, who continually kept me supplied with the relevant books and journals; Professor Thorsten Sellin, who made useful suggestions on capital punishment and directed me to recent literature on deterrence; my late friend, Dr. Joab Wasikhongo, had discussed most of the first edition before his untimely death in U.S.A. My colleague and companion in exile thereafter, Professor. T.B. Kabwegyere, has always been a source of encouragement. He made comments on my first edition of this book.

I have greatly appreciated the help I have received from Mr. Greg Baine, my son-in-law, who kindly had his secretaries type the manuscript and I am grateful to those secretaries especially Miss Nightingale Busaasi and Mr. Lucien Katsigazi, who acted as “works supervisor.”

“The wife of a friend” who rescued some of my books, Mrs. Turwomwe, deserves my thanks. Without them I would not have attempted the revision.

And lastly, I wish to pay special thanks to my wife, Maama Muko, who together with our children, kept my spirit up while we were in exile, and took great care of me during my four years of involuntary inactivity at home in Kagango. She understood “our” predicament.

But I must not forget my publishers, The Kenya Literature Bureau, who first suggested the revision of this book.

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CHAPTER I

THE NATURE OF CRIME

CRIMINOLOGY

Criminology may simply be defined as the study of delinquency and crime as social phenomena. In its current use, the term refers to the study of the process of law-making, of breaking the law and the societal response to delinquent and criminal acts. This response includes within its scope legal and non-legal or extra legal producers of handling delinquents and criminal offenders as well as the methods devised for the prevention and control of delinquency and crime.

The word “criminology” was coined towards the end of the nineteenth century by a French anthropologist, P. Tobinard. But before Tobinard, Cesare Beccaria (1738-1794) was already writing on penology in Italy; and Jeremy Bentham (1784-1832) in England. Several scholars in Europe began to show keen interest in the new discipline. For example, in 1829, Andre Guerry’s analysis of the geographical distribution of crime in France appeared and six years later a Belgian mathematician by the name of Adolphe Quetelet published a monograph on the social distribution of criminal acts in France, Belgium, Luxembourg and Holland. The title of this monograph was *Sur L’homme et le developement des ses Faculte’s essai de physique Sociale*. This was a pioneer work at a comparative study of crime cross-culturally. All these early studies of criminality suggested that crime was generally a social phenomenon and as such its explanation, treatment and control were to be sought in the process of social conditions.

In 1876 an Italian of Jewish descent, Cesare Lombroso (1835-1909), led what came to be known as the “Italian School” when he published a pamphlet which later grew into three volumes: *L’uomo delinquente* in which he restated the theory that criminals have unique physical characteristics. Together with his pupil, Enrico Ferri (1858-1928), Lombroso was the first to employ anthropological methods in the study of criminals. A psychiatrist by training, he helped popularize

the psychophysical theory which attempted to show that there is a connection between certain types of body structure and some temperamental characteristics. Lombroso described the criminal as atavistic or degenerate type. This approach to the explanation of the criminal has almost completely been discredited.

Today, criminology stresses a multidisciplinary approach in its research and teaching, especially sociology, psychiatry and law.

Very eminent criminologists especially in Europe, have had their training in medicine, but delinquency and crime being social phenomena need not be a monopoly of any one branch of higher education for most disciplines have a positive contribution to make towards a clearer understanding of the issue.

Criminology has been classified into “Schools of Thought.” A “School of criminology” is a system of thought. This system consists of a theory of crime and delinquency causation integrated with policies of control and prevention implied in the theory. The Schools have been outlined as follows:

- (i) *The Classical or Neoclassical School*: Attempts to explain delinquent and criminal behaviour in terms of *egoistic hedonism*, the psychology of which is that man is a pleasure-loving animal, that whatever man does is related to the maximizing of pleasure and that in pursuit of pleasure, man has full control of his behaviour and that he calculates the amount of pleasure in relation to displeasure or pain; that when the amount of pleasure to be derived is perceived to be greater than the amount of pain, the person decides to proceed with his programme of action.
- (ii) *The Cartographic School*: This is also known as the Geographic School, which used the same methods as present-day environmentalists, stressing the effects of ecology, culture and the composition of the population. This school made use of maps and statistics collected from the different areas; for example, Quetelet used data compiled from many European countries and maps in his monograph.
- (iii) *The Socialist School*: This has its origin in the writings of Karl Marx and Friederic Engels. It singles out economic factors in the causation of crime and delinquency. For the

followers of this school, income disparity among citizens and the ownership of means of production leading to a situation where one class of society enjoys wealth while another (usually the larger) lives in poverty is the cause of delinquency and crime. In other words the exploitation of man by man is the cause. It is in this view that crime (especially property crime) is perceived as a method of distribution of wealth especially in those societies where income differentials among citizens are astronomical.

- (iv) *The Lombrosian School*: This is a cluster of sub-schools. It includes the Italian School, the mental testers and the psychiatrists. In his *L'uomo delinquente*, Lombroso's theory consisted of the following propositions:
- (a) Criminals are, by birth, a distinct type.
 - (b) This type can be recognised by stigmata or anomalies, such as asymmetrical cranium, long lower jaw, flattened nose, scanty beard and low sensitivity to pain. The criminal has at least five of these traits and those with three do not fit well.
 - (c) These physical characteristics do not in themselves cause crime, rather, they identify the personality that is prone to criminality and this personality is either a reversion to the savage type—an atavism—or else a product of degeneration.
 - (d) Because of their personal natures, such persons cannot refrain from committing delinquent and criminal acts unless the circumstances of life are unusually favourable.
 - (e) Several types of delinquents and criminals such as thieves, murderers and sexual offenders are differentiated from each other by physical stigmata.
- (v) *The Sociological and Social Psychological School*. This stresses the impact of groups and social processes on individual behaviour and it has largely been developed in the United States of America. The central proposition of the school is that criminal behaviour is a result of the same processes that produce other social behaviour. This theory negates and rejects the theories of atavism, degeneration and feeble-mindedness. Early European pioneers of this school of thought include Von Liszt (Germany), Prins

(Belgium), Van Hamel (Holland), Fointsky (Russia) and Tarde (France). Tarde, a social psychologist, rejected the biological explanation of criminality insisting that “imitation” was the root of crime. For Tarde a person behaves according to the customs of the society of which he is a member. In this respect, Tarde came much closer to Sutherland and Gressey in their theory of differential association and also to Wolfgang and Ferracuti in their explanation of sub-culture of violence. Criminology in Europe has further been studied by such scholars as Hans Von Hentig, Sir Leon Radzinowicz, Johannes Andenaes, Nils Christie, Karl Christiansen, Herman Mannheim, Franco Ferracuti and F.H. McClintock. In America the study of delinquency and crime has, over the last half of a century attracted a lot more giants. These include, Sutherland, Gressey, Marshall Clinard, Ruth Caven, Richard Cloward, Lloyd Ohlin, Albert Cohen, Daniel Glasser, Sheldan and Eleanor Glueck, Thorsten Sellin, George Vold, Richard Quinney and Harry Barnes.¹

In Africa, the early researches in crime and delinquency were done by outsiders such as William Clifford, working in Zambia, Guy Houchon in Zaire, Ralph Tanner in Uganda and a few others. More recently interest in the subject is beginning to increase with researches being done by Talani Asuni, A. Adeyemi, Femi Odekunle and O. Oloruntimehin in Nigeria; Festo Muga in Kenya, Khalifa in Egypt, Eric Kibuka in Uganda and Dr. Ete in Ivory Coast. But generally, the Africans intelligentsia has not quite awakened to the menace caused to society by delinquency and crime.

CRIME

“What is Crime?” This is a very common question raised as soon as one begins to talk about the subject. A criminal act is any act that contravenes the Criminal Law. The Criminal Law or the Penal Code, categorically states what citizens may not do. It is, therefore, a crime to do that which the Criminal Law prohibits or to fail to do what a Criminal Law requires one to do. Every criminal act

1 Edwin H. Sutherland and Donald R. Cressey, *Criminology* ninth edition, J.B. Lippincott Company, 1974, pp. 49-56.

is defined by the Criminal Law. This means that no matter what people think about what an individual has done and however much the general public may disapprove of the behaviour of the individual, that behaviour is not a crime unless it is specifically prohibited by the Criminal Law. This is a body of rules promulgated by the state in its effort to harmonise relations between human beings. It is an embodiment of the wishes of the majority of citizens formulated by their political leaders and it must be specific, uniform and must state the Penal Sanction for the contravention of such laws. When the Criminal Law is enforced without fear or favour, we speak of the Rule of Law.

For the enforcement of the Criminal Law, the state establishes agencies whose sole responsibility is to see to it that law and order are observed. These agencies include the police and the courts. The police and the courts in a properly functioning social system must apply the Criminal Law uniformly to all persons, irrespective of their station in life.

The state also makes a clear distinction between a crime and what is commonly called an “offence”. An offence is any contravention of what is legally prohibited. For example, driving a motor vehicle without a valid driving permit is an offence but not a crime. Also, a crime must not be confused with a tort. While a crime as we noted above, is an offence against the state, a tort is a violation of civil law, an offence against an individual. But we must also note that a certain offence can be committed against the individual as well as against the state and is therefore a tort or crime or even both depending on the way the act is defined and handled by law enforcement agents. A person who has caused harm to another may be fined or jailed for committing the crime of assault.

We can, therefore, list what may be considered as the major element of crime. These include:

- (a) The act committed or omitted must be harmful either to the state, to an individual or to both. This means that mere thought or planning to cause the harm without carrying out the plan is not a crime.
- (b) The act committed or omitted must be specifically prohibited by the Criminal Law. The law must make

the prohibition in advance and must not be applied in a retroactive manner. Cases of *ex post facto* enactments are pure violation of the principles of the Rule of Law.

- (c) There must be a reckless act or conduct that is intended to bring about the harm.
- (d) The intention just noted above must be criminal or *mens rea* must be present. *mens rea* used in a broad sense means evil intent or knowledge of the wrongfulness of behaviour. The concept of *mens rea* very often is used in the Latin maxim *actus non facit reum, nisi mens sit rea*; that is, an act does not make a person guilty of an offence unless his mind is guilty. Other concepts used instead of *mens rea* are: malice aforethought, evil intent, recklessness, guilty conscience and guilty knowledge. *mens rea* is not motive. It has to do with deliberate action to reach a desired object while motive has to do with the reasons for the objective.
- (e) There must be a fusion of *mens rea* and conduct, that is, the intention to do something wrong knowingly and the act of doing the wrong must occur concurrently.
- (f) There must be a causal relationship between the legally prohibited harm and the voluntary misconduct.
- (g) Finally, there must be a legally defined punishment. The enactment of a Criminal law must also state the penalty for the contravention of such a Law. Crimes change with laws. Roscoe Pound in reply to a question, "What is Law?" said that a final answer is impossible because law is a living, changing thing, which may at one time be based on sovereign will and at another on juristic science, which may at one time be very specific in its proscriptions and at another time more general.² This being the case with the nature of law, it follows that what is a crime now need not be so tomorrow. This simply means that the more laws a country makes, the longer the list of crimes grows. A national parliament can legalise what has already been illegal or illegalize what was previously legal. This view was put more clearly by a British Parliamentarian who declared that "Parliament can do anything except to make a woman a man."

2 Roscoe Pound, "Interpretation of legal History," Sutherland and Cressey, idem.

Criminal definitions too vary from one country to another; what is a crime in one state need not to be a crime in another. Game machines may be proscribed in one country but be fully licensed in another. Bigamy is a crime in some countries but not in others. In America, people who are strongly pro the establishments hoist the national flag in front of their homes but such an act would constitute a treasonable offence in some of our African states.

Most nations in the world are reporting crime increases; and this is especially so in the poorer nations, the so-called “developing” countries. In a study of crime in Uganda, Clinard and Abbott noted “...as the less developed nations attempt in one or two generations, to bring about transformations that have culminated from several centuries of development for most of the industrialised nations, severe social repercussions are often evident.³ What this means is that abrupt social change with its emphasis on development without adequate provision for the non-delinquent social value may lead to crime increase. In Africa, this has led to a disproportionately high rise in crime rates, especially property crime. A Uganda government prison report in 1941 attributed the increase in crime rate “to more knowledge of and facilities for crime and a greater desire for civilised belongings.”⁴ While discussing the problem of crime in Uganda and especially, *kondoism*, (armed robbery) with rural illiterate Baganda Mohammedan peasants living in Shema, Ankole, one of them remarked in Luganda that the problem is due to *Obulabufu butali buigirize*, meaning, smartness without education. The process of urbanisation, industrialisation which inevitably leads to the disruption of traditional social values and social control are to be considered as some of the contributing factors in crime increase.

Equally important is the introduction of the monetary economy. The widespread of inadequate and highly irrelevant education which leads to alienation of the masses coupled with widespread unemployment and the free enterprise economic policies giving rise to a sizeable middle class capable of amassing wealth which they did not help to create, have all combined to stimulate criminality

3 Marshall B. Clinard and Daniel J. Abbott, *Crime in Developing Countries: A Comparative Perspective*, John Wiley & Sons, New York 1973, p.5.

4 Annual Report of Uganda Prisons, 1941.

in all its diverse forms. As nations strive to get rich as quickly as possible, so do individuals; as the nations are impatient so are individuals. The nations borrow money from richer ones, they levy heavy taxes, impose heavier fines on offenders, employ prison labour in order to develop the economy of these societies. Individuals, too, make experiments with all kinds of schemes in order to advance themselves. One of these is politics, another is crime.

Politics in Africa has made it possible for a would-be pauper to find himself appointed to a position that he was never prepared for or even dreamed of and this can explain the perplexing phenomenon of African political intolerance and corruption. The pressure that international economic systems like the International Monetary Fund (the IMF), bring is the same as the one felt by the individual being pressurised by the national economic system. Unfortunately the individual cannot borrow large sums of money time and again; he cannot impose taxes on anyone arbitrarily. What he can do is to make the best of his mental and physical abilities.

Some take to crop or animal husbandry, others work for the government, the churches, or the multinational companies. Those who work in such offices find that their salaries or wages are too small and financial commitments too many and have to devise means of making supplementary incomes, hence we hear of corruption, nepotism and brotherisation, practices that are quite widespread in government and parastatal bureaucracies.

A respondent told a researcher in Kampala that “stealing is caused by a feeling that one should be as rich as others without any job to get money from” while another said that the people steal money in order to make the rich poor also.⁵

CRIME STATISTICS

Statistics about crime and especially those provided by the police are very unreliable and most misleading. It is almost impossible to

5 Clinard and Abbott, op. cit. p. 115.

compare two countries using these figures. For example, in Uganda, all acts of killing of man by man are entered in Crime Report Book (CRB) as "Murder." This makes it impossible to differentiate murder in the legal sense and manslaughter. In Kenya, the police annual report puts murders and attempted murders together so that it becomes impossible to know how many people got killed and how many got injured in attempted murder. Rape and attempted rape are listed together, again making it impossible to know how many rape cases occurred and how many attempts were made. When a house is set on fire and two people get burned to death, the police will enter this in their books as murder or even arson! There is so much confusion that little use can be made of these figures! The problem stems from the fact that the government policy makers and policy executives have not fully realized the value of statistical data in policy formulation. Unless the data are genuine, they can not be of much use as guides to show the rate of crime increase or decrease in society. Police departments exert no effort whatsoever to make their data meaningful. Prison, like police, annual reports are equally of very limited value; it is doubtful if they are ever put to serious use. The reports first deal with buildings, staff movements, official visits, football and boxing matches between this and that station or department, promotions, retirements and only a small part is left to crime and criminals. On crime it is common for police reports to make tabulations which add more confusion; for example, the report may show:

<i>Offence</i>	<i>1981</i>	<i>1982</i>	<i>1983</i>
Theft	2115	2350	2785
Assault	186	215	380
Murder and attempted	96	105	124

From this table, many police departments will say that theft in 1983 increased by 435 over the 1982 figure; that assault increased by 165 over the 1982 number. The report shows neither the rate of population increase within the area, by what factors; nor the increase in the police force at any given police station which may

result in an increase of reported crime. The availability of the means of transport to the police will mean that the police will respond to distant calls and effect arrests. The public-police relationship is especially important in that people will refrain from reporting acts of crime if they do not have confidence in the police or in the political system as a whole. When the public has no confidence and trust in the police or in the courts and when the political system is viewed as illegitimate and corrupt the whole legal system may be adversely affected.

Another factor that negatively affects police statistics is the educational levels of these officials. The police, like prison guards, have generally poor educational attainments and poor training programmes designed by colonialists more than three generations ago. The average policeman in uniform knows not much more than the average citizen. He is only more sophisticated in the use of violence at the slightest irritation. Police statistics can be affected by the attitude of the police themselves.

If the police are disgruntled, underpaid, over-worked or do not individually support the ruling clique, they may arrest citizens unnecessarily just to cause more unrest, or even refuse to arrest since nobody cares anyway.

Crimes differ in their reportability: that is, some are more easily reported than others. For example, arson is more likely to be reported than attempted rape. Homicide, under normal conditions, is an offence that most people will not wish to conceal, but rape is not likely to be reported because of the shame or stigma that surrounds it; and because women are, in the majority of cases, raped by men who have had sex with them previously, or know them very well. But even with homicide, it is suspected a lot more cases go unreported. Some authorities on criminal statistics have suggested that what is normally reported is merely the tip of a huge iceberg. For example, cases of poisoning, in which the victim ingests poisoned food from which severe and bloody vomiting and diarrhoea ensue, the victim dying in a day or two. Pregnant women who abort after having been

kicked by their drunken husbands and all well-planned murders remain unknown as they go as natural deaths. Studies in other parts of the world have shown that the bulk of crime, even in the best well organised police districts, remains hidden, that is unreported and, therefore, unknown to the law enforcement agencies.

CHAPTER II

TYPES OF CRIME

Crime, like any other social phenomena, can be categorised into types. The best account of this so far is by Clinard and Quinney. It is entitled *Criminal Behaviour Systems: A Typology*, and the second edition is particularly useful. Two categories of offences can be recognised: the first being all those criminal acts committed by an individual or a group of individuals against another person or group of persons. Included under this broad heading are such acts as assault, rape, robbery with menace, defamation and the like.

The second category includes offences committed against the state. This comprises tax evasion, possession of illegal firearms, conspiracy to change the government illegally, destruction of public utilities and all harmful acts committed against private citizens and residents who are under the direct protection of the state. There is, in addition to the two broad categories, yet another type that is known as crime without victims. These crimes cause harm neither to the individual nor to the state. They include all violations of legal prohibitions that are intended to uphold the moral values of the society, such as those prohibiting the cohabitation between a man and his daughter or mother or sister or with another man. These acts are considered bad in themselves even if when done, no individual is made to suffer. The same applies to the use of marijuana, L.S.D. and other narcotics. There are also numerous acts that are socially unacceptable that are, however, neither crimes nor offences under any statute. These include the bulk of what are called deviant behaviour.

Clinard has noted that deviance may take many forms, far beyond the conventional ones that most people customarily allude to; for example, burglary, robbery, mental disorder and prostitution. An almost endless variety of behaviours and characteristics is considered to be deviant by some people at least and encounter pronounced stigma in certain groups, depending upon the prevailing conditions and situations. They include, for example, physical disabilities and

impairments such as crippling, blindness, mental retardation, obesity and stuttering, violation of rules of etiquette, lying, cheating, nudism, window peeping, exhibitionism, smoking marijuana, illegitimacy, non-support of minor children, violation of safety regulations, hijacking, health care, quackery: and violations of certain amateur and professional sports rules.

Clinard also includes the following as being perceived as deviants: reckless drivers, pacifists, racists, hippies, radicals, squares and conservatives, the very rich and the very poor, old people, drinkers and non-drinkers and motorcycle gangs.¹ This list of behaviour that can be labelled deviant clearly shows that deviance is not an inherent trait of certain forms of behaviour, but rather a property conferred upon these behaviour forms by society which directly or indirectly witnesses these behaviours and decides whether to define them as deviance or not.

Sociologically, all socially disapproved behaviours may be arranged on a continuum ranging from behaviours that are merely not approved but to which society strongly disapproves such as rape, infanticide, robbery and corruption. The stronger the disapproval, the heavier the penalty for the violation. The definition of deviance poses special difficulties because of different social strata that compose the society. For example, behaviour that may be defined as deviant or even delinquent within the context of the family may be quite acceptable by the larger community, and conversely, behaviour that may attract strong disapproval at the community level may be unnoticed by the member of the domestic group.² One explanation is that a behaviour may be perceived as deviant from the onset, but as time goes on, it may gradually acquire some acceptance; for example, smoking in public by women. In some societies this habit has stopped to be regarded as deviant behaviour. Finally, we may have to define deviance as behaviour which violates the generally accepted norms of behaviour within a given community. This definition clearly shows that there can not be a universal definition

1 Marshall B. Clinard, *Sociology of Deviant Behaviour*, Fourth edition (Holt, Rinehart and Winston, Inc.) p. 18.

2 Karl T. Erikson, "On the Sociology of Deviance" in Ronald A. Farrell and Victoria Lynn Swiggett (eds.) *Social Deviance*. (J. B. Lippincott Company, 1978) p.33.

of deviance; for what constitutes deviance in one country or part of a country is not necessarily defined as deviance in another. For example, homosexuality is not only deviant but a crime in many countries while it is socially accepted in some countries. Illegitimacy (whatever that means) is considered deviance in some puritanical societies while it provokes no reaction in others.

Deviant behaviour must be differentiated from delinquent behaviour. It must be noted from the start that virtually any form of youthful behaviour which the public regards as deviant may be defined as “delinquent.” Generally speaking, delinquent behaviour is youthful behaviour that violates legal prohibitions; behaviour for which the youthful offender may be brought before the law enforcement agency, such as a juvenile court, for determination. A similar act committed by an adult does not have to be brought before a court. West and Farrington have made a catalogue of delinquent acts or characteristics that are commonly engaged in by youth; that generally, delinquents are less conforming and less socially restrained than non-delinquents and that this difference shows up in all aspects of lives; that they are more immoderate in their smoking, drinking, gambling and sexual habits. They more often become violent after drinking. They drive more recklessly and are more likely to sustain injuries. They are more often spendthrifts. They show little interest in reading or in further education. When they are employed, their work records are less stable; they tend to earn more, but are in jobs with poor prospects for steady employment. They mix more freely with other groups of the kind that gets into trouble. They spend more of their leisure time away from home, and indulge more often in seemingly aimless hanging about, or loitering. They more often take prohibited drugs. They tend to be more aggressive, and are very often in conflict with or alienated from their parents and home. They easily adopt new and exotic dress-style and ornaments and hair style.³ These are what are commonly called the “Abayaye” in Luganda or “Emihiri” in Runyankole—Rukiga. The boys that fit the above description are commonly seen in major cities and towns in East Africa. In Nairobi they are known as “Parking Boys”,

3 D. J. West and D. P. Farrington, *The Delinquent Way of Life*, (Heinemann Library of Criminology and Penal Reform, 1977) p. 78.

who spend their time on the streets pointing out empty parking lots to motorists. Very often they are found drunk from inhaling gasoline taken from parked vehicles. These, when they are mature, form the core of criminal syndicates. Over the decades scholars have laboured to explain the ‘cause’ of delinquency and deviance; and numerous theories have been advanced to this end. Some of the early thinkers began to seek explanation of delinquent behaviour in personality traits of the individual delinquents; others sought it in group dynamics; but what they overlooked is a simple fact that all that we call delinquency or deviance and even crime, are part and parcel of human behaviour.

Frank Tannenbaum has noted that there are two opposed definitions of the situation. The definition of the situation by the young delinquent may be in the form of play, adventure and excitement, interest, mischief, fun; he may go out breaking windows, annoying people, running around porches, climbing over roofs, stealing from pushcarts, playing truant but all are activities defined as play, adventure and excitement. But to the adult members of the community these activities are defined as nuisance, evil, delinquency and demands will be that something be done to control the delinquents.⁴ Clearly, none of these youthful behaviour is indicative of mental or any other abnormality in the personality structure of the individual youths.

A mother may be heard to remark to her friend: “I do not know what to do. Joni is running around with those boys and comes home only to eat and go back to his gang.” What the mother is saying is that sooner or later Joni is going to run into trouble because of his association with “those boys.”

In simple language, Joni’s mother is saying that Joni is learning bad behaviour from those boys, that manners are contagious. All the theories that focus on individual personality traits and mental abnormalities must be restricted to a minority of cases; the bulk of cases being results of individual interaction in delinquent subcultures;

4 Frank Tannenbaum, “Definition and Dramatization of Evil,” in Ronald A. Farrell, Victoria Lynn Swiggett. *Op. cit.*, p. 58.

and having nothing so much to do with inherited tendencies towards crime and delinquency.

VIOLENT CRIME AGAINST THE PERSON

Crimes that involve the use or threat of use of violence include acts in which injury is inflicted on the victim. These crimes include criminal homicide, aggravated assault, forcible rape, kidnapping, which involves the use of physical force, child molesting, which involves the use or threat to use force, armed robbery by the use of dangerous weapons such as guns, spears, rocks and pangas and sticks. What makes this kind of crime a type of itself is the element of 'force' and the threat of use of force. We must point out, however, that certain types of criminal homicide do not require the use of force, for example, cases in which life is lost through the use of poisoning. Although no force is used to bring about the death of the victim, such cases are included because they involve the loss of human life.

Nearly all recent studies of crime or violence show that this type of crime is experiencing tremendous increase especially in large cities. These studies show that:

- (a) Criminal homicide, aggravated assault and armed robbery increase with the size of the city. The bigger the city the higher the rate of increase.
- (b) The crimes of violence in these cities and towns are committed by youths in the 15-17 years age group. This clearly shows that the larger the percentage of those below 25 in the city, the higher the rate of violent crime.
- (c) A significant proportion of the recent increase in major crimes is due to migration of the population from rural to urban areas, especially for those between the age of 15 and 24. The increase and the problem posed by violent crime is thus due to demographic change rather than to pathogenic forces.
- (d) Violent urban crime is overwhelmingly committed by males against other males. The reported rate of male arrests for homicide is five times that of female offenders and twenty times more for robbery.

- (e) The bulk of the crimes of violence are perpetrated by poor, uneducated persons with little or no employment skills.
- (f) A young male is particularly liable to become delinquent if he lives in wretched housing near the centre of a large city or town, without a father in the house, with low income, unstable employment, little or no education and in a substructure that has a grievance against society and the police.
- (g) The majority of violent crimes such as homicide, assault and so on occur between relatives, friends and acquaintances mostly in the home.⁵ Forcible rape may be committed by a stranger and robbery is also commonly committed by strangers. In U.S.A. it is reported to occur more frequently outside the house, but recent experience in Uganda is that the bulk of the *kondo* cases occur at home.
- (h) Alcohol and the use of drugs have been noted to play a significant role in the perpetuation of acts of violence. Alcohol and drugs help to weaken inhibiting controls, thereby making potential violence possible. Alcohol is also responsible for a larger percentage of fatal motor accidents in different parts of the world.
- (i) In cases of homicide, assault, and rape, the victim and the offender are very often found to have been drinking together and Wolfgang has shown that in some cases, the victim helps to bring about his or her own victimization.
- (j) As to the motive for homicide or assault, studies show that very little distinction can be made, between homicide and assault; the assaulter cannot be said to have set out to inflict a lesser harm than the homicide offender. The motives in both cases are similar and usually trivial involving disputes, quarrels within the family, jealousy and arguments of a minor nature.

5 Daniel J. Mulvihill and Melvin M. Tumin with Lynn A. Curtis, *Crime of Violence*, Vol 12. A staff report to the National Commission of the Causes and Prevention of Violence (in U.S.A) 1969. P. xxviii - xxxi, also Tibamanya mwene Mushanga, *Criminal Homicide in Uganda*, East African Literature Bureau, 1974, and Tibamanya mwene Mushanga "Wife Victimization in East and Central Africa," in Richard J. Gelles and Claire Pedrick Comell, (eds.) *International Perspectives on Family Violence*, (Lexington Books, 1982), pp 139-145.

- (k) Studies done in U.S.A. have conclusively demonstrated that the majority of the acts of violence are committed by repeaters not one-time offenders. These studies have also shown that a violent offender when released from prison if he recidivates, will commit serious crime two to three years after release, and that there is a tendency for violent offenders who have served longer prison sentences to recidivate more often than those who have served shorter sentences.⁶

Finally, the cost of those acts of violence is the most difficult to calculate. In terms of financial cost, the expenditure on the control of crimes of violence is a great drain on poor nations. In terms of suffering and also loss of life, we do not yet know how to measure these two items. In addition to the usual acts of “normal” violence, there is a new wave of violence of a political nature. Just because individuals or groups of individuals do not agree on a common programme of action for national independence, they opt to use violence in order to achieve their perceived objectives. Many nations in Africa are spending thousands of millions of badly needed dollars to suppress popular or reactionary uprisings and dissidents and wherever the political leaders have failed or have found it impossible to provide security and liberty, progress and stability, they have resorted to the use of violence. This gives rise to the emergence of new but undesirable social groups and practices, such as political demagoguery and vigilante or self-help action groups. Retribution and vengeance, which make rational reasoning and compromise between contending and conflicting groups impossible, lead to the escalation of violence and help not only to undermine but to weaken the cohesion of society and ultimately lead to the instability and final demise of the government.

Crimes of violence vary in their reportability; criminal homicide has more reportability or what is sometimes called visibility than assault and rape. It is believed to be due to the horror it provokes not only on the bystanders but even in the offender himself. In

6. Marvin E. Wolfgang, *Patterns in Criminal Homicide*, (John Wiley & Sons, Inc. New York, 1966.) See also Marvin E. Wolfgang, “Victim - Precipitated Criminal Homicide” Terrence Morris and Louis Blom-Copper, “Victim’s Contribution” in Marvin E. Wolfgang (ed.) *Studies in Homicide*, Harper & Row, 1967.

many cases, it is the offender who reports the crime to the chief or the police. This hardly ever happens in other types of crimes such as rape, robbery or shoplifting. It is, perhaps in this regard, that criminal homicide offenders never regard themselves as criminals. Homicide, as noted earlier, unlike theft, corruption and robbery is, in 99% of cases, a “once-in-lifetime” offence in which only a tiny percentage of offenders become repeaters. In most cases when a homicide offender kills more than one person, he does so immediately or soon after the first offence. On the other hand, assault can be repeated, very often several times in a single night, week, month or year; for example, wife beating, and it is for this reason that we find that assault stands out as the most frequently committed crime against the person.

Assaults range from minor abrasions to those cases in which serious injuries are inflicted on the victim. The cases of assault are in fact more numerous than all cases of murder, manslaughter and rape combined in most countries. In Uganda, in 1968 while the criminal homicide rate was 17.8 per 100,000, the rate for aggravated assault was 130.3 per 100,000. The city of Kampala had the highest rate of aggravated assault with 480.8 per 100,000 while the district of Ankole had the lowest rate of 38.7 per 100,000.

It must be noted here that the higher the rate of aggravated assault, the higher the incidence of criminal homicide. The following tables show this relationship:

HIGH RATE AREAS

<i>Area</i>	<i>Population</i>	<i>Homicide cases</i>	<i>Rate per 100,000</i>	<i>Assault Cases</i>	<i>Rate per 100,000</i>
Uganda	9,526,237	1,894	17.8	18,438	130.3
Karamoja	298,089	101	43.9	607	186.4
Bugishu & Sebei	486,241	180	36.2	1,632	197.8
Kampala City	331,889	143	33.3	2,326	480.8
Mengo & Mubende	1,694,940	547	25.8	3,253	138.7

LOW RATE AREAS

<i>Area</i>	<i>Population</i>	<i>Homicide Cases</i>	<i>Rate per 100,000</i>	<i>Assault cases</i>	<i>Rate per 100,000</i>
Ankole	855,155	90	8.5	527	38.7
West Nile & Madi	572,078	57	8.4	628	59.6
Bukedi	518,923	24	6.3	532	91.7
Kigezi	642,300	49	5.3	621	53.5 ⁷

Criminal homicide, assault, rape and armed robbery are crimes that very frequently involve one offender and one victim, one offender and several victims or several offenders with one victim or several persons being victimized by several offenders.⁷

With the exception of robbery, crimes of violence cannot easily be turned into professions as forgery; corruption and thievery usually are committed by professionals. In fact it is possible to assume that in large cities, there may be as many professional thieves as are professional policemen. There are of course, cases in which a single person has, over a number of years, committed several criminal homicides, but this cannot be called a profession as he cannot make a living out of murdering persons. As noted earlier, crimes of violence are commonly committed by people from the lower social classes. These crimes occasionally involve people in upper social strata as either offenders or victims. The resort to the use of violence is determined in terms of the cultural context; that is, certain cultures define certain stress situations as requiring the use of force while others do not.⁸ Studies in both Puerto Rico and Argentina found that an important element in violence is the desire of the average male to prove his “machismo” or manliness. It is also reported that men of Latin American background are often expected to resort to violence in cases of personal vilification or in marital quarrels.⁹ The desire to prove that one is a man and not a chicken is a driving force in the commission of these acts of violence. To call into question the manhood of a person may also lead to rape; in fact a woman may

7 Tibamanya mwene Mushanga, *Criminal Homicide in Uganda*, op. cit. pp. 10 - 13.

8 Marvin E. Wolfgang and Franco Ferracuti, *The Subculture of Violence*; (London: Tacistock, 1967)

provoke her raping if she utters such remarks that may be interpreted as indicating doubt about the manliness of the male especially in situations in which alcohol is present in both offender and victim.

Kondoism, a type of robbery with menace, very prevalent in Uganda, but was previously confined to Buganda and the eastern region, is one exception to the rule that violent crimes are not the kinds of crimes of which people make professions or careers.

Habitual violent robbers are driven by the acquisition of goods such as money, cars, clothes and so on rather than the harming or taking of life of victim for its own sake. Robbers will use violence when the property owner tries to resist, raise an alarm, make an attack on the robber or robbers or when the robber thinks that he has been recognized and can be identified later. Therefore, it may not be wise to try to recognize robbers as this may lead them to greater use of brutal force.

There has appeared a new form of violence in Uganda. This is of hired gunmen who invade private citizens in their homes at night and kill the occupants; in some cases, individuals are just grabbed and pushed into cars and driven off, never to be seen again. Very often the victim may be driving his own car when he is suddenly stopped and pulled out, or simply gunned down in the middle of the road. These cases have proved to be extremely difficult to investigate; some have been attributed to political dissidents, others to business rivals while others result from actions of hooligans who have acquired firearms illegally and can be hired by individuals to eliminate their so-called enemies. Prominent persons have been killed and the law enforcement has not been able to make arrest except in very few cases.

A lot of people continued to “disappear” during the rule of terror by Obote and Idi Amin up to the beginning of 1986. The most regrettable thing about this new form of violence is that if it is not arrested in good time, it may take on the characteristics of a subculture of violence as has been the case in Colombia and on the island of Sardinia.⁹

9 Clinard and Abbott, op. cit. p. 59.

The crime of homicide or criminal homicide is defined as illegal killing of human being. When a person kills himself that is suicide. Commonly the law of homicide makes a distinction between those homicides that are called murders, those that are manslaughters and those that are called excusable or justifiable homicides and infanticide or homicides that are committed by mothers against their own babies. Murder as the gravest act committed by an individual or a group of individuals is defined as unlawful killing of a human being with malice aforethought or with *mens rea*, express or implied. In many countries murder is classified into first and second degrees.¹⁰ First degree murder in most countries carries the death penalty while the second degree may carry lengthy prison sentences. Manslaughter too is classified as voluntary and involuntary. Voluntary manslaughter is the unlawful killing of a person by another person in a sudden heat of anger, without malice aforethought or premeditation. Involuntary manslaughter is the killing of another without malice and unintentionally while doing some illegal act not amounting to a felony.¹¹

CRIMES AGAINST PROPERTY

This category of crime is the largest. It includes all kinds of theft or stealing such as shoplifting, pilfery, breaking and entering, theft of motor vehicles or their spare parts and accessories, theft of livestock, what here in East Africa is commonly referred to as “cattle rustling”; theft of foodstuffs either in the gardens or in stores, theft of spare parts of radios, watches, bicycles by their repairers, cheating, adulteration of milk, in Ankole commonly nicknamed “baptism” of milk, meaning adding water to milk; destruction of property, forgery, gambling, extortion, corruption and bribery, embezzlement and multifarious and miscellaneous types of behaviours that sociologists have nicknamed “white collar crime,” or crimes that are committed by persons of high social status in the course of their work.¹² Crimes committed against property continue to show remarkable increase

10 Wolfgang, op. 23 – 24.

11 Edwin H. Sutherland, White Collar Crime, (New York, Holt, Rinehart and Winston, Inc. 1949).

12 Cited by Clinard and Abbott, op. Cit. p. 82.

in Africa. Increases have been higher in urban areas than in rural villages. In a Danish study, Karl Christiansen predicted that countries where the process of industrialization and urbanisation continues have to expect a further increase in crime and delinquency.¹³

Property crimes in Africa are a product of many forces. Urbanisation with its inherent property of drawing young persons from the rural villages; widespread unemployment of school leavers; high cost of living, taxation; greater desire for new things, hunger, frustration, alienation, unequal distribution of the national wealth; the breakdown of normative systems of traditional social control through child socialization; social heterogeneity brought about by mixing of different cultural groups; the spread of deviant and delinquent substructure through modern means of communication; all these reinforce each other and undermine the urban youths resistance to commit crime against property.

Clinard and Quinney have identified two categories of property crime offenders; the occasional property offender and the career property offender. Occasional property offenders and career property offenders may commit similar acts of crime against property, but the occasional offender does so infrequently and irregularly; while the career offender, makes a living out of his delinquency. The occasional property offender, unlike the career criminal does not identify himself with the crime, that is, he does not conceive of himself as a criminal. The occasional property criminal begins by being very crude as he lacks experience; but as time goes he may acquire more expertise and begin to adopt more techniques as his offences become more frequent until eventually the once occasional offender matures into a career criminal.

VANDALISM

One of the most common criminal acts against property is called vandalism. While on a short visit to the University of Dar es Salaam in 1972, the author noted with concern that there was not a single telephone anywhere in the University outside the offices that was in

13 J.P. Murphy, "The Answer to Vandalism May be Found at Home," *Federal Probation*, op. cit. 18(1954) pp. 8 - 10. See also Clinard, *Sociology of Deviant Behaviour*, Fourth edition, op. cit. pp. 58 - 59.

working condition. The wires were cut and receivers either thrown away or destroyed. Sidewalks and steps and footpaths to and from the dining hall were dark because the electric bulbs had either been removed or maliciously broken. At the University of Nairobi, students have, over the years been a cause for concern as they have engaged in acts of violence, throwing stones at passing cars; at Makerere University, students used to tamper with telephone machines in such a way that long distance calls could be made without spending a single coin. Students at Makerere and the University of Nairobi tear and remove articles from academic journals or chapters of textbooks in the library. All this is vandalism; the wilful destruction of property.

Studies of the complaints made by citizens and public officials reveal that hardly any property is safe from this form of aggression. Schools are often the object of attack by vandals. Windows are broken; records, books, desks, typewriters, supplies and other equipment are stolen or destroyed. Public property of all types appears to offer peculiar allurements to children bent on destruction. Parks, playgrounds, highway signs, and markers are frequently defaced or destroyed. Trees, shrubs, flowers, benches and other equipment suffer in like manner. Motorists are constantly reporting the slashing or releasing of air from tyres, broken windows, stolen accessories. Golf clubs complain that benches, markers, flays even expensive and difficult-to-replace putting greens are defaced, broken or uprooted. Libraries report the theft and destruction of books and other equipment. Railroads complain of and demand protection from the destruction of freight car seals, theft of property, wilful and deliberate throwing of stones at passenger car windows, tampering with rails and switches.

Vacant houses are always the particular delight of children seeking outlet for destructive instincts; windows are broken, plumbing and hardware stolen, destroyed or rendered unusable. Gasoline station operators report pumps and other service equipment stolen, broken or destroyed. Theatre managers, frequently in the “better” neighbourhoods, complain of the slashing of seats wilful damaging of toilet facilities, even the burning of rugs, carpets etc.¹⁴

14 George Bernard Shaw, *Everybody's Political What is What?* (London: Constable & Co. Ltd., 1944) pp. 160 - 161.

Here is a case of vandalism as described by George Bernard Shaw, one of the greatest British writers of this century.

“....When one day, wondering along the seashore in Scotland, I found myself the target of a barrage of stones, heavy or sharp enough to injure me seriously if they found their mark on my head. I had come within range of a fishing village, or possibly a mining village, where the children were at play. Their notion of play was to throw stones at a strange elderly gentleman with a beard, defying him meanwhile with war cries describing him opprobriously as a Beaver.

Being considerably frightened, and too old to run away fast enough, not to mention that fright would have encouraged my assailants and greatly increase their enjoyment, I concluded that there was nothing for it but to frighten them more than they were frightening me. They had three things to fear: the police, the straps with which their parents corrected their behaviour and the possibility of my seizing and clouting one of them who might be any of them. Accordingly I strode towards them under fire with a resolutely vengeful air.

They dispersed and fled, leaving me fortunately scatheless, but quite convinced that some other alternative to imprisonment in school than letting children loose to amuse themselves in their own way must be found if civilization was to survive”.¹⁵

From the above account, we would further define vandalism as the deliberate and wilful defacement, mutilation or destruction of private or public property by one or a group of juvenile delinquents who have no immediate or direct ownership in the property so abused. Clinard and Quiney have pointed out that vandalism is associated with affluence, and that it virtually never occurs in less developed countries where the destruction of goods in limited supply is inconceivable. Experience in East Africa shows this not to be the case; that vandalism is not on the whole a rational activity and as such whether goods are in limited supply or not, vandals will still destroy them. Journals and textbooks are in extremely short supply, but students do destroy them and students are not juvenile by definition. In rural areas children are known to uproot potato runners, destroy pumpkins, shoot at other people's goats, spoil wells for drinking water, cut banana trees, destroy birds' nests and

15 M. Cherif Bassiouni, *Criminal Law and its Process*, 1967 pp. 165 – 169

their contents, throw stones at passing cars, burn grass, cut down trees, upset other people's beehives and so on. It does appear that vandalism, as Murphy says is a cultural phenomenon, and that its answer may well be found at home. As such it may not have much to do with the affluence or property of the society in which it occurs. Vandalism has to do with gang-membership; youths who are left free to roam around villages are apt to get involved in mischievous behaviours than those who are more closely controlled.

Vandalism and delinquency in general is a result of some kind of malfunction in the process of socialisation either at home, the village or neighbourhood or at school or in all these social institutions.

POLITICAL CRIMES

Under the broad headline of political crimes, there are many and various delinquent behaviours. These are criminal because they contravene the enacted statutes of the state; they are political because they are committed by those who are opposed to the government on account of policies which they may happen to disapprove of very strongly or the dislike they may have for the incumbents of government high offices and some of the political crimes are committed by government officials in the name of the state.

The government as the only national institution that enjoys the monopoly of the use of force in its attempt to suppress undesirable elements within its borders very often oversteps the lawful boundary.

It is the responsibility of the government to maintain law and order and to this end it has a wide range of punitive sanctions to enforce conformity. These vary from such minor and mild sanctions as "caution" and "warning", to detention, banishment, fines, long terms of imprisonment and the death penalty at the other end of the spectrum. The legislative arm of government makes numerous laws to control citizens' behaviour and maintain harmony and peace. But these laws are not generally known by the general public. The government uses them to maintain itself in power and when no necessary law exists, it resorts to arrests and detention without trial.

In countries where the separation of power is unheard of or is given lip service, the abuse of power and privilege helps to stimulate opposition and the desire to overthrow the government. This is commonly the case in dictatorial states where government leaders pay little attention to the needs of the people and hardly ever heed the admonitions of the opposing factions. There are three aspects of political crimes that can be identified.

First, we have the set of crimes committed by those who are anti the government. These include conspiracy,¹⁶ treason, sedition, unlawful assembly, riot and inciting mutiny, including desertion, incitement to violence, foreign enlistment, sabotage, assassination or attempted assassination of political leaders, giving government and military secrets to foreign (enemy) government and engaging in any political activity that is prohibited by the state. Clinard and Quinney have noted that persons who occasionally engage in political crime are those who are interested in their society, but that at times they find it lacking in important ways. And for this reason they may sever their commitment to society in place of a social order that could exist. So they seek the modification of the social order that exists or may even advocate for an entirely new one.¹⁷ The traitor and the spy are examples of political activists who are committed to the establishment of a new social order. The traitor wages war against his own government, just like a guerrilla who advocates the total change of the government, its policies and personnel in order to bring about a radical change in the social system.

The spy, unlike traitors, is often a citizen of another country and engages in what is called espionage, to obtain information usually of a military nature to pass on to a foreign power.

Political dissenters engage in acts of violence not because they enjoy doing so, but because they make political capital out of such acts. Most of those anti-government persons have some general characteristics in common. To begin with, the political offenders do not regard themselves as criminals even when they attack and kill innocent citizens. For them the acts of violence such as the

16 Clinard and Quinney, op. p. 161

17 *Ibid.*

destruction of public utilities like electric plants, petrol distilleries, bridges, rails, schools, offices and so on are perceived as legitimate means of removing the unpopular regime. The guerrillas are amoral in their actions, they do not care how many people get killed or are made to suffer by their actions so long as such acts are aimed at the eventual overthrow of the government to which they are opposed, their argument being that the people are in any case being killed and made to suffer already and anything that can be done to rid them of the dictatorial and terrorist government is justified.¹⁸

Secondly, for nearly all political offenders violation of the law is not their objective. The political offender violates the law in the course of his efforts to overthrow the government. Thirdly, the ultimate goals of the political offender are not personal but are perceived as desirable for the good of the general public. The political offender accepts to suffer discomfort and hardship and hunger as sacrifice to his country. This is the driving force for genuine liberation and freedom fighters. Liberation fighters do not engage in fighting for their own personal glory and gain but do so in pursuit of an ideal. The motivational orientation of liberation fighters, traitors and spies has been characterized as follows:

Although some political offenders are persons without integrity who have yielded to the extensive bribes paid either by foreign powers or by local groups, the vast majority are conscientious adherents to a political philosophy which threatens the existence of the government they are opposing. This was true of the attempts to wrest power from a tyrannical monarch and is equally true of those who aim to overthrow our own government or that of any foreign power today. Political offenders thus represent a paradox for they are criminals who carry on their illegal activities in pursuit of their ideals. They are not imbued with sordid schemes for extracting vast sums of money from unsuspecting victims, nor are they motivated by basic desires to destroy or kill, although these crimes may be necessary in the pursuit of their ideals. They are generally idealists devoted to a cause (however mistaken it may be) or personal safety.

18 Mabel A. Elliott, *Crime in Modern Society*, (New York: Harper and Row Publishers, 1951) p. 180

In most cases of treason the traitors place this cause higher than the existence of their own government.

In cases of espionage the spies may be loyal agents of their own country and place their survival above that of the country whose national interests they would destroy – or whose secret papers they would secure.

Or they may be hired agents of a foreign power and thus are guilty of treason. All spies are heroes then, to their native land or the country whose cause they are espousing, while they are arch enemies to those government whose secrets they secure.¹⁹

It is clear from the above that the main cause of serious crimes against the government is ideology. To some people commitment to an ideology such as socialism, communism or capitalism is stronger than commitment to a religious belief system; and this explains, in part, why guerrillas cannot be eradicated. Because of their struggle till the system or the government they detest is no longer in existence. Some of these armed and bloody struggles have been known to last for years on end.

The revolutionary, the liberation and freedom fighter is not a disgruntled political failure; he is frequently capable of perceiving viable alternative programmes of action but lacks the forum to do so. Often he is more concerned about the management of state and national affairs; about the education of youths; about relations with other nations; about corruption; tribalism and brotherisation and dreams of taking the reins of government in order to put things right (according to his own way). Treason, therefore, is not merely rebellion against authority, or even a refusal to abide by the laws of the state but a serious challenge either to the existence of the nation as a political entity, or to the legitimacy and constitutionality of the government of the state; for most of the offenders of crimes of this nature define the governments which they strongly oppose as illegitimate. Treason is a crime that can be committed by citizens and not foreign residents. Citizens have a national duty of allegiance to the state and the Constitution but not to the government. The question which largely remains unanswered is whether citizens have a moral

19 See also Clinard and Quinney, *Ibid*

obligation to uphold a Constitution which is unconstitutionally constituted.

The law says that as long as there is a *de facto* administration, citizens are bound to uphold the Constitution it devises; which may be legitimized as time goes.

The third aspect of political crimes includes all those criminal acts that are committed by the government itself. Criminologists, in common with the rest of the people, have not been able to face up to the truth that governments like individual human beings, can act criminally. There are lazy governments, weak governments, foolish governments, corrupt governments, strong governments, and ailing governments just as individuals are.

Most people regard governments as being above the law and in unstable states, government officials are indeed considered (and consider themselves) to be above the law. Stable political systems act within the provisions of the law; that is, a government of laws, not of men exists; but in Africa, the reverse is the case, men rule and not the laws.

A catalogue of criminal acts which a government is capable of committing is quite impressive. It includes the detention of innocent citizens, violation of civil and human rights, fraudulent amendment and alternation of the Constitution; misappropriation of public funds; rigging of electoral boundaries or what is called gerrymandering and falsification of electoral results; nullification of candidates, nomination papers; arrest and detention of would-be candidates on nomination day till the expiry of deadlines. More still some governments engage in terrorist activities against the citizens; murder of political opponents. In Uganda, for example, there was the shocking murder of Archbishop Jonan Luwum together with Ministers Oboth Ofumbi and Wilson Lutala by Amin, murders that he faked as a road accident. Similar road accidents have occurred in Malawi and elsewhere. Shall we call these "political motor accidents?" Torture of persons to force them to confess to crimes which they never committed; the use of brute violence in effecting arrests or in the general handling of suspects as well as offenders. The indiscriminate use of detention, of beating and torture of persons is

widely used in a good number of countries. The abuse of human rights is documented by Amnesty International annually and shows that very few countries are free from this abuse.

The police, the army and prison guards frequently use violence in their day-to-day activities in the racist republic of South Africa, a good number of African detainees have been murdered in police custody and the authorities have explained their deaths as suicide.

GENOCIDE

Genocide, derived from a combination of Greek word *genos*, race or tribe, and Latin word, *cide*, to kill, literally means the killing of a race. The term was first coined by an American of Polish origin, Professor Raphael Lemkin, in 1944. The term refers to the intentional destruction or attempted destruction of a racial, national, ethnic or religious group whether in war time or peacetime. Genocide is defined in terms of killing of the group or otherwise attempting to bring about the destruction of that group including prevention of births, or transferring away the children from the group. The common causes of genocide include extreme racism, fundamental religious extremism, and tribalism. In legal concepts, genocide does not include large scale political violence that occurs from time to time in many parts of the world.

The convention on the prevention and punishment of the crime of genocide are tried by the Special United Nations tribunals and the International Criminal Court started its work on 1 July 2002 at The Hague and is charged with trying genocide cases; for example, in March 2005, the Security Council referred the situation in Darfur, Sudan, in which the Arab Northerners have killed the South Western Africans to the International Criminal Court. There have been many cases of genocide in different parts of the world. Some of these include what came to be known as the holocaust in which the Nazi regime in Germany under Adolf Hitler exterminated an estimated six million people. This figure has, however, been disputed. This genocide led to what came to be known as the Second World War.

In 1972, under the rule of Mr. Michel Micombero, a terrorist programme was embraced as to exterminate the people of Hutu race in Burundi who constituted 85% of the population and who for centuries had been terrorized by their overlords, the Tutsi. Michomburo's regime in Burundi was one of the worst in autocratic Africa at the time.

In July 1973 the Newsweek magazine reported that:

"in terms of sheer brutality, few events in post World War II history can equal the massacre that took place last year in the beautiful Central African Republic of Burundi. At that time, members of the country's population rose up against the towering Watutsi overlords who have dominated them for centuries. The insurrection failed, and the "Tutsi" government of Col. Michael Michombero exacted a frightful vengeance - slaughtering up to 250,000 "Hutu" men, women and children. Some died from bullets or razor sharp panga knives, others from long nails driven through their heads...best estimates are that some 10,000 Hutus have been killed so far in current outbreak of slaughter - and the massacre is not yet over."²⁰

Then, in 1994, genocide broke out in Rwanda which left dead an estimated 800,000 people mostly of Tutsi origin and some moderate Hutus.

The immediate cause of violence was the downing of the plane in which President Habyarimana and the President of Burundi was killed at Kanombe near Kigali. The two presidents were returning from Tanzania to attend peace talks on Rwanda. The cause of that genocide is to be sought in the history of the social, economic and political relationship between the three racial groups of the people, namely; the Hutu, 90%, the Tutsi, 9% and Twa, 1%. For a period extending over a millennium, the Tutsi dominated the Hutu and Twa in social, economic and political spheres of Rwanda.

The Tutsi ruler, known as Umwami, excersised absolute autocratic rule. The ruler had absolute power over the Hutus. The Tutsi for centuries had imposed unbreachable disabilities similar to

20 Newsweek 2 July 1973; see also Sunday Post (Kenya) October 28, 1973.

those the Bahima had imposed on Bairu in neighboring Ankole in western Uganda.²¹

These were:

1. All Bairu were forbidden from owning cattle, although they could be given old unproductive ones or bulls;
2. All Bairu males were never recruited in the army;
3. There could be no intermarriage between the Bairu and Bahima.
4. Bahima chiefs could take Bairu women as concubines who begot children who came to be known as Abambari, but Bairu were forbidden to do this;
5. No Bairu were allowed to hold a high political position;
6. All Bairu had to work for and pay tribute to Bahima chieftains;
7. When a Mwiru killed a Mwiru, that was a matter for them to settle by retaliation. But when a Muhima killed a Mwiru, the relatives of the deceased had no retaliatory rights.

In Uganda, the crime of genocide is punishable as a crime of murder; that means that an individual or a group of individuals charged with genocide face the death penalty on conviction.

Very often the government asks, demands and encourages its agents to engage in criminal activities against its citizens. Police detectives frequently implant incriminating objects on persons in order to arrest them; pistols or bullets may be brought into the home of an individual which is then searched for weapons. While it is a serious offence for a citizen to be found in possession of firearms without a valid permit, it is equally criminal for a law enforcement official to bribe or try to incriminate a citizen. Sometimes government officials commit criminal acts which on the surface appear to be committed by the government. The following is a case in which the government is not itself involved in the criminal acts but its agents are:

The Military Tribunal yesterday sentenced Warrant Officer Two, John Oligo Egadu, of the Uganda Army to death for murder on his own plea

21 The People's Struggle, January 1987 Vol. 1. P.5

of guilty. The tribunal started its proceedings on Tuesday at Makindye Military Police Headquarters to try four soldiers of the Uganda Army who were alleged to have committed murder in their respective areas where they were acting as chiefs earlier this year... Warrant Officer Egadu was separately charged on four counts of murder which he committed when he was acting chief of Bunambate sub-county in Bugisu District.

The prosecution charged that between the 7 to 8 June 1972 (Sic), the Warrant Officer murdered four people in Bunambate sub-county in North Bugisu. The deceased were arrested by the Warrant Officer who suspected them as wizards and thieves and later murdered them.

The prosecution produced evidence to show all the deceased died at the hands of the accused as shown by the medical reports. The accused pleaded guilty to all charges. In passing the death sentence as stipulated by the Military Tribunal Decree of 1973, the chairman, Col. Mwaka, advised the accused that if he wants he has the right to appeal to the Defence Council or petition the President in writing for clemency within 14 days after the decision of the Tribunal. Two other soldiers – Private Paul Tukei and Alahai Dadul also appeared before the Tribunal and were charged that on 31 May, 1973 at Toroma in Teso District, the two men murdered Ananiya Opio and Misaki Aupole who they buried alive.²²

The offenders were government officials and in fact might have been acting and believing that they were carrying out government duty. It is in such cases that a clear distinction must be made between those in government positions who because of their lack of knowledge of what is proper, misuse their position to rob, cheat, confuse and very frequently beat and murder innocent persons, and those who do so knowing fully well that they are wrong, but who nonetheless know that they have the backing of the government and are therefore, above the law. In cases like these the relatives of the deceased have a legal right to sue the state for damages. At Eldoret District Hospital in Kenya, a newly born baby was eaten to death by rats. The resident magistrate advised the parents of the dead baby to seek legal advice as to what remedies they could claim from the hospital authorities for what he called “gross negligence and dereliction of duties.”²³

22 Voice of Uganda, Thursday, 15 November, 1973.

23 The Standard, (a Kenyan daily), Thursday 14 April, 1975.

OCCUPATIONAL CRIMES

A taxi driver, whose occupation is to drive a taxi, is not likely to be charged with adulteration of food, but with carrying an excess number of passengers; a chemist may be charged with violence of drug rules as a doctor may be charged with contravening the Dangerous Drugs Act. Similarly, a surgeon who leaves a pair of forceps in the abdomen of a patient may be charged with dereliction and gross negligence. From the above we can define occupational crime as either fraudulent or inadvertent violation of law in the course of occupational activity. Occupational offences are related to occupation. Edwin Sutherland in 1939, referred to these types of occupational crimes as “white collar” crime because they are committed by persons described above; that is men and women who work in offices. The definition of occupation as crime includes such violation as corruption, false claims by officials, abuse of power, issuing of false certificates by government clerks and officials, false assumption of authority, personation of public official (as when office messengers or junior filing clerk pose as the “officer” in the eyes of the public). It is because of the post a detective holds in the department that he can, when properly bribed, destroy vital evidence, a file may be lost or investigations may lead nowhere.

The customs officials very often confiscate goods on the pretext that they are illegally imported. Frequently border officials demand cash payments or payments in kind to allow goods in transit to cross borders.

Public officials manning such posts may be found to be relatively better off financially than their colleagues in other government departments. A police constable in charge of traffic on a particular road is envied by his colleagues because of the cash payments he receives daily from taxis and other road users. But we must point out at once that not all police or customs officials or any other officials in government or company departments are corrupt.

In a limited survey in Uganda, in 1973, it was found that nearly 57% of those interviewed had either been offered or accepted bribes in the course of their duties.

Occupational crime has a very wide range of activities. All kinds of cheating, stealing by servant, selling of government stores such as drugs, equipment, food, private use of government vehicles and materials, the exchange of government equipment with old ones, e.g. motor vehicle type and engines. Nearly all mechanics and repairers of such equipment as watches, radios, television sets, refrigerators, electric cookers and all electric appliances are in the habit of stealing parts of equipment brought to them for repairs. Occupational crimes, sociologically known as white collar crimes, also include all unethical behaviour by unscrupulous doctors, lawyers and other professional practitioners.

Some criminologists have written about what they have called “blue collar crime,” as a sub-category of occupational crimes. These are crimes committed by persons in the course of their professions such as mechanics, all repairers, construction workers, plumbers, meat packers and all those whose daily work is a white collar occupation.

PROFESSIONAL CRIME

Professional crime, just like white collar crime or occupational crime, is a sociological term. It refers to all unlawful behaviour for the purpose of economic gain or in which a person is engaged full time as a means of earning a livelihood. The offender is a professional criminal in the sense that he economically depends on his criminal activities. He makes a career out of the crime; he acquires skills and techniques relevant to the commission of his crimes. The criminal derives personal and social prestige among his peers, he frequently develops protective techniques against arrest, prosecution, conviction and imprisonment, all of which he accomplishes through bribery and corruption.

A man cannot live by murdering other people, but he can earn a living by frequently armed robbery raids on other people's property or banks. A man cannot make a living out of raping women but a pimp can earn his living by his wits, deviant woman can live by prostitution and frequently live very comfortably. There are, therefore, crimes which one cannot turn into occupations or profession. These

as noted earlier on, include the conventional crimes of criminal homicide, assault, rape, trespass, arson, malicious damage to property.

On the other hand many people are living by engaging in prostitution, armed robbery, forgery, illicit distillery of alcoholic drinks, illegal exchange of foreign currency, poaching and all that has come to be known as *magendo*; a term that refers to all sorts of activities in which persons engage themselves in for economic survival. It involves all kinds of thievery, cheating, selling of government equipment such as typewriters, stationery, cement, iron sheets and anything that can be sold. *Magendo*, in its various forms, is currently the backbone of economic survival for the majority of people in Kampala. The guiding principle of *magendo* and *magendoism* “eat or be eaten.”

Professional criminals differ from other criminals in that they use no violence, they evolve rationalizations that help them to develop a positive self-image, they look upon those who refuse to engage in *magendo* with paternalistic pity and despise the uncorrupt and hardworking persons for being naive and unrealistic. Higher education is derided as is employment in the civil service; church attendance is largely for covering up and for reinforcing the self-righteous rationalization.

ORGANISED CRIME

Thorsten Sellin, one of America's giants in the field of criminology, defined organized crime as business enterprises for the purpose of making economic gain through illegal activity.²⁴ Organised crime is also variously known as professional crime, the combination, partnership, the *syndicate*, the mob, the gang and in America, it is commonly known as *Mafia* or *Cosa Nostra*.

The crime is organized in the sense that other businesses are organized, with a well structured organization, specialization of skills, coordination of activities to eliminate duplication and waste, the motive being profit. Organization goes with planning, leadership, discipline, division of labour, co-operation and a social structure

24 Thorsten Sellin, “Organised Crime: A Business Enterprise,” *Annals*, 347 (May 1963), pp. 12 – 19 see also Clinard and Quinney op.cit. p 224

that gives personal status and a place for the individual among his business associate.²⁵ Loyalty to the syndicate and hostility to non-members are virtues. Herbert Block and Gilbert Geis have noted that organized crime or syndicate embraces the upper echelons of illegal behaviour and in addition, often shows elaborate interrelations among criminals, law-enforcement personnel, and politicians.²⁶ Organised crime or syndicate is not gangsterism, it is not haphazard and as Don Gibbons has noted, cooperation rather than conflict among the groups is the norm.²⁷

Organised crime has two more characteristics that differentiate it from other types of property crimes such as *kondoism*. The first is the element of corruption and the second is the element of enforcement both of which are considered necessary for the maintenance of internal discipline and smooth running of the organization. Within the organization there is usually a position for one or more “enforcers” whose duty it is to maintain law and order within the syndicate by arranging and carrying out violent acts such as maiming and killing deviant members. Another position that is important to the organization is that of the “corrupt” whose duty is to establish and maintain relationships with public officials whose assistance may be required from time to time.

Very frequently for the purpose of cover-up, the organizers of the crime gang engage in legitimate business such as retail shops, bars, barbershops, operation of petrol stations just like any other law abiding citizens.²⁸

CORPORATE CRIME

Corporate crime is any criminal act committed by a corporation that is punishable by the state whether under administrative, civil

25 Herbert A. B. Vold *Theoretical Criminology*, (New York: Oxford University Press, 1958), Chapter 12.

26 Herbert A. Block and Gilbert Geis *Man, Crime and Society*, 1964, (New York: Randon House).

27 Don C. Gibbons, *Society, Crime and Criminal Careers*, (1968, Prentice-Hall Inc.) Chapter 16. Clinard and Quinney, *op cit.* p. 225.

28 Marshal B. Clinard and Peter C. Yeager, *Corporate Crime*, (1983, New York: The Free Press (especially chapter 5).

or criminal law. A corporation that violates the law differs from an individual or a group of individuals in that it is a legal personality that cannot be subjected to certain penal sanctions such as corporal or capital punishment or imprisonment. The penal sanctions against a corporation available for corporate crime include fines, suspension of trade license or its cancellation.²⁹

It must be understood, however, that a corporation may be held just as criminally liable as an individual. Reports abound on cases where chief executives have been imprisoned after having been found guilty of felonies. Like individuals, corporations under the law, have legal personality; they can, through their representatives transact business, negotiate contracts, they can acquire and dispose off property, they are subjected to the normal taxation procedures as are individuals and they can sue and be sued in their names. In the same way, the principle is that the corporation is distinct and separate from its directors, managers and executives. In many cases of corporate crime, the corporation is used as a vehicle for illegal activity such as hostile takeovers, tax evasion or insider trading. The list of the crimes committed by corporations is endless, but the legal regime penalizes them in a different manner. The argument is that the corporation is charged and is liable to a variety of penalties as are the individuals who run the corporation. They will in most cases, be charged together.

In law, it is presumed that a company's directing mind, and will, its centre and ego, its brains are to be found in the executives. In this way, individuals will be liable to imprisonment for the criminal acts of their companies. This is based on the notion that a company, *per se*, can not make decisions and thus any criminal act that takes place, which was or ought to have been within the executive's knowledge, will render that executive liable to criminal prosecution.

In this era of advanced information technology where communications and correspondences have become real time, the levels of corporate crime have grown.

29 Clinard, Marshall B. and Peter C. Yeager, 2006, *Corporate Crime*, Transaction Publishers, New Brunswick, USA.

From money laundering to land speculation and racketeering, corporations have devised ways and means of eluding the long arm of the law.

Under another principle of law, an individual may be held vicariously criminally liable for the acts of a company. This arises from the principal/agent relationship that exists, where the company is the principal and the individual is the agent. If it can be proved that the principal's criminal act was facilitated by the agent, then the agent will be equally liable.³⁰

The regulatory framework for corporations is to be found in the articles and memorandum of the corporation.

Illegal transactions and transactions that are traditionally against public policy will not be registered with the registrar of companies and if so registered, they make the corporation an illegal entity rendering the entire registration process a nullity. In terms of ethics, whereas the Penal Code generally deals with individuals; in the United States, for instance, the Better Business Bureau will police company practices. In Uganda, the Uganda National Bureau of Standards, Town, Municipal or City Councils as well as the Uganda Revenue Authority and the Public Procurement and Disposal of Assets Authority (PPDA) will do the policing, monitoring and regulating the respective areas of practice. Because of the variety of ways in which corrupt or illegal practices may be carried out, the various agencies have adopted different means of enforcement. Irregular procurement processes and bribery are common today as are tax evasion, money laundering and forgery and falsification of tax returns.

In all spheres of business life, the risks of illegal activity are rampant. From false advertising and marketing to product misrepresentation and copyright infringements, the likelihood of illegality is abounding. The most visible of these corporate crimes are those that are reported to the authorities or those that have caused a lot of public concern. As is common among most crime statistics, the numbers available only represent the cases that have been

30 Cross, Ruppert and Philip Jones, 1972 *An Introduction to Criminal Law*, Butterworths, London

unearthed. The greater damage cannot be easily quantified for these very challenges. For instance, the amount of environmental damage caused by multinational industries is often disguised and hidden deep in intricate and voluminous impact assessment reports that are so vague that no responsibility is placed and thus no accountability for the polluter. Kickback gifts offered to and by corporations and bribery of corporate managers, political interference, false accounting and “speed-up” money in large corporations remain a big challenge to all developing countries of the world mainly due to the ever increasing gap between the rich and the poor. In Uganda, recently it has been observed that Non Governmental Organizations (NGOs) are among the most corrupt organizations in the country and it is no surprise that their primary objective is fight corruption, instil good governance and enhance transparency. Transparency International, an international agency that has a Uganda chapter recently released reports that perception in Ugandan society of corrupt activity placed it 3rd in the entire world.

In a very comprehensive study of 582 corporations during 1975 and 1976 in U.S.A., Clinard and Yeager found that the corporations were frequently involved in six main types of corporate illegal behaviour:

1. ***Administrative violation:*** This kind of corporate offence involved non-compliance with the requirements of an agency or court, such as failure to obey an agency or a court order given to reinforce an agency order; refusal to produce information required by officials, improper keeping of records; failure to submit periodic reports to officials; failure to report cases of pollution discharge and failure to apply for permits.
2. ***Violation of the environment:*** This comprised cases of air and water pollution, including oil and chemical spills, deforestations and abuse of water catchment areas.
3. ***Financial violation*** by these corporations (only corporations with sales in 1975 of dollars 300 million to more than 45 billions were studied) included illegal payments and many illegal financial transactions, including tax violations, malpractices, internal control violations, false entries (borrowing against non-existent receivables,

recording fictitious sales.) Improper estimates (improper accounting costs, improper calculation of recoverable costs, misreporting of costs) and a host of other financial irregularities.

4. **Labour violations:** These included all types of discrimination in employment (regarding race, sex, national origin or religion), occupational safety and health hazards, unfair labour practices, wage and hour violations.
5. **Violation of manufacturing regulations:** Such violations include electric shock hazards, chemical and environmental hazards such as poisoning and other injuries that result from handling, using or ingesting toxic substances and chemical agents that cause injuries discernible only years after exposure, fire and thermal burn hazard. Failure to report defects in motor vehicles and their spares, violation of food and drug regulations (such as misbranding, mispacking, mislabelling, packing food in defective containers), lack or inadequate or incorrect direction for use of drugs on labels, contamination or adulteration, inadequate or unsterile standards in blood or plasma collection and laboratory processing and a lot more malpractices.
6. **Unfair trade practice** including abuse of competition, (monopolization, misrepresentation, price discrimination, credit violation, maintaining resale conditions with coercion and prevention of fair competition). Other illegal practices include price fixing, bid rigging, agreement between competitors to allocate markets, job customers, accounts, sales and patents false and misleading advertisements.

The inventory of violations of laws by corporations appears to be endless. This study involved only the real huge firms, 582 of them, out of hundreds of thousands perhaps even millions spread all over the United States of America. The number of illegal dealings and violations of these corporations, firms and companies must equally be running into millions of such illegal acts annually.

Corporate crime is not being regarded as an American phenomenon, it has been found to be extensive in Europe, Japan, Australia and elsewhere in the world. A study of the crime has

disproved the agreement that poverty or individual pathology is the cause of crime because most of the crimes are committed by corporate executives who are affluent and presumably well-adjusted persons.³¹

CRIME AS A SOCIAL FACT

Crime and social deviance in general is viewed by the majority of people as pathological, abnormal and a characteristic of social morbidity. It interferes with domestic tranquility and causes social unrest as when acts of collective violence occur or when corruption threatens the stability of a government. Others have in fact argued that societies would not exist without criminality; that it is absolutely necessary for the continued existence of the human groups. Durkheim, one of the founding fathers of sociology, argued that crime is normal provided it attains and does not exceed, for each social group, a certain level.³² Many sociologists and criminologists hold the view that crime as a social fact is part and parcel of society. Karl Marx, one of the earliest sociologists, wrote about this in *Theoren Uber den Mehrwert* Vol. 1 edited by Karl Kautsky apparently as a contribution to an argument and criticism against Adam Smith's discussion of unproductive labour. Before Marx, a Russian economist, Heinrich Storch (1766-1835), had noted that doctors produce health (but also illness), professors and writers produce enlightenment (but also obscurantism), poets, painters, etc., produce good taste (but also lack of taste), moralists produce good manners, priests produce worship, the labour of the sovereign produces security, etc... One could just as

31 Clinard, Marshall B. and Peter C. Yeager, op. cit p. 24.

32 Emile Durkheim, "The Norman Johnston, (eds) The Sociology of Crime and Delinquency, second edition, 1970; (New York: John Wiley and Sons, Inc.) pp. 11 - 14. See also Leon Radzinowicz and Marvin E. Wolfgang, *The Criminal in Society: Crime and Society*, Vol. 1 (Basic Books, Inc. Publisher 1971) pp. 391 - 392 Karl Marx Selected in *Sociology and Philosophy*, translated by T. B. Bottomore (1964, McGraw-Hill Book Company, New York), pp. 158 - 160.

The World Almanac and Book of Facts, 2008, World Almanac Books, N.Y. 2008 Newsweek, 2 July, 2973

Mushanga, T.M. 1994 "Genocide and Suicide in Rwanda and Burundi: A Response to Centuries of Racial Inequality" (Unpublished) Makerere

Gourevitch, Philip, 1998. *We Wish to Inform You That Tomorrow We Will Be Killed Together With Our Families: Stories from Rwanda*, Farrar Strsue and Giroux N.Y

E. Adamson Hoebel, 1996. *Anthropology: the study of man*, McGraw Hill, N.Y. P. 408

well say that illness produces doctors, stupidity produces professors and writers, lack of taste produces poets and painters, immorality produces moralists, superstition produces priests and general insecurity produces sovereigns.

Marx continued this argument noting that: “A philosopher produces ideas, a poet verses, a parson sermons, a professor text-books, etc.

A criminal produces crime, the criminal also produces not only crime but also criminal law, and he produces the professor who delivers lectures on this criminal law and even the inevitable text-book in which the professor presents his lectures as commodity for sale in the market. There results an increase in material wealth quite apart from the pleasure which... the author himself derives from the manuscript of this text-book. Further, the criminal produces the whole apparatus of the police and criminal justice, detectives, judges, executioners, juries, etc. and all the different professors, which constitute so many categories of the social division of labour; develop diverse abilities of the human spirit, create new needs and new ways of satisfying them. Torture itself has provided occasions for the most ingenious mechanical inventions employing a host of honest workers in the production of related instruments. The criminal produces an impression now moral, now tragic and renders a “service” by arousing the moral and aesthetic sentiment of the public. He produces not only text-books on criminal law, the criminal law itself, and thus legislators, but also art, literature and novels. The criminal law, the criminal helps to interrupt the monotony and security of bourgeois life. Thus he protects it from stagnation and brings forth that restless tension, that mobility of spirits without which the stimulus of competition would itself become blunted. He therefore gives a new impulse to the productive forces. Crime takes off the excess population, diminished competition among workers and to a certain extent stops wages from falling below the minimum, while the war against crime absorbs another part of the same population. The criminal therefore appears as one of those natural equilibration forces which establish a just balance and open up a whole perspective of useful occupations. The influence of the criminal upon the development of the productive forces can

be shown in details; for example, would the locksmith's trade have attained its present perfection if there had been no thieves? Would the manufacture of banknotes have arrived at its present excellence if there had been no counterfeiters? Would the microscope have entered ordinarily into commercial life had there been no forgers? What about the development of applied chemistry which advanced as a response to the adulteration of wares?

Crime constantly develops new measures of attacking property and as a result new defence measures are developed. Apart from the sphere of private crime, would there be a world market, would nations themselves exist if there had not been national crime? Is not the tree of evil also the tree of knowledge, since the time of Adam?

Marx concludes with the remarks that:

“what we call Evil in this world, moral as well as natural, is the grand principle that makes us sociable creatures, the solid basics, the life and support of all trades and employment without exception: that there we must look for the true original of all arts and sciences and the moment evil ceases, the society must be spoiled if not totally dissolved.”³²

CHAPTER III

THEORIES OF THE CAUSES OF CRIME

CAUSATIONS

The question of “cause” does not present a problem in sociology and criminology alone but also in other fields of study as well.

In law, the cause of an act is an essential ingredient of every crime in which the offender’s behaviour and the harm or injury the victim sustains for which the state seeks to impose penal sanctions are inextricably related. The conduct of the offender must reflect his intention and constitute the proximate cause of the results. It is, therefore, clear that a person cannot be held responsible for indirect consequences which a reasonable man could not have foreseen as likely to have resulted from behaviour or conduct; nor for those consequences which would have occurred regardless of the actor’s behaviour.

The quest for an explanation of criminality and deviance in general goes back for centuries, perhaps it is as old as human culture; and because deviance and crime are so widespread, there are as many theories of crime causation as there are thinkers.

All the theories of crime may be categorized into two main groups. The first includes all those theories that point to the “inside” of man and the second consists of those theories which point to the “outside” of the person. The first group, we will call “The Theological-Biological,” While the second may be termed “The Social-Cultural”.

I. THE THEOLOGICAL-BIOLOGICAL THEORIES

(a) *Demonology*

Many of those who believe that man commits criminal acts only when he is possessed by demons, include all religious people. These

hold that man as created by God is “good” and it is when he is possessed by the devil that he begins to deviate.

In the 19th century, the belief in demonology led to the isolation of criminals so that they could have some quiet and read the Bible and have time to reflect on their misdeeds. Prayer was considered to be of special value in curing criminality. Recitation of biblical texts was also considered very beneficial. This theory of possession by the demon is still prevalent among the followers of certain churches; for example, those who claim to pray for the sick, the lame and the invalid. Divine healing of physical handicaps and curing of diseases by prayer and faith are believed to be all that is required.¹

At healing sessions, cripples’ crutches and aids of invalids are thrown away to demonstrate the power of faith in the Holy Spirit.

(b) Original Sin

This is a very central element in Christian Theology. The doctrine of the original sin states that, with the fall of Adam and his wife from the grace of God, by their disobedience, they sinned and as a result, all the descendants of Adam became sinners. Thus sin and criminality became hereditary traits of human beings to the present day. Man is born a sinner (a criminal in our discussion) and he can only regain his grace and freedom through the blood of the Lamb of God, Jesus Christ, through baptism with not only water but also with the Holy Spirit. Through Adam and his wife man acquired one of those few characteristics that differentiate him from the rest of the animal kingdom, namely delinquency. Salvation by the grace of God is possible through faith and baptism. Not good works, Luther warned, but faith by the grace of God.²

(c) The Doctrine of the Free Will

Related to the explanation of criminality in terms of the original sin, is the doctrine of the Free Will. The doctrine, which is also very central in Christian Theology, states that as a result of man’s fall

1 George B. Vold *Theoretical Criminology*, (New York: Oxford University Press, 1958) pp. 5 - 6.

2 Vold op. cit. p. 29

from grace, God, Being Most Merciful, sent His Own single Son to come and die for man's sin so that the latter could regain his divine grace; that God also equipped man with the faculty of rationality; i.e. the ability to choose right from wrong; that it is because man chooses to misuse this Free Will that he continuously engages in sinful (criminal) behaviour. This doctrine assumes that all human beings are equally given this Free will, which criminals misuse. It ignores the fact that all human beings are not equally endowed with the same amount of intelligence or wisdom, and that human beings' behaviour is influenced by their social environment such as the family, the school and the community in which they are reared.

The doctrine of Free Will does not help us understand and explain international crime rates; for it cannot be demonstrated that the citizens of a country with a high crime rate are less capable of exercising their Free Will gift than the citizens of another country with a low rate of crime.

(d) Heredity

To the students of Criminology, the name of Cesare Lombroso is like that of St. Paul to the Christians. He was born in Venice in 1835 of Jewish parentage; he studied medicine and became a specialist psychiatrist and finally was made professor of legal medicine in the University of Turin.

He died in 1909. His name became known outside of Italy with the publication of his book, *L'uomo delinquente* (The Criminal Man) in 1876 in which he asserted the atavistic nature of the born criminal. He also suggested that there was a close relationship between crime, epilepsy, insanity and degeneracy.

For Lombroso, the criminal was a kind of person more primitive and savage than his civilized counterpart. For him, as noted in the previous chapter, criminals are by birth a distinct type, with recognizable stigmata or anomalies.

The theories of Lombroso were refuted by another physician, an Englishman by the name of Charles Goring, who made a comparative study of several thousand criminals with thousands of non-criminals

and found, to his satisfaction, that there were no significant differences between them; but in spite of this overwhelming analytical evidence, and more that has been shown since the time of Goring, we still hear people saying: "He looks like a thief," or "His eyes are like those of a murderer," forgetting that things are not always what they appear.

Along with the theory of heredity goes the theories of race and intelligence; of course race is a hereditary characteristic, so is intelligence and certain kinds of medical conditions such as epilepsy, insanity, gross stupidity and morphological sizes of persons. The Whites in the United States and Arabs seized on this flimsy theory and held that criminality among Blacks was due to low intelligence.

This is blatant racism which some White scholars still advance to explain high crime rates among Black-Americans. However, Washburn in a study of race and intelligence found no causal relationship between intelligence and race.

The author writes:

"Today one approaches the study of intelligence expecting to find that environment is important ... The average IQ of large groups is raised by education ... In the states where the least education effort is made, the IQ is the lowest. In fact, as one looks at the review in Anastasi's book it is exceedingly difficult to see why anyone ever thought that the IQ measured innate intelligence, and not the genetic constitution as modified in the schools and by the general intellectual environment".

"I would suggest that if the intelligence quotients of Negroes and Whites in this country are compared, the same rules be used for these comparisons of data between two groups of whites. This may not seem a very extreme thing to suggest but if you look at the literature, you will find that when two groups of Whites differ in their IQs the explanation of the difference is immediately sought in schooling, environment, economic positions of parents, and so on, but that when Negroes and Whites differ in precisely the same way the difference is said to be genetic. Let me give you but one example of this; Otto Klineberg showed years ago in excellent studies that the mean test of many Northern Negro groups were higher than those of certain groups of Southern Whites. When those findings were published, it was immediately suggested that there had been a differential migration and the more intelligent Negroes had moved to the north. But the

mean of Northern Whites test results is above that of the Southern whites. Are we to believe that the intelligent Whites also moved to the north?"

³Another eminent criminologist, Professor Elmer Johnson of the Department of Sociology at the University of Southern Illinois, writing on the topic of race asks:

Are the crimes among Negroes symptoms of something inherent in the Negro or do they reflect something which the Negro experiences in a special way to an unusual degree?

Professor Johnson goes on to answer the question he poses:

"As a biological concept, race is a plastic and relative term. Migration and other contacts between peoples have eliminated pure races and complicated the study of Physical Anthropology ... To prove that Negro criminal behaviour is caused directly by the biology of race, it would be necessary to establish certain facts. First, Negroes would have to be shown to be of a single personality type. They are not. Second, the effects of environmental circumstances and differential operation of the system of justice would have to be cancelled out. Third, it would be necessary to rule out the influence of minority status itself on Negro behaviour. The Negro may become criminal because he is denied full opportunity and citizenship on the basis of biological criteria, not because he embodies such criteria. Fourth, it would be necessary to prove that other races would not behave as the Negroes behave if they were placed in the same circumstances encountered by the Negroes. Fifth, behaviour among Negroes often is judged according to white middle-class norms of thrift, ambition, abstinence and sexual behaviour.

Lack of social acceptability is not the equivalent of criminality. It would be necessary to rule out the influence of differential morality in judging the "inherent" criminality of Negroes. If the relationship between Negroes and crime were a single, direct, biological one, it would be necessary for race to change with difference in the definition or crime over time and space; but racial changes are accomplished through mutation and amalgamation, processes which are relatively slow".⁴

3 Sherwood L. Washburn, "The Study of Race." In *Race and Intelligence*, edited by Melvin M. Tumin.

4 Elmer H. Johnson, *Crime, Correction and Society*, revised edition, (New York: The

It is now established beyond refutation that theology and biology cannot give an adequate explanation of criminality. Biological processes that may be malfunctioning causing a person to behave in a criminal manner cannot be proved to have nothing to do with criminality as it has nothing to do with the religiosity of a given group of people. We have, therefore, to keep on searching for a plausible theory of crime.

(e) *Mental Disorders and Crime*

Mental disorders that lead persons to engage in criminal and antisocial activities should not be discussed under the heading of theories of crime. But since these disorders are frequently singled out even in courts for special attention, our interest is to examine their role and relationship with deviance and crime.

Mental disorders cover a very wide range of behavioural types. The bulk of these are also called abnormal in different cultures.

In some respects nearly all human beings are mentally abnormal in that we have no single set of criteria to define “normal” behaviour. On the other hand abnormal behaviour is behaviour that significantly departs from socially accepted patterns of behaviour. Abnormality also may vary in individuals, being worse at one time and less at others. Mental abnormality ranges from what is called feeble-mindedness, in which crimes of violence such as assault and homicide may occur very unintentionally, to processes of old age such as senility and other serious disorders like epilepsy, maniac psychosis, depressive psychosis, schizophrenia and others. Mental disorder is defined differently in different cultures and legal systems. Thus, in England and Wales, 53.2% of cases of criminal homicide from 1957 to 1968 were committed by persons who were considered mentally abnormal.

In England and Wales, offenders accused of serious offences such as homicide frequently plead insanity or diminished responsibility are used as devices to protect offenders from facing harsher penalties or society from embarrassment.⁵ In the United States of America

Dorsey Press Illinois, 1968,) pp. 76 - 80.

5 *Ibid.*

when whites kill, they are more likely to be found to be insane or suffering from diminished responsibility than blacks. Wolfgang has remarked:

“Therefore, the deduction can be made that white individuals who commit homicides are far more likely to be psychotic than their black counterparts.”⁶ A white psychiatrist who examines a black offender is most unlikely to find him suffering from a mental disorder. This is racism. In courts white judges find black offenders guilty of crimes such as murder and rape with which they may be charged and either sentence them to death or to very long prison terms whereas white judges tend to convict white offenders of lesser charges and, therefore, to give them lighter sentences.⁷

In a study of criminal homicide in Uganda, of the 501 victims, 43 of them or 8.6 percent were killed by persons who were suffering from illness. The low figure (as compared to England and Wales 53.2%) is due to several factors; one could be that maybe Africans around these parts do not frequently suffer from mental illness as to the English, or that these offenders were not subjected to proper psychiatric examination.

In law, insanity is defined in terms of what is called “the M’Naghten Rules,” as harmful behaviour perpetrated under circumstances in which the actor does not know the nature or quality of his act or he does not know right from wrong. The laws of Kenya, Tanzania and Uganda state:

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind, incapable of understanding what he is doing or of knowing that he ought not to do the act or make the omission.⁸

One of the common mental disorders that very often causes persons to use violence is schizophrenia. This disease covers all mental conditions of illnesses that may appear among all age groups, which are characterized from the onset by fundamental disturbances, in the

6 Marvin E. Wolfgang (edited), *Studies in Homicide* (New York: Harper and Row, 1967), p. 199.

7 *Ibid*

8 See sections 12, 13 and 11 of the Penal Codes of Kenya, Tanzania and Uganda respectively.

personality, thinking, emotional life, behaviour patterns, interests and social relationships and responsibility.⁹

The processes of urbanization and industrialization especially in the developing countries is partially responsible for mental abnormality. Studies done some years ago revealed that Africans suffer from a syndrome that is generally known as *malignant anxiety* or *frenzied anxiety*. Lambo explains that malignant anxiety is a condition that is not associated with psychosis or mental defect; that it is most commonly to be found among detribalized people who are exposed to special stresses and strains of urban life; that it seems to be the commonest source of capital crime in Africa.¹⁰ This condition was also found in Senegal in 1962 by Aubin and by Carothers in Kenya in 1948.

Lambo found that it was in fact very prevalent in Nigeria. Favourable conditions do exist in East Africa for malignant anxiety in the slums of Nairobi, Kampala and Dar-es-Salaam, and indeed in any fast growing city.

(f) Intelligence, Feeble-mindedness and Abnormal Behaviour

The idea that criminality may be due to low intelligence and feeble-mindedness may have been responsible for such cruel punishments as the death penalty and castration. There is plenty of literature on the death penalty, especially by noted scholars such as Thorsten Sellin and Hugo Bedau. There is hardly any on castration except where it is mentioned as a form of treatment of slaves by Sellin.¹¹

Castration was a routine procedure carried out on all slaves that went to the Arab lands; and that explains why there are no black people in those countries.

9 W. L. Linford-Rees, H. Textbook of Psychiatry, (London: The English University Press, 1967.)

10 Tibamanya mwene Mushanga, Homicide and its Social Causes, (Nairobi: E.A.L.B. 1977) p. 122, see also T. Adeoye Lambo, "Malignant Anxiety: A Syndrome Associated with Criminal Conduct in Africans," Journal of Mental Science, 1962, 108.

11 Thortsten Sellin, Slavery and the Penal System (New York: Elsevier Publishing Company Inc. 1976.

Where offenders were castrated, it was not so much as a punishment: it was intended to stop the criminal from passing on his criminality to his descendants. Low intelligence was commonly held to be responsible in most cases some two generations ago. Harry Goddard is reported to have observed that:

Every investigation of the mentality of criminals, misdemeanants, delinquents and other antisocial groups has proven the possibility of contradiction that nearly all persons in these classes, and in some cases all, are of low mentality It is no longer to be denied that the greatest single cause of delinquency and crime is low grade mentality, much of it within limits of feeble-mindedness.¹²

Goddard believed that at least half of all criminals are mentally defective; and Charles Goring in Britain thought that defective intelligence was the major cause of all crimes except for some kinds of fraud;¹³ but in another study, Day Zeleny concluded that the ratio of delinquents and the general population in respect of mental deficiency was about 1.2 to 1, which means, that the difference hardly exists.¹⁴ And recent reports show that mentally retarded persons in the community do not show excess of delinquency among themselves as compared to the general population; and that mentally retarded inmates have about the same disciplinary records in prisons as any other prisoners; and that when put on parole, they do as well as normal parolees.

In general, it can be concluded that the relationship between feeble-mindedness, low intelligence and crime is comparatively slight. The difference is more related to detection, arrest and conviction. The intelligent offender is most likely to conceal his criminal act, more likely to evade arrest, and to argue his case in court more successfully than a feeble-minded offender. An intelligent crook can easily conceal the cash he has snatched or embezzled and when questioned, he can smartly explain the circumstances surrounding

12 Reported in Sutherland and Cressey, *Criminology*, eighth edition, p. 152. See also the ninth edition p. 54.

13 Johnson, *op. cit.* pp. 171 - 172

14 L. D. Zeleny, "Feeble-mindedness and Criminal Conduct" *American Journal of Sociology*, 38; 564 - 578, January, 1933. See also Sutherland and Cressey, *Criminology* seventh edition, p. 162.

the whole issue while a feeble-minded fellow may easily reveal his efforts to conceal his booty or even break down into self-induced confession.

It must be pointed out, however, that there are certain kinds of crimes that require high intelligence, especially those that call for some elaborate organization and planning such as kidnapping, forgery, embezzlement, tax evasion, conspiracy, counterfeiting of coins or currency, premeditated murders, stealing of ballot papers, arranging of commission receipts on government tenders. This is partly why some crimes remain unknown to the law enforcement officials; they are committed by people who are relatively clever than the detectives, the state attorneys, magistrates and judges.

In the same category of low intelligence, feeble-mindedness is also included in all those acts that exhibit some abnormality of the mind. One of the destructive behaviours that is often associated with criminality is compulsive behaviour. Compulsive behaviour is destructive in that the individual is unable to control or modify his actions. He often appears to be compelled to continue along his deviant path despite the severe social disapproval and even sanction and penalties that he may receive and despite his intentions, desires and even serious attempts to change. Some forms of violent criminal acts such as forcible rape, homicides, assaults and deviant behaviours such as alcoholism, drug addiction, some kinds of sexual promiscuity, the so-called nymphomaniacs, are largely due to compulsive behaviour; and no amount of negative sanctions, legal or otherwise are likely to bring about a change of heart. Very common is the crime of shoplifting by women who are undergoing certain physiological changes as when they are pregnant or when they reach menopause; or even when they are menstruating or breast-feeding. These behaviours are called compulsive because they are mostly irrational, like stealing one earring, or one sock, or a button. Compulsive behaviour, just like any other abnormal behaviour, insanity, intelligence, normalcy and most of other human attributes such as ugliness, beauty, cleverness, being nice, being honest and so on go by degrees; for in some sense we are normal, insane, wise, old, foolish, poor, but some are much more so than others.

Another concept which is closely related to compulsive behaviour is anger. Legally defined, anger is a strong passion of the mind excited by real or imagined injuries. Anger is not the same thing as rage; it is a milder emotional vexation and is normally not taken seriously as a defence in law.

Thirdly, there are what are commonly called “criminal tendencies.” The concept of criminal tendencies is extremely difficult to define and even to explain. In one way it is related to what we have called compulsive behaviour; in other words it is related to those deviant behaviours that are due to physiological and psychological changes taking place within the person. It has been suggested that criminal tendencies are present when an offence corresponds to the personality of the delinquent person. The person with criminal tendencies is to be differentiated from the normal delinquent who commits a criminal act in conflict situations or because of opportunity. Deviant behaviour is human behaviour and must be understood as such, but persons with criminal tendencies and those who have compulsive behaviour behave criminally in a culturally and socially meaningless way. Such persons will be seen to react to even milder insults or abuse in a much more unexpected manner; they are prone to pick up quarrels, conflicts and fights much more readily than others; and in time they come to be socially recognized as persons with unstable minds who are to be avoided.

Persons who fit these descriptions are those whom we interact with in our daily lives. Very often they show no signs of abnormality of mind; but these often erupt with the ingestion of alcohol.

(f) *The Freudian Theories of Violence*

In psychological, psychoanalytical and psychiatric studies, violence and aggressive behaviour are known to be interrelated. One school of thought has suggested that violent behaviour is a quite normal development in the child, deriving from aggressive and sexual needs and drives,¹⁵ all of which have their origin in the biological and

15 Crimes of Violence Vol. 12. A staff report submitted to the National (American) Commission on the Causes and Prevention of violence, prepared by Donald J. Mulvihill and Melvin M. Tumin with Lynn A. Curtis. December 1967 pp. 456 – 457.

physiological make-up of individuals. This school points to such common characteristics among children as head knocking, biting and hair pulling. That these behaviours suggest the presence in the infant of a destructive trait immediately from the womb.¹⁶

The report of the staff to the commission on the causes and prevention of violence (in U.S.A.) states:

A defect in the development of the child produces such an absence of fusion. The child whose parents are absent, who does not experience emotional responsiveness from adults, and who is punished by adults to the exclusion of love, will be unable to give and receive love. Experiences such as these encourage the infant and child in the expression of destructive behaviour. Destructive urges never become, or are insufficiently fused with loving urges. The infant is given no reason to modulate or modify his behaviour, behaviour which expresses love or restraint over aggression and destruction remains unrewarded, and therefore excluded from his choice of responses If a child is punished for his behaviour, he learns to associate the infliction and perception of pain in others with the experience of pain in himself (resulting from his punishment). In effect, the child is being taught the principle of retaliation, and he acquires more than fear from his punishment. He observes and imitates whoever punishes him. Stated differently, the child will learn that infliction of pain is the response he is to give when he is made to suffer pain. Later, when in pain, whether this be physical, his most probable response is the one repeatedly demonstrated to him and that is the expression of destructive behaviour.¹⁷

Theorizing on the causes of violence, Elton McNeil notes that while violence is a common characteristic among children, the need to use violence and the way to use it at any particular time is not equal; that depends upon different kinds of life experiences in early childhood. The staff report continues with the analysis as given by McNeil.

McNeil places emphasis upon violence resulting from experiences that are part of human development. He believes violent people are the products of experiences directly affecting their development. Violence appears in the life of the individual whose parents showed him no love, whose parents portrayed life and the world as violent, and

16 *Ibid.*

17 *Ibid*

whose parents reinforced violence as preferred behaviour, rationalising it as reasonable and natural, rather than monstrous in quality. Life experiences reinforce those from infancy and childhood, and increase the likelihood that intense anger will become coupled with poor control and result in violence. McNeil insists that to understand violence one must turn to the study of human development where it arises. Only then is there hope that violence will be controlled.¹⁸

According to the above view expressed by Elton McNeil, violence is acquired and internalised through the long process of socialisation. Although the infant may have the innate tendencies of violent behaviour, it is through differential socialisation that those violent or non-violent tendencies become incorporated in the personality structure of individual persons. What has been called collective experience of violence is important in violent behaviour orientation. Children who are exposed to brutality such as mob lynching, riots, and public executions of suspected felonies by firing squads and torture are most likely to be violent in their social behaviour; for they not only internalize violent behaviour patterns but become hardened and internalize no non-violent behaviour patterns and a general reverence for life. It is in such situations that we say that violence breeds violence. For children learn what they see and live. If children have to put up with frequent fighting between parents, they cannot be expected, when grown up, to live in peace as husbands and wives, or to settle their marital and domestic problems in non-violent ways.

Brutality is likely to be committed by members of society who have been dehumanized; for humanness does not refer to anatomical structure of human beings alone but to those qualities that show care, love, concern feeling for others and reverence for human life.

History is full of inhumanity meted out by these monsters in human form, against other human beings, usually members of a particular group of people. The group could be a racial group, a tribal group, members of a religious sect, and frequently it is made up of members of opposition parties. There is nothing as dangerous to human beings as a dehumanized tyrant. There could be no worse

acts of barbarity and inhumanity than to bury a person alive in the presence of his children, wife, relatives and friends; and this kind of behaviour seems to be common on the African continent.¹⁹

Following in the footsteps of Sigmund Freud, psychoanalysts have constructed a theory of violence when there is malfunctioning of the mind. According to Freud,²⁰ the psyche is conceptualized as being divided into three parts: the *Id* as the part that contains the desires, wishes, and fantasies which provide the individual with impetus which is necessary for human action; the *superego*, which is the part of the psyche that represents the moral values of the community within the individual. It is fully aware of what is and what is not socially or culturally acceptable; it is the censor of human action. Finally, there is the *ego*, which is the part that receives the wishes as indicated or transmitted by the *Id* with the approval or disapproval of the *superego* and determines what course of action to be taken.

In the sick person, the theory states, one of two things happens: The *Id* may overflow with violent drives, wishes and desires. Thus the sick person hates too much, enjoys pain (either of self or others) too much, or wants to destroy himself. Very often the *Id* is just too much for the *ego* to control and as a result the person breaks out into violent behaviour which may lead to catharsis or reduction in tension. Alternatively the *superego* may be extremely overformed or underformed. If it makes no allowance for the expression of hate and dislike (due to overformation) so as to bring about a catharsis, or the relaxation or reduction of tensions, the person may overcome this differently by building up or accumulating more tensions. This may go on till he cannot control himself any longer, and as from a weak dam, violence erupts without warning. But when the *superego* is too weak due to underformation, the individual sees nothing wrong in the use of violence. What is not explained is how the *superego* is developed, but it is assumed that a child develops the kind of *superego*

19 See Voice of Uganda, Thursday 15 November 1973, and more recently (early 1984) reports of mass murder and torture have been reported by international press to be taking place in Matebeleland, Zimbabwe being committed by government soldiers.

20 Roger Brown, *Social Psychology*, Collier - Macmillan student editors, 1965, pp. 374-382.

through what the psychoanalysts have called collective experience which is imparted into the child through socialisation.

When the *superego* is underdeveloped, it is not the fault of the individual, but of the community. The “sickness” is in the society and passed on to the person, expecting him to use violence in defined situations. When there is a breakdown between the *superego* and the *Id*, rage erupts within the person, making him act violently.

The psychoanalytical theories of violence when generally considered have the following elements:²¹

- Drives are indispensable to the dynamics of human mental activity. Drives, together with psychic energy which is assumed to be part of them, provides the motive force capable of setting our mental or psychic apparatus into action. The two basic drives are sex and aggression.
- Man is not distinguished, however, by the nature of his drives alone, but by how he deals with them. Crucial here are the *ego* functions of delay, modification and renunciation of the drives demands.
- While sexual impulses or drives have a wide variety of aims, and can be constructive, diversified, the aims of aggression are to totally destroy objects, to fight with or to dominate them, or to cause their disappearance.
- Aggression may be modified by displacement, by restricting the aims of aggressive impulses, by sublimating aggressive energy, or by fusing aggressive drives with *libido*.
- In normal development, the motive for redirection of hostile impulse is love. It is because the loved person is valued above all other things that the child gradually modifies his aggressive impulses and finds alternative modes of expressing them.
- Individuals who do not or cannot develop meaningful attachment to other humans feel little pain, joy, grief, guilt or remorse and have no clearly formed conscience. Because of their emotional poverty, an appetite for

21 Bernard Chodorkoff and Seymour Baxter, “Psychiatric and Psychoanalytic Theories of Violence and Its Origin,” a consultant’s paper that formed the background to the Task Force Reports on Violence. See also Crimes of Violence a Staff Report Vol. 12 p.465.

powerful sensations is created with demands for equally powerful psychological sensations. Hence, they resort to drugs, or brutal activity, experienced in dehumanized dimensions.

- The period of greatest vulnerability is during the first 12 years of life. The love bond forms during the human infancy and the regulation of the aggressive drive is dependent on the quality of these bonds.
- The absence or rupture of human bonds has a permanent effect on the capacity to regulate aggressive behaviour. This implies that the eradication of the source of later destructive behaviour could be made possible by providing stable human relationship for each child in his development.
- The absence of social adaptation or the appearance of dissocial or delinquent behaviour should not be viewed as the result of specific causes such as mental deficiency, moral insanity, broken homes or parental neglect. Instead, such behaviour should be recognized as stemming from the unsuccessful transformations of the self-indulgent and social trends and attitudes which are part of the child's original nature.
- The child must become libinally (with positive sexual feelings) tied to his environment through imitation, identification and introjections. In adequate development, the parents' social ideals are carried into the internal world of the child where they take root as its ideal self and become a forerunner of the *superego*. Introjections of parental authority are added during the Oedipal period to become an effective internal legislator, the *superego*, which then regulates drive control. It does this by rewarding a compliant *ego* with feeling of well-being and self-esteem and by punishing rebellious ones with pangs of conscience and guilt.
- Adequate socialization into the norms are a failure in *ego* development, the incorporation of parental dissocial values by normal identification, and disruption of identification through separation, rejection, or other interferences with normal ties.

- Early childhood aggression is not adverse to adequate socialization. Such aggressive strivings, if fused in the normal way with libinal ones, are socializing influences that provide the initial strength and tenacity with which the infant reaches out for the object world. Aggressive strivings are also necessary for adequate identification with parents and for achieving independences; they also add moral strength and severity to the *superego* in its dealings with the *ego* when the aggressive strivings are deflected from objects and placed at the *superego*'s disposal. When aggressive drives are not tied to libinal processes, the child may become destructive and quarrelsome, and shows a preference for hostile rather than friendly relations with fellow beings. This will occur when there are sufficient rejections or loss of love. Aggression in this defused form is not controlled either externally by parents or internally by *ego* and *superego*. If fusion does not occur through the strengthening of *libidinal* ties and new object relations, the destructiveness expresses itself delinquency, criminality and violenceThe criminal perpetuates the attitude of the child who ignores, belittles, or disregards parental authority and acts in defiance of it.

II SOCIAL-CULTURAL THEORIES

(a) *Culture, Conflict and Crime*

Culture conflict as a theory of criminality was first formulated by Thorsten Sellin in the late 1930s.²² The theory is based on the contradictions or conflict of conduct norms confronting persons in certain situations. Thus social disorganization, culture conflict is used to refer to social conditions characterized by lack of consistency and harmony in influencing individual behaviour. Sellin noted that a conflict of norms exists when more or less divergent rules of conduct govern specific life situations. Individuals are socially identified with a number of social groups each of which has its own conduct norms.

A person is a member of a family which is primarily responsible for his socialization and the internalization of social norms; political

22 Thorsten Sellin *Culture, Conflict and Crime*, Social Science Research Council, New York, 1928.

party, a religious sect, a trade union, a clan and so on. As a member of these groups he acquires norms which may sustain, weaken, reinforce or contradict the norms he had earlier internalized in his personality structure. If he lives in a more complex society the chances of his norms running counter to other norms become greater.

Culture conflict also is a result of social disorganization which comes as a result of rapid social change. New values imposed on old values create conditions under which behaviour can be variously defined.

Colonialism and imperialism and facilitated communication led to culture contacts with inherent mix-up of values and definitions of social norms. Disorganization also may be a result of the presence of contradictory or antagonistic social systems functioning side by side within the same community.

This in some societies has led to bloody conflict as has been the case in Lebanon and India where the Christians and Mohammedans, and Hindus and Mohammedans have been engaged in prolonged conflict which has resulted in a number of people being killed.

In Africa, colonialism was largely responsible for the introduction of foreign law. The African cultural values were defined as deviant, pagan and very often as illegal. This may still be the case in countries where the laws have not been changed, despite the attainment of independence. Many countries still have the laws on their books that were purely intended to benefit the imperialists. Such laws make no sense in independent countries. For example, the law of bigamy; that it is a criminal offence for a man to marry more than one woman and yet it is not illegal to divorce every other year.

The problem has always been that legal training, like training for the priesthood (for example in seminaries), makes the African lawyer (and priest) more British than British lawyers. Immediately before and after independence, white magistrates, judges and other law officials were very vocal in their criticism of law the colonialists had imposed on the African people, but the African lawyers seem to be unable to see where the law as introduced by the colonialists is in conflict with the dominant social values. In Nigeria, lawyers, led by

such men as T.O. Elliot, have not been silent; and a lot of necessary revision of the laws has been done; and to some extent in Tanzania. In Uganda, Idi Amin made efforts, primarily to introduce Sharia Law (The Mohammedan Law) but without much success.

Sellin has noted that “culture conflicts are sometimes regarded as by-products of a culture growth process—the growth of civilization—sometimes as the result of migration of conduct norms from one culture complex or area to another. However produced, they are sometimes studied as mental conflicts and sometimes as the clash of culture codes.”²³

Culture conflict is not conflict as it is commonly understood and used. Conflict as a social relationship refers to a struggle in which two or more individuals take part aiming at outdoing each other. A conflict is said to exist when two persons compete for the same valued object. The object could be a person, a political position, a house, a position in a church and conflicts are especially common in all hierchically organized institutions such as the army, the church, the police, the prison departments and in some industrial organizations.

Conflict, according to George Simmel, is one of the central elements of social interaction. It strives to dissolve ambiguity and divergent dualism. It is in this regard that conflict may be viewed as a method of achieving some kind of unity. Robert Merton made a distinction between what he called direct and indirect conflict.²⁴ Direct conflict is characterized by efforts of one group to impede, restrain or even destroy the other; while indirect conflict refers to situations in which individuals or groups do not actually impede the efforts of the other but nevertheless seek to attain their ends in ways which obstruct the attainment of the same end by the others.

Sociologically, all conflict is not harmful. It is recognized as a useful element in society for it creates initiative and generates

23 Shlomo Shoham, “Culture Conflict as a Frame of Reference for Research in Criminology and Social Deviation”, in Marvin E. Wolfgang, (editor,) *Crime and Culture*, Essays in honour of Thorsten Sellin, (John Wiley and Sons, New York, 1968.) p. 55.

24 Julius Gould and William L. Kolb, (Editors), *A Dictionary of Social Science*, The Free Press of Glencoe, pp. 123 - 124.

competition, especially in the business world. While conflict, in general, aims at the elimination of rivalry, competition is directed towards excellence in performance.

(b) *The Subculture of Violence*

The concept of the subculture of violence has been popularized by the writings of Wolfgang and Ferracuti. It was originally formulated to explain other behaviours characteristic of human groups rather than of individual persons only.

A subculture is not a contra-culture; and it cannot be wholly different from the society of which it is a part. A subculture is called a subculture of violence because of its members' outward behaviour which is expressed through violence in situations which members of other subcultural groups would have reacted in a non-violent manner. For members of certain groups are known to be quarrelsome, more belligerent than others. Even here in East Africa, we know of some tribes which easily resort to physical force in situations where members of other tribes would have laughed off the offender. These are usually the groups of people who have acute inferiority complex coupled with a neurotic sense of political and economic insecurity. The following is a full text of the theory of the subculture of violence:²⁵

- (1) *No subculture can be totally different from or totally in conflict with the society of which it is a part.*

A subculture is not entirely an expression of violence, for there must be interlocking value elements shared with the dominant culture. It should not be necessary to contend that violent aggression is the predominant mode of expression in order to show that the value system is set apart as subcultural. When violence occurs in the dominant culture, it is usually legitimised but most often it is vicarious and a part of fantasy. Moreover, subcultural variations, we have earlier suggested, may be viewed as quantitative and relative. The extent of difference from the larger culture and the degree of intensity, which violence as a subcultural theme may possess, are variables that could

25 Marvin E. Wolfgang and Franco Ferracuti, *The Subculture of Violence: Toward an Integrated Theory in Criminology* (London: Tavistock, 1967), pp. 158 - 161.

and should be measured by known sociopsychological techniques. At present, we are required to rely almost entirely upon expressions of violence in conduct of various forms; parent-child relationships, parental discipline, domestic quarrels, street fights, delinquent conflict gangs, criminal records of assaultive behaviour, criminal homicide, etc.— but the psychometrically oriented studies in criminology is steadily increasing in both quantity and sophistication, and from them a reliable differential psychology of homicides should emerge to match current sociological research.

- (2) *To establish the existence of a subculture of violence does not require that the actors sharing in these basic value elements should express violence in all situations.*

The normative system designates that in some types of social interaction, a violent and physically aggressive response is either expected or required of all members sharing in that system of values. That the actor's behaviour expectations occur in more than one situation is obvious. There is a variety of circumstances in which homicide occurs, and the history of past aggressive crimes, in high proportions both in the victims and in the offenders, attests to the multisituational character of the use of violence as well as to its interpersonal characteristics. But, obviously, persons living in a subcultural milieu designated as a subculture of violence cannot and do not engage in violence continuously, otherwise normal social functioning would be virtually impossible. We are merely suggesting, for example, that ready access to weapons in this milieu may become essential for protection against others who respond in similarly violent ways in certain situations, and the carrying of knives or other protective devices becomes a common symbol of willingness to participate in violence, and to be ready for its retaliation.

- (3) *The potential resort of willingness to resort to violence in a variety of situations emphasises the penetrating and diffuse character of this culture theme.*

The number and kinds of situations in which an individual uses violence may be viewed as an index of the extent to which he has assimilated the values associated with violence. The index should also be reflected by quantitative differences in a variety of psychological dimensions from differential perception of violent stimuli to

different value expressions in questionnaire-type instruments. The range of violence from minor assault to fatal injury, or certainly the maximum of violence expected, is rarely made explicit for all situations to which an individual may be exposed. Overt violence may even occasionally be a chance result of events. But clearly this range and variability of behavioural expressions of aggression suggest the importance of psychological dimensions in measuring adherence to a subculture of violence.

- (4) *The subcultural ethos of violence may be shared by all in sub-society, but this ethos is most prominent in a limited age group, ranging from late adolescence to middle age.*

We are not suggesting that a particular ethnic, sex, age group all share in common the use of potential threats of violence. We are contending merely that the known empirical distribution of conduct, which expresses the sharing of this violence theme, shows greatest localization, incidence and frequency in limited sub-groups and reflects differences in learning about violence as a problem-solving mechanism.

- (5) *The counter-norm is Non-violence*

Violation of expected and required violence is most likely to result in ostracism from the group. Alienation of some kind, depending on the range of violence expectations that are unmet, seems to be a form of punitive action most feasible to this subculture. The juvenile who fails to live up to the conflict gang's requirement is pushed outside the group. The adult male who does not defend his honour or of his female companion will be socially emasculated. The "coward" is forced to move out of the territory; to find new friends and make new alliances. Membership is lost in the sub-society sharing the cluster of attitudes positively associated with violence. If forced withdrawal or voluntary retreat are not acceptable modes of response to engaging in the counter-norm, then execution, as is reputed to occur in organized crime, may be the extreme punitive measure.

- (6) *The development of favourable attitudes towards, and the use of violence in a subculture usually involve learned behaviour and a process of differential learning, association or identification.*

Not all persons exposed—even equally exposed—to the presence of subculture of violence absorb and share in the value in equal portions. Differential personality variables must be considered in an integrated sociopsychological approach to an understanding of the subcultural aspects of violence. We have taken the position that aggression is a learned response, socially facilitated and integrated, as a habit, in more or less permanent form, among the personality characteristics of the aggressor. Aggression, from a psychological standpoint, has been defined by Buss as “the delivery of noxious stimuli in an interpersonal context.”²⁶ Aggression seems to possess two major classes of reinforcers: the pain and the injury inflicted on the victim and its extrinsic rewards. Both are present in a subculture of violence, and their mechanism of action is facilitated by the social support that the aggressor receives in his group. The relationship between aggression, anger and hostility is complicated by the attitudinal interpretative nature of the third. Obviously, the immediacy and the short temporal sequence of anger with its autonomic components make it difficult to study a criminal population that is some distance removed from the anger-provoked event. Hostility, although amenable to easier assessment, does not give a clear indication or measure of physical attack because of its predominantly verbal aspects. However, it may dispose to or prepare for aggression.

Aggression, in its physical, manifest form, remains the most criminologically relevant aspect in a study of violent assaultive behaviour. If violent aggression is a habit and possesses permanent or quasi-permanent personality trait characteristics, it should be amenable to psychological assessment through appropriate diagnostic techniques. Among the several alternative diagnostic methodologies, those based on a perceptual approach seem to be able, according to the existing literature, to elicit signs and symptoms trait in the

26 A. H. Buss, *The Psychology of Aggression*, (New York: John Wiley and Sons, 1961), pp. 1–2 see also Barrington Moore, Jr. *Reflections on the Causes of Human Misery*. (London: Penguin Press 1972). pp. 17 – 20.

personality of the subject being tested. Obviously, the same set of techniques being used to diagnose the trait of aggression can be used to assess the presence of major psychopathology, which might, in a restricted number of cases have caused “aggressive behaviour” outside or in spite of any cultural or subcultural allegiance.

- (7) *The use of violence in a subculture is not necessarily viewed as illicit conduct and the users therefore do not have to deal with feelings of guilt about their aggression.*

Violence can become a part of the lifestyle, the theme of solving difficult problem situations. It should be stressed that the problems and situations which we refer to arise mostly within the subculture, for violence is used mostly between persons and groups who themselves rely upon the same supportive values and norms. A carrier and user of violence will not be burdened by conscious guilt, then, because generally he is not attacking the representatives of the non-violent culture, and because the recipient of this violence may be described by similar class status, occupational, residential, age and other attribute categories which characterize the subuniverse of the collectivity sharing in the subculture of violence. Even the law-abiding members of the local subculture areas may not view various expressions of violence as menacing or immoral. Furthermore, when the attacked see their assaulters as agents of the same kind of aggression they themselves represent, violent retaliation is readily legitimized by a situationally specific rationale, as well as by the generally normative supports for violence.

(c) Lower Class Culture

Walter Miller, writing in 1958, was influenced by the then prevailing theoretical literature that generally dealt with three major sets of etiological factors in the causation of delinquency.²⁷ These factors are: the *physiological* factor, which traces the origin of delinquency as being from organic pathology; the *psychodynamic*, which regards delinquency as a behavioural disorder resulting primarily from

27 Walter B. Miller, “Lower Class Culture as a Generating Milieu of Gang Delinquency,” *Journal of Social Issues*, (1958) 14:5-19, also in Marvin E. Wolfgang, Lennard Savitz and Norman, Johnston: (editors). *The Sociology of Crime and Deviancy*, second edition, (New York: John Wiley and Sons, 1970.)

emotional disturbance generated by a defective mother-child relationship or inadequate or improper socialisation, and the *environmental* factor, pointing out delinquency as the producer of disruptive forces of disorganization in the actor's physical or social environment.

Miller's theory of delinquency was formulated after a study of one particular kind of delinquency; law-violating acts committed by members of adolescent street corner groups in lower class communities. Miller defined delinquency as behaviour or acts committed by individuals within specified age limits which if known to official authorities could result in legal action. He noted that in the case of gang delinquency the cultural system which exerted the most direct influence on behaviour was that of the lower class community itself along established, distinctively patterned tradition with an integrity of its own rather than a so-called delinquent subculture which has arisen through conflict with middle class culture and is oriented to the deliberate violation of middle class norms.

Six focal concerns and their alternatives were outlined as they tend to appear in individual delinquents:

One. *Trouble*: The lower class culture is generally characterised by law-abiding behaviour but concern over violation of law is common.

Two. *Toughness*: Physical prowess, skill and masculinity, fearlessness, bravery, daring. The alternatives are equally prevalent and include weakness, ineptitude, effeminacy, timidity, cowardice and caution.

Three. *Smartness*: Ability to outsmart, dupe, con, gaining money by "wits," shrewdness and adroitness in repartee.

Four. *Excitement*: The low class delinquents seek excitement, thrill, risk, danger, change, because of their over-daring attitudes. Alternatively, boredom, deadness, safeness, sameness and passivity are equally perceived.

Five. *Fate*: Fatalism is common and being lucky are prevalent: Belief in ill-omens and being unlucky are alternatives.

Six. *Autonomy*: They tend to be free from external constraint: they recognise no superior authority and have a large measure of

independence; but they equally perceive and reckon with the presence of external constraint and may be very dependent; being cared for by others.

Serious criticisms have been raised regarding the utility of Miller's concerns as he related them to the lower class as a culture category. For example, the concerns he listed are common to the lower class but are equally common to members of the other classes. What is different is the way these values are expressed both verbally and non-verbally because of life conditions and available resources. To postulate that the lower class have trouble with the law as a major concern is to state the obvious, but members of other strata also have trouble. The lower class persons will be involved in what is called blue collar crime such as burglary, larceny, robbery, assault, peace disturbances, gambling, offences associated with alcohol and drug use etc., while the members of the upper and middle class are frequently involved in white collar crimes of embezzlement, tax evasion, violating of rules regulating trade, breach of contract, bribery, corruption, fraud, deviant behaviour relating to sex and divorce and scandal. Miller and his associates cannot demonstrate that the members of the middle and upper classes do not show concern over trouble in some of the illegal acts commonly attributed to lower class persons. Members of the upper and middle class also get involved in assaults, robbery and peace disturbances as when they parade and demonstrate for this or against that: they also use and misuse alcohol and drugs.

The concern over smartness, and toughness and the rest are not a monopoly of the lower class persons. For example, the middle class men are also concerned about these male attributes. The poor lower class members assert these virtues in physical terms because of their lack of control of resources and power that would enable them to demonstrate their manhood without having to use physical force.²⁸

28 For a much more detailed critique of Walter Miller, Oscar Lewis and Herban Gan's Theories of Lower Class and Crime, see Charles A. Valentine, *Culture and Poverty*, (Chicago: University of Chicago Press, 1970.)

(d) *Anomie and Crime*

The concept of “anomie” or “normlessness” was originally developed by Emile Durkheim as a theory to explain the incidence of suicide. Durkheim explained that the social needs of human beings are endless and in order to regulate the behaviour of persons in their endless struggle to achieve the desired goals, collective order or social organisation is necessary, as an external regulating force to define, determine and control the behaviour of men as they strive for their needs. But if the social or collective order disrupted or seriously disturbed, dislocated or in any way made dysfunctional, men’s desire may increase to the point of outdistancing all possibilities of achievements. Anomie or normlessness is said to exist when the traditional rules lose their authority over the behaviour of men. Durkheim pointed out that anomie tended to spread when there was sudden depression, sudden prosperity or rapid technological change.²⁹ He did not mention military dictatorships of terror and economic mismanagement.

Durkheim’s theory of anomie in the explanation of suicide was taken up by Robert Merton who used it to explain deviant and delinquent acts,³⁰ Simply put, Merton’s use of anomie as a theory of crime is that modern societies put a very high premium on material possession, the kind of wealth a few with relevant education or skills can afford to acquire. These material goods are status symbols. But unfortunately society very often fails to make adequate and socially acceptable means through which persons can pass to achieve the socially valued goals. When the socially accepted avenues of achieving socially valued goals are blocked or are out of reach for the majority of the poor and slum dwellers, these people resort to the use of illegitimate means to achieve their goals.³¹

29 Dan C. Gibbons, *Society, Crime and Criminals Carrers* (1968, Prentice-Hall) pp.173 – 191. See also Emile Durkheim, *Suicide* translated by John A. Spaulding and George Simpson, (New York: The Free Press 1951).

30 Robert K. Merton, “Social Structure and Anomie,” *Amercial Sociological Review* (October 1938) 3: 672-782 see also Merton in Wolfgang, Savitz and Johnston op. cit. Chapter 27.

31 Marshall B. Clinard, *Sociology of Deviant Behaviour*, fourth edition, (Holt, Rinehart and Winston, 1974,) pp.95 – 96.

(e) Poverty and Crime

It is commonly believed that poverty causes crime; that the bulk of the petty thievery, burglaries and larcenies are committed by the poor. Clinard states that in a society with vast increases in national wealth, the result of increased industrialisation, technology and the possibilities of social planning, poverty may be regarded as a form of deviation.³² But only five lines before this statement, Clinard shows that “in United States in 1969, for example, only 1% of the USD 3000 billion of wealth was owned by the poorest third of the population: in contrast, the top 5% of the population owned over a third of the wealth of the country.” And if the economic structure in America is such that the 35% of the nation share 1% of its wealth, while 5% of the top rich share 35% of wealth how can poverty be termed deviation? That is not deviance at all; it is the worst exploitation system man has ever devised for the subjugation of his fellow men. It is a system that the Tanzanian press, in the mid-1970s called: *Nyang'au*” or “man *eats man*.” It is inconceivable to imagine what the average poor could do in a society like that. The poor remain poor because they cannot afford sending their children to school, and when they do, their children go to the poorer schools where they are most unlikely to come up. The poor cannot get credit facilities or political connections to support their applications.

The poor in America are victims of a malignant capitalist system and are not deviants. They are victims of an ugly beast which has no regard for the suffering of millions of people.

In a recent speech, the protestant Bishop of Busoga in East Uganda is reported to have said that “poverty in Uganda is a luxury”.³³ “We sometimes wonder how those who claim to be poor can afford it.” Of course, the bulk of the people in Uganda, just like those in the least developed countries (a polite phrase to mean the poorest of the poor) are poor. The people are poor and the government is poor or else it would not be requesting aid and donations year in year out.

32 For all full discussion of anomie, its theoretical implications and critique see Mashall B. Clinard, (editor,) *Anomie and Deviant Behaviour*, New York: The Free Press of Glencoe 1964).

33 The New Century (Church of Uganda Magazine) Vol. I No. 65, September, 1983.

Our concern here is how poverty is related to criminality. Developing countries, as Clinard and Abbott have pointed out, are poor countries but their poverty cannot be held responsible for their criminality or for their relatively poor educational attainments.

Poverty is a major social problem that affects health, life expectancy, infant mortality rates, housing, the quality of life and the standard of living of the individual as well as of the community and the educational opportunity. Above all, individual and collective poverty limits social participation and seriously undermines political participation and may lead to institutional instability.

There may be ways in which people are made poor. In some communities people become poor, as Miller and Rein have shown,³⁴ because they are content to live in squalor, they are resistant to work and are willing to sponge on society as parasites. Then there are the self-defeating poor who are poor because they are incompetent, and thirdly, there are the poor who are such because of ineffective and evil forces in society. Discrimination, because of tribe, party, religion and ethnic origin; automation with large groups of people being displaced out of work, unscrupulous land laws and landlords, corrupt and inefficient government, all those may lead some people into the domain of poverty. What Miller and Rein do not explain in the first two cases is why some people are content to live in squalor, why they are resistant to work and why some are incompetent.

These are some of the questions that must be answered before poverty can be accepted as a cause of crime. If it were so, the poorest countries such as those of Africa and Asia would have the highest rates of crime in the world. Poverty within a given community defines what crimes will be committed; these include breaking and entering, stealing foodstuffs from gardens or from food stores, stealing of very old and useless things like old shoes, towels, plates and the like.

The more affluent people will be found to have other types of criminal acts quite unlike those committed by the poor. But the main point is that poor or not, people will commit crime.

34 S.M. Miller and Martin Rein quoted in Clinard's *Sociology of Deviant Behaviour* op. cit.

Poverty, therefore, is not a “cause” of criminality, though it is frequently a characteristic of the majority of criminals. This is due to differential treatment of the less fortunate by the law enforcement. The poor predominate in criminal population not because they are any more criminal than others but because they are more likely to be arrested, charged, found guilty and imprisoned or sentenced to death than the more affluent members of the same society. The poor do not command respectability; very often have no friends in the government and in politics; or in the legal system who can speak to the responsible officials on their behalf. They are economically weak, and therefore cannot afford to hire forceful advocates; they have no money with which to buy their innocence by bribing the police and the magistrates.

Theories of the Causes of Crime

(a) Genetic Theory of Crime

Any attempt to explain criminal behaviour must examine either the processes which are operating at the moment of the occurrence of crime or those that were operating in the earlier history of the criminal. In the first case, the explanation may be called “situational,” or “dynamic” and in the second, “historical.”³⁵

Edwin Sutherland first formulated the theory of differential association in 1939; and over the decades it has been changed though not in a significant way largely by Donald Cressey, who co-authored the fifth edition. The theory shows how an otherwise mentally “normal” person, through stages of successive events, begins to engage in deviant and criminal behaviour. It shows that criminality is a normal learned behaviour and not to be explained in biological, physiological and psychological defects. *The principle of differential association states that a person becomes a delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of law.* The theory is sociological in that it focuses its attention on social interaction—frequency, duration, priority and intensity.

35 Sutherland and Cressey, op. cit. pp. 74 – 81.

There are nine propositions in the theory as follows:

1. *Criminal behaviour is learned.*

This means that criminal behaviour is not inherited, as such also, the person who is not already trained in crime does not invent criminal behaviour, just as a person does not make mechanical inventions unless he has been trained in mechanics.

2. *Criminal behaviour is learned in interaction with other persons in a process of communication.*

This communication is verbal in many respects but includes also the communication of gestures.

3. *The principal part of the learning of criminal behaviour occurs within intimate personal groups.*

Negatively, this means that the impersonal agencies of communications, such as movies and newspapers, play a relatively unimportant part in the genesis of criminal behaviour.

4. *When criminal behaviour is learned, the learning includes (a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple; (b) the specific direction of motives, drives, rationalisations and attitudes.*

5. *The specific direction of motives and drives is learning from definitions of the legal codes as favourable or unfavourable.* In some societies an individual is surrounded by persons who invariably define the legal codes as rules to be observed, while in others he is surrounded by persons whose definitions are favourable to the violation of the legal codes. (For example, in the American society these definitions are almost always mixed, with the consequence that they have culture conflict in relation to the legal codes.)

6. *A person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of law.*

This is the principle of differential association. It refers to both criminal and antirriminal associations and has to do with counteracting forces. When persons become criminal, they do so because of contact with criminal patterns; and also because of isolation from antirriminal patterns. Any person inevitably assimilates the surrounding culture unless

other patterns are in conflict...Negatively, this proposition of differential association means that associations which are neutral so far as crime is concerned have little or no effect on the genesis of criminal behaviour. Much of the experience of a person is neutral in this sense, e.g. learning to brush one's teeth. This behaviour has no negative or positive effect on criminal behaviour except as it may be related to associations which are concerned with the legal codes. The neutral behaviour is important especially as an occupier of the time of a child so that he is not in contact with criminal behaviour during the time he is so engaged in the neutral behaviour.

7. *Differential association may vary in frequency, priority and intensity.*

This means that associations with criminal and also with anticriminal behaviour vary in those respects. Frequency and duration as modalities of associations are obvious and need no explanation. Priority is assumed to be important in that behaviour whether lawful or delinquent developed in early childhood may persist throughout life. This tendency, however, has not been adequately demonstrated and priority seems to be important principally through its selective influence. Intensity is not precisely defined but it has to do with such things as the prestige of the source of criminal and anticriminal patterns and with emotional reactions related to the associations. In a precise description of the criminal behaviour of a person, those modalities would be rated in quantitative form and a mathematical ratio reached. A formula in this sense has not been developed and at any rate the development of such a formula would be extremely difficult.

8. *The process of learning criminal behaviour by association with criminal and anticriminal patterns involves all of the mechanisms that are involved in any other learning.* Negatively, this means that the learning of criminal behaviour is not restricted to the process of imitation.

9. *While criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values; since non-criminal behaviour is an expression of the same needs and values.*

Thieves generally steal in order to secure more, but likewise honest labourers work in order to secure money. The attempts by many scholars to explain criminal behaviour

by general drives and values, such as the happiness principle, striving for social status, the money motive or frustration, have been and must continue to be futile, since they explain lawful behaviour as completely as they do its opposite. They are similar to respiration, which is necessary for any behaviour, but which does not differentiate criminal from non-criminal behaviour.

It is not necessary, at this level of explanation, to explain why a person has the associations he has; this certainly involves a complex of many things. In an area where delinquency rate is high, a boy who is sociable, gregarious, active and athletic is very likely to come in contact with other boys in the neighbourhood, learn delinquent behaviour patterns from them and become a criminal. In the same neighbourhood the psychopathic boy who is isolated, introverted, and inert may remain at home and not become acquainted with other boys in the neighbourhood and not become delinquent. In another situation, the sociable, athletic, aggressive boy may become a member of a scout troop and not become involved in delinquent behaviour. The person's associations are determined in a general context of social organization. A child is ordinarily reared in a family; the place of residence of the family is determined largely by family income; and the delinquent rate value of the houses. Many other aspects of social organisation affect the kind of associations a person has.

The preceding explanation of criminal behaviour purports to explain criminal and non-criminal behaviour of individual persons. As indicated earlier, it is possible to state sociological theories of criminal behaviour which explain the criminality of a community, nation or other group. The problem, when thus stated, is to account for variations in crime rates of a particular group at different times.

The explanation of a crime must be consistent with the explanation of the criminal behaviour of the person, since the crime rate is a summary statement of the number of persons in the group who commit crimes and the frequency with which they do so. One of the best explanations of the crime rates from this point of view is that a high crime rate is due to social disorganization. The term

social disorganisation is not entirely satisfactory and it seems preferable to substitute for the term *differential social organisation*. The postulate on which this theory is based, regardless of the name, is that crime is rooted in the social organization and is an expression of that social organization. A group may be organized for criminal behaviour or organized against criminal behaviour. Most communities are organised for both criminal and anticriminal behaviour, and, in that sense the criminal rate is an expression of the differential group organization. Differential group organization as an expression of variations in crime rates is consistent with the differential association theory of the processes by which persons become criminals.

The question for the explanation of criminality is an endless one. If we were to present all available theories of crime, the whole book would be on criminological theory. For example, there is Differential Opportunity structure outlined by Richard Cloward and Lloyd Ohlin.³⁶ In this theory Cloward and Ohlin attempt to unite the theory of anomie as advanced Merton, which recognises the concept of differentials in access to legitimate means and what they call “the Chicago tradition” led by Edwin Sutherland in which the concepts of differentials in access to illegitimate means are implicit. Differential Opportunity structure looks at the individual not in terms of anomie or in the Chicago tradition, but in relation to both legitimate and illegitimate systems.

Clifford Shaw and Henry McKay put forward the theory of cultural transmission.³⁷ They were examining criminal traditions in the city of Chicago. Criminal traditions appeared to persist from one generation to another in spite of constant changes in the population. Then there is Albert Cohen on delinquent subculture³⁸ and many more.

The two broad categories of criminological theories the theological biological and the socio-cultural types have one problem

36 Richard A. Cloward and Lloyd E. Ohlin *Delinquency and Opportunity* Glencoe: The Free Press.

37 Clifford R. Shaw and Henry D. McKay, *Juvenile Delinquency and Urban Areas* (Chicago, University of Chicago Press, 1942) see also Shaw and McKay, “Cultural Transmission” in Wilfgang, Savitz and Johnston op. cit. Chapter 25.

38 Albert K. Cohen, *Delinquent Boys*. Glencoe; (The Free Press, 1955.)

in common and that is the medical analogy. The theories that focus on the “inside” of the criminal use the medical analogy when they consider the biological transmission of criminal tendencies. In medicine certain conditions are known to be transmitted from parent to child; this is heredity.

The social-cultural theories too do the same, assuming that the individual is born free of criminal traits and as he grows up, criminal patterns begin to be impressed on his mind; in other words, he is infected just like a child is with mumps, or measles if he mixes with patients of these diseases.

One thing that should be pointed out is that criminal behaviour and deviance in general are not pathological unless committed by person suffering from mental abnormality. The majority of what constitutes crime including conventional crimes of homicide, assault, rape, larceny and the like are committed in the process of social living and as such they constitute the day-to-day of human existence just like marriage, greeting, disputation laughter, hunting, beer parties and all that occupy us as human beings.

CHAPTER IV

CRIMES OF VIOLENCE

Violence is widely used in different situations by different people; both in criminal and non-criminal interaction.

In non-criminal situations, violence is employed as a means of enforcing conformity, as when parents use or threaten to use it against their deviant small children. Violence also is common between husbands and wives in the course of their marital relationships; in fact, recent studies indicate that violence is more widely used than is commonly believed to be.¹ In the use of violence within the domestic circle, the wife and the children are frequently victimized. In a sample of twelve groups of people scattered all the way from the Abaluhya and Luo of Kenya, the Ankole, Bakiga, Batooro and Alur of Uganda to the Tiv of Nigeria the wife was found to be the most favourite victim of violence.²

Violence is also used in public institutions such as schools, where pupils are given lashes for infraction of school rules or indiscipline. Police and Military recruits are often beaten in the course of their training. Violence is also commonly used in interpersonal disputes, especially where there is alcohol. Acts of collective violence are becoming increasingly common in Africa. Communal violence has broken out in the Mohammedan regions of Northern Nigeria; violent clashes have been reported between government soldiers and residents of the Northern Frontier Districts of Wajir, Garissa and areas bordering Somalia. Violence is frequently used by nearly all dictatorships in Africa and elsewhere. Police use violence to effect arrests and to extract confessions from suspects. In the racist Republic of South Africa, Many Africans have been murdered by the police while undergoing interrogation.

1 Richard J. Gelles and Claire Pedrick Cornnell, (editors). *International Perspectives on Family Violence*, Lexington Books (Lexington Massachusetts, 1983)

2 Tibamanya mwene Mushanga, "Wife Victimisation in East Africa and Central Africa," *Victimology* 2(3/4): 479-485, 1977-78 The Visage Press, also in Gelles and Connell, *op. cit.*

Acts of violence are many and vary in severity. They range from minor assault to murder. Some of the violent acts are of a sexual nature, like forcible rape; and others are committed against persons who are incapable of defending themselves; prisoners and children are especially vulnerable. Suicide is regarded as a violent act although most often no violence is used. Acts that are described as violent may be categorized into two main groups: one group comprises all acts in which violence is inflicted directly on the victim; these include assault, criminal homicide, forcible rape. The other group includes those acts in which violence is not used directly but in which it may be used at any moment, as in abduction, kidnapping and the taking of hostages.

ASSAULT AND AGGRAVATED ASSAULT

Common assault is, perhaps, the commonest violent act that is committed everywhere and everyday. Assault is defined as any conduct which creates in the person of another apprehension and fear of violence being used against him when the aggressor has the apparent and immediate means to effect such violence. It is for the latter reason the mere uttering of offensive words may, under some consideration, be defined as an assault. Usually words alone are regarded as insufficient to constitute a crime of assault. The most important element of assault is conduct which constitutes an apparent external manifestation of the intentions of the actor to carry out his threat. The verbal utterance must be interpreted to mean that violence is about to be used against the victim by the actor. The degree of conduct sufficient to induce such a belief in the victim is legally underdetermined. Thus to utter verbal threats may constitute an assault provided they are uttered in such a manner that the victim believes he is about to be attacked or is in imminent of danger to life or limb. Common assault is the use of physical violence against another person; assault occasioning actual bodily harm is a misdemeanour much more serious than common or simple assault. Assault occasioning actual bodily harm is assault in which physical injury has been caused; for example, the victim receives a visible injury on his body such as bleeding, a cut, a bruise an abrasion, a laceration or a black eye. In Tanzania and Uganda, such an offence

carries a penalty of imprisonment for five years; but the penalty for common assault is only a maximum of one year.³

Aggravated assault is a much more serious assault on the person; it is much more related to homicide. Comparative studies that have been carried out in other societies have shown that aggravated assault and criminal homicide are quite similar; the difference between them being the chance and accident rather than of degree in intent. The offender in aggravated assault does not set out to inflict a less fatal assaultive injury on his victim than the criminal homicide offender.⁴

In East Africa, aggravated assault is an offence that carries a heavier penalty than common assault; but the bodily harm need not be permanent nor need it amount to grievous harm.⁵ In United States of America, the Federal Bureau of Investigation (FBI) classifies aggravated assault as “assault with intent to kill or for purpose of inflicting severe bodily injury by shooting, cutting, stabbing, maiming, poisoning, scolding or by the use of acids, explosives or other means”.⁶ According to the above definition, aggravated assault is classified on three criteria; the seriousness of the injury; the type of weapon used or the use of an object as a weapon and the intent of the assault to cause serious injury.

Battery, another concept which represents the non-lethal culmination of an assault, is carrying out of the threat; an assault need not be carried out and similarly, a battery need not be preceded by a verbal threat. Most of these simple assaults result from disputes between two or more persons in the course of drinking. The majority involve people who are known to each other and occur in the presence of old friends and neighbourhood groups and as such are usually settled on the spot; and only a few of them are reported to the police.

3 Uganda Penal Code Sections 235-238.

4 Tibamanya Mwene Mushanga, *Criminal Homicide in Uganda* (Nairobi: East African Literature Bureau, 1974), pp. 34-36

5 J.J.R. Collingwood *Law in Africa*, No. 23 *Criminal Law of East Africa and Central Africa*: (Sweet and Maxwell, African Universities Press 1967), pp. 201-202.

6 David J. Pitman and William Handy, “Patterns in Criminal Aggravated Assault,” *Journal of Criminal Law, Criminology and Police Science*, 53 (March 1962), pp 44-49.

CRIMINAL HOMICIDE

The term homicide covers intentional and unintentional killing, brutal murders, judicial executions, ritual murders and death on the roads, political assassinations and infanticide.⁷ Homicide is therefore, the killing of a human being by the action or inaction of another person whether intentional or not. A homicide is criminal if it is committed with malice aforethought, premeditation, intention or when the victim dies due to the negligent act or omission on the part of any other person other than himself. A homicide is justified when the killing is done in self-defence, as when a person spears a robber; or when the killer does so to stop the commission of a felony. A policeman who shoots and kills a felon who is attempting to escape is not guilty of criminal homicide; a prison guard who executes a convict is acting within the law and the homicide is justifiable and therefore legal. Excusable homicide is committed when a person without negligence but accidentally kills another. A homicide is criminal if it is done without lawful justification or excuse, then it is either a murder or manslaughter.

Studies in criminal homicide reveal very interesting patterns in respect of sex, age, relationship between the victim and the offender, motives for the homicide and methods of inflicting fatal injury and the weapons used.

In a study of criminal homicide in Uganda, it was found that homicide is predominantly committed by males against males; for in a sample of 569 criminal homicide offenders, 506 or 88.8% were men.⁸

In another study carried out by the author in Kenya, men were found to commit homicide more frequently against other men than women.⁹ Wolfgang in an earlier study in Philadelphia found that of the 620 offenders 511 or 82.4% were males.¹⁰ These and other

7 William Clifford, *An Introduction to African Criminology*, (Nairobi: Oxford University Press, 1974), pp. 119-124.

8 Mushanga, *Criminal Homicide in Uganda* op. cit.

9 Tibamanya mwene Mushanga, *Homicide and its Social Causes* (E.A.L.B., 1977).

10 Marvin E. Wolfgang, *Patterns in Criminal Homicide* (New York, John Wiley and Sons, 1966), pp. 31-36.

research findings conclusively show that males kill each other first, their next victims are women, usually their wives, friends or lovers and are least victimized by the females. Females, on other hand, have low rates of violent killings; but when they do kill, they kill men and infrequently kill their fellow women. Men's share of all crimes is in excess of their percentage in all societies. Sutherland and Cressey have noted "the crime rate of men is greatly in excess of the rate of women in all nations, all communities within a nation, all age groups in all periods of history for which organized statistics are available and for all types of crimes except those peculiar to women, such as infanticide and abortion."¹¹ In the Uganda study, mentioned above, it was found that women in Kigezi district of Western Uganda, engaged more frequently in violence than women in Ankole and Toro districts, also in western Uganda. An explanation for this pattern of violence was first given by Veli Verkko in his study of homicide and suicide in Finland in 1951.

Verkko formulated a law of sex categories and homicide; he called it static law. According to this law, societies with high frequencies of crimes against life, such as homicide, the participation of women in those is small and that women participation in crimes against life is high in those societies in which the frequency of crimes against life is low.¹² Another partial explanation of this sex differential in the use of violence may be sought in the interactional processes and the use of leisure in different communities and in their cultural definition of social situations in which conflicts now and again ensue between individuals.

The studies of criminal homicide in Uganda and Kenya show that criminal homicide, in general, is committed by persons who are younger than their victims. This finding is not unique to Uganda and Kenya; it has been observed elsewhere in the world. The most violent age group is that between 25 and 29 years; followed by those between 20 and 24; and thirdly those who are 30 and 34 years. The very young, that is this below the age of 14 and the very old,

11 Edwin H. Sutherland and Donald R. Cressey *Criminology*, ninth edition, 1974, p. 120.

12 Veli Verkko, *Homicides and Suicides in Finland and their dependence on National Character*, (Copenhagen, 1951), pp. 51-55.

those who are aged 60 and above infrequently commit homicides, though they more frequently become victims of violent and fatal attacks. Apart from differential reporting practices around the world, the very young and the very old, participate less in crimes of violence such as criminal homicide, grievous assault and forcible rape probably because of their relative physical weakness and their relatively reduced participation. Regarding the relationship between the offender and his victim, the Ugandan study and the study done at Kamiti Maximum Prison in Kenya, like several done elsewhere and notably in the U.S.A. and Britain, show that criminal homicide is primarily a crime which comes as a result of interactional process that ends in the death of one or more persons.

These studies further show that criminal homicides are frequently committed by persons against members of their own families, domestic groups, friends, workmates and acquaintances. This means that criminal homicide very infrequently involves persons who are unknown to each other.

In the study done in Uganda it was found that 159 or 33% of the 501 victims were members of the same family as their slayers, 27% of those victims were wives of the offenders; 171 or 34.1% were friends, fellow workers or acquaintances. That is, in all, 67% of the victims were killed by persons closely related to them as spouse, friend or acquaintance. An offender in the town of Mbarara in Ankole admitted the killing of a person, but he said it was a pure accident; "I did not intend to kill him; he was not a man of our area, I did not know him."¹³

It could, therefore be concluded that in general, people do not kill strangers except when the killing occurs in the course of robbery, or for ritual murders or other felonies in which material gain is the motive. It is therefore safer to be among strangers provided they are not robbers. But this conclusion must be considered with caution; because in communities where violence has or is assuming a dominant subcultural status, total strangers can readily be attacked

13 Mushanga, *Criminal Homicide in Uganda*, op.cit See also Mushanga, *Homicide and its Social Causes*.

and killed, especially in large cities. In the United States it has been reported that:

“Fear of strangers (that) is impoverishing the lives of many Americans. People stay behind the locked doors of their homes rather than walk in the street at night. Poor people take taxis because they are afraid to walk or use public transportation. Sociable people are afraid to talk to those they do not know. Society is suffering from what the economist would label opportunity costs. When people would stay at home, they are not enjoying the pleasurable and cultural opportunities in their communities; they are not visiting their friends as frequently as they might. The general level of sociability is diminished”.¹⁴

Studies of criminal homicide done in different parts of the world show a remarkable pattern in the choice of weapons to cause death by offenders; the choice of weapons is largely determined by cultural factors. The analysis of weapons of violence shows that in general, people will use whatever is readily at hand to kill others. Weapons like cooking pots, boots, radios, grinding stones, hoes, pangas and other commonly used domestics objects or cultural artefacts figure frequently in cases of criminal homicide and aggravated assault.

A study of weapons used in criminal homicides by the end of this century in East Africa will definitely show more frequent use of firearms than was the case at the turn of the century. As more firearms come into these societies the more they will be used as weapons in homicides, armed robbery and kidnapping.

In the United States of America, perhaps more than in any country, except Colombia, the use of firearms has been on the increase over the decades. In 1980 the Federal Bureau of Investigation reported 23,000 cases of criminal homicide and firearms were used in 62% of these cases.¹⁵ In 1970, the same agency reported that firearms were the weapons used in 66.2% of cases.¹⁶

14 Crimes of Violence, Vol. 11 A Staff report to the National (USA) Commission on the causes and prevention of violence, Prepared by Donald J. Mulvihill & Melvin M. Tumin with Lynn A. Curtis, (Government Printer, Washington D.C 1970) p. 216.

15 Uniform Crime Report Crime in the United States: The annual report of F.B.I. (U.S. Government, Washington D.C. 1980), p.8.

16 *Ibid.* p. 235.

In 1979, the number of people that were killed in that country was up to 23,040,¹⁷ that is the number had almost doubled over a period of twelve years and the majority of cases are believed to have been caused by guns. Earlier, Ramsey Clark, a former Attorney-General of the United States has observed in his *Crime in America*:

Since 1900, guns have killed over 800,000 persons in America. More than 20,000 are shot to death and upwards of 200,000 are injured or maimed by firearms each year... Estimates of the number of firearms in private ownership range from 50 million to 200 million ...Surveys indicate more than 40 million people own guns.¹⁸

In 1963, 4,760 persons were killed by firearms; in 1965 the figure had risen to 5,600. In that year alone 34,700 cases of aggravated assault and 68,400 of armed robberies were reported to have been committed by use of firearms.¹⁹ In a study done over 46 years ago, Bensing and Schroeder found that firearms were responsible for 55.2% of homicides committed in the city of Chicago.²⁰ In 1963, there were 125 murders in Detroit; by 1973, just ten years later, the figure had gone up to 693 and guns had been used in 65% of these cases. In the city of Detroit alone, with a population of one and half million people, there were about 500,000 guns.²¹

In a study of 500 criminal homicides, Howard Harlan found that firearms were frequently used as weapons in homicide, having been used in 49.2% of the Cases.²² In yet a different survey, Emil Frankel found that homicides by firearms were one of the alarming phenomena in present-day social life in America; guns had been used in 51.9% of 1,816 homicide cases.²³

17 The World Almanac and Book of Facts 1982 (Newspaper Enterprise Association, Inc. New York, 1981), p. 956.

18 Ramsey Clark, *Crime in America*, Pocket Books, New York, 1970 pp 82-83.

19 The Challenge of Crime in the Free Society: A report by the president's commission on law enforcement and administration of Justice; (An Avon book, New York, 1970), p.534.

20 Robert C. Bensing and Oliver Schroeder, *Homicide in an Urban Community*, (Springfield Illinois: Charles C. Thomas, Publisher, 1960) p. 100.

21 The Times, Wednesday 19 December 1973.

22 Howard Harlan, "Five Hundred Homicides," *Journal of Criminal Law, Criminology and Police Science*, 1950, vol. 29.

23 Emil Frankel, "One Thousand Homicides," *Journal of Criminal Law, Criminology and Police Science*, Vol. 29

The few studies that have been done in Africa show quite a different picture. Tanner in his Uganda survey of homicide in 1964 found that firearms (including the muzzle-loading ones) were used in 1.7% of cases.²⁴ In a study of criminal homicide, the author found that out of 501 victims, only four had been killed with guns.²⁵

In a Sudan study, Fluehr-Lobban found that only six victims had been killed by the use of firearms.²⁶ Bienen in a study of homicide in western Nigeria found that guns had been used in 38 cases or in 19% of the 205 cases.²⁷ Paul Bohannan in a study of homicide among the Abaluyia of North Kavirondo in Kenya for the years 1949 and 1954 does not mention firearms at all. In the study, sticks, knives and spears were found to be the major weapons of killings.²⁸ Wilson too, who did a study of homicide among the Jaluo of Kenya, makes no mention of guns; the Fallers too in a similar study in Bugisu in Uganda, in 100 cases of homicide, not a single one had been caused by the use of firearms; and La Fontaine in a similar study in Bugisu doesn't mention firearms at all.²⁹

In England and Wales, Gibson and Klein reported that shooting ranged from the low rate of 2.1 % in 1958 to a high one of 13.0% in 1965.³⁰ These are quite low rates when compared to those obtainable from the United States of America; as for the Soviet Union, we have to wait for some time before we know what the situation is like there.

The use of firearms, or of any other lethal weapon is a cultural phenomenon; being dependent on cultural definition of situation as requiring the use of firearms. In a study of crime in Switzerland,

24 Tanner op.cit. p. 98.

25 Mushanga, *Criminal Homicide in Uganda*, p. 56.

26 Carolyn Fluehr-Lobban, "An Analysis of Homicide in the Afro Arab Sudan," a paper for the Sudan Notes and Records, 1972.

27 Leigh Bienen, "Criminal Homicide in Western Nigeria," a mimeographed paper, 1972.

28 Paul Bohannan, editor, *African Homicide and Suicide*, (Princeton University Press, Princeton, 1960) p. 216.

29 The studies of Bohannan, Wilson, Faller and Faller and La Fontaine are found in Bohannan (editor) op. cit.

30 Evelyn Gibson and S. Klein, *Murder, Studies in the causes of delinquency and the treatment of offenders*, (Her Majesty's Stationery Office, London, 1961).

Marshall Clinard noted that firearms are rarely used in crimes of violence there; that guns are not commonly used to settle personal disputes or even robberies.³¹

This finding is extremely interesting when we note that firearms are readily accessible all over the country; for the Swiss law requires every male to serve in the army and remain in the army and with his guns from the age 20 to the age of 50, and 55 in case of officers. This means that practically every Swiss family has firearms at its disposal and yet these weapons do not figure in Swiss crime, especially violent crime such as homicide, aggravated assault and armed robbery. Many cultures do define certain weapons as defensive or offensive, an example is that of many Africans who culturally carry knives or spears as is the case in some herding communities in East Africa.

MOTIVE IN CRIMINAL HOMICIDE

Criminal homicide, it must be clear now, is a phenomenon that generally expresses the interpersonal relationship in which the offender and his victim are known to each other and in most cases quite closely related.

Motive must not be confused with intent; motive is a much less formal term and refers to that which stimulates a person to commit a crime; while intent is a legal term referring to the offender's ability to comprehend the nature of his act and his resolve to commit it.³²

In the study of criminal homicide in Uganda that we have already referred to, of the 501 victims of violent deaths, beer party brawls, in other words, intoxication with alcohol accounted for 109; this category was followed by what the author called domestic altercations with 65 cases; then provocation and the rest included stealing and robbery, mental disorders, motives of a sexual nature like morbid jealousy; then disputes of any description may end up in violence and death; such as over land, brideprice, disputes over money and inheritance. Then there is a host of incidences of criminal homicide whose motives may be due to depressive disorders,

31 Marshall B. Clinard, *Cities with little Crime, The case of Switzerland*, (Cambridge University Press, Cambridge, 1978), pp. 114-115.

32 *Crimes of Violence*, Vol. II p. 229.

schizophrenia, aggressive psychopathy and all sorts of neurosis and acts resulting from mental abnormality.³³

In the laws of African countries that were formerly under British rule, a motive is not material to criminal responsibility unless it is expressly declared to be so³⁴ and therefore courts are never interested in seeking motives for the homicide cases that they handle.

Alcohol, which figures quite frequently in cases of altercation and beer party brawls, cannot be a motive in crimes of violence. What it does is to free the person by lowering or completely suppressing his capacity and ability to regulate and control his emotional states; his mind is liberated from fear and cultural expectations and feels free to deal with situations as they arise.³⁵

A motive then is the reason an individual has for doing what he does. The reason for doing so may be quite reasonable, as when a mother steals food to feed her starving child, but this will not make the act any less criminal. On the other hand an evil motive, as we noted earlier on, cannot make one a criminal as long as it has not been carried out. Now in criminal homicide, it is the act of killing which constitutes the crime because it is prohibited by criminal laws of these countries.³⁶

Criminal homicides have been categorized into four broad categories; first there are those which result from long periods of hostility; the second category is those which result from sudden outbursts of anger and rage; thirdly, there are cases of cultural nature and lastly, there are those in which robbery is the motive.

Very often some of these cases may fit in one or more of these categories. One case is recorded here from a study of criminal homicide offenders at Kamiti Maximum Prison in Kenya. In this case the offender was under constant fear because he believed that the deceased was bewitching his family; this is what he said to the police:

33 D. J. West, *Murder Followed by Suicide*, (Heinemann, London, 1965).

34 J. J. R. Collingwood, *Law in Africa*, 1967, p. 30.

35 Mushanga, *Criminal Homicide in Uganda*, p. 95.

36 Mushanga, *Homicide and its Social Causes*, p. 87.

“The deceased was a witch. He was bewitching me, my children and my mother. We were drinking, but I was always aware that he was bewitching my family. We quarrelled about it when I asked him to tell me the reason why he was bewitching my family. Then we started fighting and got my pocket knife and cut his neck and he died at once.”³⁷

In the above case, the deceased was a cousin of the offender; for witchcraft like sorcery is always practised against one's relatives and close friends. Belief in witchcraft, sorcery and the evil eye are quite common “motive” in many parts of Africa. The so-called ritual murders described by Clifford fall in this category.³⁸ Many groups in Africa believe in rituals or in medicines in which blood, brain or more frequently the heart or liver of a young child has been mixed to be very potent protection against witchcraft; or are believed to bring good luck as when campaigning for a political position. A woman in Bunyoro had her co-wife to blame for her misfortunes; first she had a skin rash, then her five-year-old son died, then she suffered from constipation and most importantly she had growth coming out of her vagina which made it impossible to have sex with men; and for all these reasons, she had to kill her co-wife.³⁹

In the search for motive in criminal homicide, we come across cases in which, the victim and not the offender is responsible for his victimization. This is not restricted to criminal homicide alone, but to most criminal offences, such as forgery of cheques, stealing of clothes that are left out unwatched; rape in which the woman taunts the man especially with whom she may have been drinking. Very often violence erupts because of love-hate mix-up in one or both individuals who are engaged in sexual relationship. There are men and women who suffer from *sadism*, a pleasurable feeling derived from the infliction of pain and suffering on another person usually a sexual partner; this may also be accompanied by its opposite, *masochism*, which is a desire to be hurt by the love object and cases are known where murder occurs immediately after, or even during sexual intercourse.⁴⁰ In one

37 Mushanga, op. cit. p. 78.

38 Clifford, op. cit.

39 Mushanga, op. cit. p. 89

40 Terence Morris and Louie Blom-Cooper, “The Victim's Contribution,” in Marvin

case a man kissed his sexual partner, enclosing the whole mouth and nose and as result, the woman suffocated to death.

In such cases of provocation especially where a sexual relationship does exist, the victim could have been the offender, as when a victim attacks the offender with a knife and the offender overpowers his would-be assaultant and kills him. In some cases, the victim may be partially or wholly responsible for his own death. He may be the first to use force or to enrage the offender by abuses, insults and ridicule especially in the presence of other persons. These are some of the cases in which the victim appears to be determined to be killed by inviting his opponent, by calling him vile names and almost demanding to be killed.

Psychological frustration that may be a result of physical defect or malfunction of biological and physiological organs very often leads some persons to commit violent crimes such as homicide or aggravated assault. In one study of a group of murderers who were physically deformed were compared with their own brothers as a control group. The researcher, Stuart Palmer, found that among the 51 murders there was a total of 26 instances of extreme visible physical defects (those which were present at birth combined with those which developed later); among the 51 control brothers there was a total of only seven defects; that is, there were almost four times as many physical defects among murderers as among non murderer brothers.⁴¹ Physical defects that cause frustration include, lameness of limbs, blindness, club foot, deformed jaws, exceptionally large or small heads, over or under weight, being too fat or too thin, too short or too tall; having extra digits, hunch-back; stammering, one eyed or abnormally short neck. All these cause social embarrassment and this can cause frustration as the affected persons may frequently think that everybody who looks at him is thinking about the defect and perhaps laughing at him inwardly.

E. Wolfgang, (editor) *Studies in Homicide*, (Harper & Row, New York: 1967) p.67. See also Marvin Wolfgang's "Victim-Precipitated Criminal Homicide," in Wolfgang, *op.cit.* p.72

41 Stuart Palmer, "Psychological Frustration – A comparison of Murderers and Their Brothers," in Wolfgang, *Studies in Homicide*, *op. cit.* p. 135.

Perhaps one of the severe psychological frustrations is that which results from impotence. The impotent man may pick quarrels and fights in situations that do not require the use of force; and it is asking for trouble to taunt a man who is impotent in a sexual context, for impotence, like childlessness is a social stigma that causes plenty of frustration.

The study of criminal homicide also involves the time and place of the homicide. In America, the rate of criminal homicide is reported to increase during the hot summer months of the year.⁴² Perhaps because, during winter, a lot of people remain at home and, as a result, their contacts with others are minimized and their drinking of alcohol is somehow reduced. Homicide is also associated with the time of the day and day of the week. The weekend is the worst period of the week, and festive days such as Easter, Christmas and other major national holidays claim more victims of violence, rape and robbery. Saturday night has been singled out as the day of homicide and the hours of 8.00pm and 2.00am are the bloody hours of the day.⁴³

In the American studies, the highway has been reported to be the commonest place where homicides are committed; although the home is known to be worse than outside the home. In these studies, men are more frequently killed in the street than inside homes. Women kill mostly in the kitchen but are mostly killed in the bedroom.⁴⁴ In the few studies that have been done in Africa, the pattern is slightly different; men tend to be killed at beer parties and women at home and not necessarily in the kitchen; the other patterns remain that the majority of female victims are killed by males, and the majority of female offenders too kill males; women are kinder to their female folks than they are to their male counterparts.⁴⁵

In 1970, Mexico had the highest recorded criminal homicide rate of 46.3 per 100,000 of the population. This record is surpassed by *La Violencia Colombiana* (1945-62) which occurred in Colombia

42 Wolfgang, op. cit. p. 20

43 *Ibid*, 21

44 *Ibid*, 21

45 Mushanga, Criminal Homicide in Uganda, op. cit.

where more than 300,000 were killed in a space of seventeen years; or 48 persons per day.

In more recent times, it is estimated that more than 500,000 people were murdered during eight years (1971-1979) of Amin's administration in Uganda; which is one of the highest criminal homicide rates ever recorded since the Second World War, with a rate of over 170 people being killed everyday. Recent reports, however, suggest that the security situation is worse than it was during the Amin dictatorship, that under the "scorched earth policy" designed by North Koreans for Obote, Uganda has lost between 100,000 and 200,000 people, many in the last few months of 1984.⁴⁶

In 1967 Spain reported the lowest rate of criminal homicide of 1.23 per one million of population; but a few years later, Interpol reported that Norway, Ireland, Denmark, Sweden, England, Wales and Ghana as the countries with the lowest homicide rates in the world. In the Indian state of Sikkim, in the Himalayas, homicide is reported to be practically unknown; while in the Hunza area of Kashmir in the Karakoran, only one definite case of homicide has been recorded since 1900. Criminal homicide is said to be extremely rare among the Bambuti of Ituri Forest. The followings is a list of countries whose homicide rates were reported to Interpol in 1970; (Per 100,000)

Congo (Brazzaville)	27.70
Ethiopia	25.74
Uganda	24.60
Pakistan	20.77
Philippines	19.05
Taiwan	12.39
Ceylon (Sri Lanka)	12.21
Libya	11.20
Peru	7.90
Egypt	7.60
Kuwait	7.55
Luxembourg	6.76
Syria	6.00

46 Guinness Book of World Records, 1974, see Munnasi Vol. 2 series 7, 24 August 1984, p. 14, and Newsweek, No. 34, 20 August, 1984, p.32.

Tanzania	5.30
Cyprus	5.27
Kenya	5.00
Jamaica	4.60
Italy	3.50
Argentina	3.09
West Germany	3.00
Netherlands	3.00
Israel	2.90
France	2.58
Japan	2.30
Ivory Coast	2.20
Australia	2.04
Austria	2.00
Scotland	1.88
Canada	1.90
Finland	1.70
South Korea	1.41
Hong Kong	1.13
New Zealand	1.02
Indonesia	0.79
Greece	0.70
Iran	0.70
Spain	0.54
Malaysia	0.50
Ghana	0.48
England/Wales	0.34
Sweden	0.30
Denmark	0.20
Ireland	0.20
Norway	0.13 ⁴⁷

47 The New York Times Encyclopedic Almanac, 1970, p. 231. The data for Uganda, Kenya and Tanzania are taken from Mushanga, *Criminal Homicide in Uganda 1974*, p. 28.

MURDER AND MANSLAUGHTER

In the preceding paragraphs, we have been looking at criminal homicide in general; we now turn to consider murder and manslaughter. Homicide is the killing of a person by another person; when the killing is not legal or justifiable or excusable, it is criminal. Thus murder is one type of criminal homicide; it usually makes a very small fraction, about 3-5% of the bulk of criminal homicide. Murder is defined in law as unlawful killing of a human being by another with malice aforethought. Malice aforethought refers to a “guilty mind,” or what lawyers term, *mens rea*.

In a number of jurisdictions, murder is graded into first and second degrees. This distinction is extremely important in that it may determine the legal sanction or penalty the offender may receive.

In East and Central Africa, especially in the former British dependencies, the penalty for murder in the first degree is death;⁴⁸ and second degree murders are punished by life imprisonment. The penalty of death is mandatory and only the heads of states can reprieve a condemned person by pardon. Legally, that is constitutionally, such a penalty can only be passed by a competent court of law presided over by legally qualified officials. But in recent times, especially in African dictatorships, this requirement has been waived and lay judges have been appointed to pronounce death sentences on citizens. In Malawi, the National Traditional Court found Mr. Orton Chirwa and his wife, Vera, guilty of treason and sentenced them to death in 1983. The couple appealed to the National Traditional Court of Appeal, which upheld the verdict of the lower court. Chirwa and his wife are now serving life sentences after being pardoned by the life President Banda. Their son, Fumbani Chirwa, who was originally charged with his parents has not been heard of since December 1981.⁴⁹

When a condemned person is pardoned, it is common to send him to prison for life or for a specific period of time. Thirty one years ago Zaire publicly announced that it had abolished the death

48 See the Penal Codes of Uganda, Kenya and Tanzania Sections, 189, 205 and 198 respectively .

49 Amnesty International 2 February, 1984. Newsletter Vol. XIV no. 2. p. 8.

penalty; but now, the legal death penalty has been replaced by what Amnesty International calls extra judicial executions which are carried out by *Brigade Speciale Presidentielle*, Special Presidential Brigade and *Brigade Special de recherches et de Surveillance*, Special Research and Surveillance Brigade.⁵⁰

In the determination of the presence or the absence of malice aforethought four criteria are considered; the prosecution must show that;

- (a) There was an intention to cause death or grievous bodily harm to any person. This is outright and overt malice;
- (b) The knowing that the act or the omission causing death will probably lead to the death of the victim or grievous bodily harm. Here malice is implied;
- (c) An intent to commit a felony, as in the use of violence in the commission of a robbery;
- (d) An intention by the act or omission to facilitate the escape from lawful custody of any person who has committed or attempted to commit a felony.

Manslaughter is another type of criminal homicide in which the killer is not legally defined as a murderer because the act of killing is done with no malice aforethought. It covers such killings as accidental deaths. The most important legal element in the determination of manslaughter is the unlawful killing in a sudden heat of anger and clearly without premeditation.

Provocation is very often the defence of the accused. The homicide in which the offender is provoked is legally termed voluntary or non-negligent manslaughter.

Involuntary or negligent manslaughter is death resulting from unintentional killing, such as from negligence; that is, death being due to the negligence of someone other than the victim himself. Deaths resulting from motor vehicles are usually excluded from the category although it is possible (and it happens) for a driver, with malice aforethought, or with deliberate intent, to run over a pedestrian, in which case the driver uses his motor vehicle as a

50 Amnesty International Torture in the Eighties, Vol. XIV no. 4, p. 8.

weapon just like any other killer would use a spear, stick or a gun. Penalty for manslaughter is life imprisonment.⁵¹

Another term which is commonly used in journalism is assassination; which simply means the intentional killing of an individual for political reasons. The victim is usually a politically important person in society. Thus the killing of President John F. Kennedy, President Sadat, Dr. Martin Luther King Jr., Sheikh Karume (of Zanzibar), Tom Mboya and J.M. Kariuki of Kenya and more recently Indira Gandhi, are all assassinations. History and especially recent history of Africa is full of these assassinations which are committed by governments against individuals as was the case of Diallo Telli in Guinea, of Steve Biko and others in South Africa; of Janan Luwum, Wilson Oryema and Oboth-Ofumbi, and Sebastian Sebugwawo, George Kananura, Kabango in Uganda. But these murders must not be confused with the killing of common people by governments or the killing of prominent politicians by thugs, robbers or any other group for reason other than politics. Thus the murder of Dr. Joseph Muhangi, member of Uganda Parliament in 1981, could have been for political reasons in which case it was an assassination.

INFANTICIDE

The crime of infanticide is committed by a mother killing her child who is less than twelve months old. The killing of a child by its father, stepfather or any other person other than its mother cannot be infanticide. In East Africa, infanticide is committed;

When a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, in circumstances which *prima facie* amount to murder, but at the time of act or omission the balance of her mind was disturbed by reasons of not having fully recovered from the effects of giving birth to the child, or by reason of the effect of lactation consequent upon the birth of the child...⁵²

The penalty for infanticide is the same as for manslaughter. The crime is common, and in areas where it is not so, then abortion is.

51 See The Penal Codes of Uganda, Kenya and Tanzania *Supra*.

52 *Ibid*.

The distinction between infanticide and abortion is a legal one. In infanticide there must have existed as an independent person, that is, it must have an independent respiratory system of its own; but in abortion the foetus is wilfully evacuated from the womb before it is due so that it dies as a consequence.

There are numerous motives for infanticide; mostly young women commit infanticide in order to conceal the birth of an unwanted child, and perhaps whose paternity is not known. In some cases, the young woman may commit infanticide when she finds out that the father of the infant is not accepting the responsibility or the paternity; while in others, mental abnormality may be the cause.

In some cases the mothers of these young women encourage them to destroy their own babies in order to save the otherwise good name of the family. In the past some groups of people killed girls who became pregnant before marriage. Among the Abanyankole, John Roscoe reported that the penalty was death; that when a girl became pregnant before marriage, she was taken by her own brother to Kagera River; a stone was tied around her neck with a bundle of herbs and was then cast into the river and drowned.⁵³

For obvious reasons, the Abanyankole, the Abakiga and Abanyarwanda, held the mother responsible for the conduct of her daughters and were held as guilty as their daughters when pregnancy happened. In certain groups pregnancy is still considered a disgrace to the family; and in cases where the girl is highly integrated into her family, clan, or religious group, or when she sees that no help will be coming from the man who made her pregnant or from her embittered brothers, the alternative is an attempted abortion. When this fails, the destruction of the infant is resorted to. Infanticide and abortion will continue to increase as normative social values continue to change.

Now, with the freedom of movement and employment possibilities and the pressing for "Women's Libs," the prohibition of polygamy by Christian sects and a general surplus of women over men outside marriage pregnancies are becoming quite common.

53 John Roscoe, *The Banyankole*, (Cambridge University Press, 1923) p.120.

Some are illegally aborted and some infants are born and then killed. It will be some time before the average girl learns the methods of birth control; or to do without men.

MAYHEM AND MUTILATION

Mayhem is defined as violent depriving of another person of the use of such of his members as may render him less able either to defend himself or to fight his enemy. Mayhem does not refer to any injuries however heinous, but to those that render a man less capable of self-defence, or make him less able to disable his adversary. The injuries include cutting off of hands, legs or the plucking out of eyes. The term commonly used to refer to these brutal acts is dismemberment.

Mutilation has now been revived in the Sudan as a Koranic penalty for thievery. On 9 December, 1983 the first amputations were carried out at Kober Prison in Khartoum before a crowd of 3,000 people. "The chopped off parts of the hands were first raised high up for the public to watch and then were displayed on the podium for a while before prison guards carried them away."⁵⁴ In another case, "Baljit Singh was blinded by the police in Bihar, India, in 1980. Thirty-six suspected criminals suffered the same fate. One of the men said that officers held him down, punctured his eyes with bicycle spokes and then wrapped acid-soaked pads over his eyes."⁵⁵

Mutilation as approved by Koranic countries is believed to be a deterrent against further crime and justified as a form of punishment as *lex talionis*, an eye for an eye.⁵⁶

Thus thieves and counterfeiters have their hands cut off, liars and perjurers have their tongues torn out, and spies have their eyes gouged out. Those guilty of adultery used to have their noses cut off or disfigured in such a way as to make further sexual intercourse with them unattractive or difficult. In fact the castration of sexual offenders has been going on in Europe till very recently.

54 Amnesty International Newsletter, Vol. XIV no. 2, p. 8.

55 Harry Elmar Barnes, *The Story of Punishment. A Record of Man's Inhumanity to Man*; (The Stratford Company, Boston, Mass, 1930) p. 30.

56 This is reported by W. Becker, *Sittlichkeitsverbrechen An Kindern*; Nachrichtendienst Des Deutschen Vercins fuer Oeffentliche Und Private Feursorge, 1964. (A study in West Germany of "Sex offences committed against children").

In a survey by Langenlueddeke in Germany, 2,800 offenders were found to have been castrated for sexual offences in the years between 1934-1944.⁵⁷ Castration, as we have already seen, was performed on all male slaves that were taken to Arab countries so that they would not have sexual intercourse with the wives and daughters of their masters.

King Canute of ancient England issued a legislation prescribing mutilation as a common method of corporal punishment:

Let the offender's hands be cut off, or his feet, or both, accordingly as the need may be. And if he has wrought yet greater wrong, then let his eyes be put out and his nose and his ears and his upper lip be cut off, or let him be scalped, so that punishment may be inflicted and also the soul preserved.⁵⁸

SUICIDE AND HOMICIDE FOLLOWED BY SUICIDE

Suicide has been a subject of study by a number of disciplines for generations and forms one of the most researched topics in sociology. Suicide or self-murder is a crime in most countries, when it is accomplished, there is no criminal but when it fails, then the would-be victim may be charged for attempted suicide. In Uganda, attempted suicide is a misdemeanour; but aiding another person to commit suicide is a felony and the punishment is life imprisonment.⁵⁹

Suicide refers to the act of taking one's life or self-destruction, *fele dese*. Emile Durkheim, perhaps one of the greatest authorities on this subject defined suicide to include "all cases of death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce the results."⁶⁰ Ruth Cavan regards suicide as "the intentional taking of one's life or the failure when possible to save one's self when death threatens."⁶¹

57 Barnes, op. cit. p. 61.

58 Uganda Penal Code Sections 209 & 210.

59 Emile Durkheim, *Suicide*, translated by John A. Spaulding and George Simpson (New York: Free Press, 1951) p. 44, also see Clinard's *Sociology of Deviant Behaviour* fourth edition, p. 626. See also S. N Eisenstadt, *Comparative Social Problem* (New York: The Free Press 1964) pp. 2-8

60 Ruth S. Cavan, *Suicide* (Chicago: University of Chicago Press, 1928) p. 3.

61 The World Almanac and Book of Facts, 1982, p. 963.

Suicide, like homicide, varies in rates from country to country but certain patterns have been observed. For example, the wealthier and older people tend to be more prone to suicide than the very poor and the relatively young. Suicide increases among those who are over 50 years old, and gets worse among those who are over 70 years.⁶²

It is much more common than homicide. In England and Wales, it claims about 5,000 people compared to 150 for homicide.⁶³ In United States of America, in 1979 there were 27,640 cases of suicide compared to 23,040 cases of homicide and 53,990 cases of motor vehicle accidents, 105,420 cases of unspecified accidents including over 13,690 cases of falls, 5,700 cases of drowning,⁶⁴ some of which may have been suicide, but not included in the reported cases.

Bohannon states that “when in the Western society people become “serious” about the study of homicide, they turn to lawyers, judges, policemen, psychologists, sociologists and actuaries.”⁶⁵ That was written over 46 years ago but no studies have been done by lawyers, judges, policemen, psychologists, sociologists or actuaries in Africa. In studying homicide and suicide in Africa, Bohannon and his colleagues wanted to find out whether Africans kill themselves and one another for the same reasons and in the same situations as Europeans and Americans. This we have yet to find out; because the desire and the need to take one’s life may arise from a number of reasons and is largely determined by the culture in which one is reared and lives.

Prolonged suffering resulting from such diseases as cancer and other malignant diseases, blindness, barrenness, shame, sexual impotence, mental abnormality and psychological frustration and a host of other personally and socially distressful situations may compel one to consider the termination of his life. Suicide as an escape from persecution is frequently committed by murderers; that

62 D.J. West, *Murder Followed by Suicide*, (London: Heinemann 1965) p.1.

63 *The World Almanac*, op. cit. p. 956.

64 Paul Bohannon, *African Homicide and Suicide*, (editor), (Princeton University Press, 1960) p. 3.

65 Clinard, *Sociology of Deviant Behaviour*, fourth edition, p. 638.

is, a person commits a homicide and immediately or some time later, he commits suicide. A woman may kill herself to put a stop to her husband's beatings and general mistreatment. In order not to be made to suffer by being taken prisoner, a soldier may shoot himself to death. Some other persons commit suicide in order to punish the survivors, or to demonstrate how a recent event couldn't be tolerated. Thus in some Eastern countries a woman may commit suicide because her husband was reported to be in love with another woman, or because he has died.

The culture of a people will often define the method by which suicide may be committed. In the United States of America, the majority of cases are committed by a gun; but studies done in Africa show over-abundance in the use of hanging and in recent times, the use of poisonous substances has been reported. Cattle dip solutions such as delnav, for example, have been responsible for about half a dozen victims within less than a year in the experience of the author. The methods of self-murder could be as varied as those of homicide.

We noted earlier on that there are definite patterns in suicide. It has been found that men, in general, commit suicide more frequently than women; the rate of men being three to four times greater than that of women. In the United States of America, white persons are known to have a much higher suicide rate than non-white; but blacks in America are reported to have a higher rate of criminal homicide than the whites. Married persons have a lower suicide rate than the unmarried, but an unsatisfactory marriage or broken marriage may be conducive to suicide. It is generally believed that Roman Catholics are less prone to commit suicide than Protestants, although both religions condemn it. Catholic countries in Europe; Spain, Portugal, Italy and Ireland have lower rates of suicide than the Protestant nations; Denmark, Sweden, England and Germany. But Norway and Scotland, though overwhelmingly Protestant, have low suicide rates.

The low suicide rates among Catholics is explained, at least in part, by the Catholic Institution of Confession; for while the Catholic has a father (priest) to go to and confess and in so doing relieves himself of psychological tension, his Protestant counterpart

is left on his own and when he is completely overwhelmed, he turns to self-destruction. Cultural attitudes and definition are also important in determining whether the death of a particular person is or not suicide. In countries where suicide brings shame and disgrace to the family, a person who takes poison intending to kill himself will be said to have taken medicine by mistake; a fall from a high rise building will be said to have been accidental; and if the doctors and police who get involved in the case are of the same culture, they all announce death as accidental.

This may be deliberately to avoid embarrassing the relatives of the deceased. If done on a national level it may give a false picture of the real incidence of suicide. This means that in countries where suicide is condemned, the given rates are not real. Both Catholics and Protestants condemn suicide, but Catholics are more serious about the condemnation. Talmud and the Koran too condemn suicide.

In regard to occupation of the victim, it has been found that professionals, managerial and unskilled workers have relatively higher suicide rates than the rest. Senior army officers are reported to have higher rates of suicide than the rank and file of soldiers. Professionals, high ranking army officers and big businessmen have high social status which they guard jealously. Any threat to the image of the person is likely to cause psychological frustration and lead to suicide. On the other hand, the unemployed poor find life worthless and miserable. In general, suicide occurs more often when there is a pronounced social mobility either upwards or downwards on the social status scale.⁶⁶

Attempted suicide is about six to eight times as actual suicide. In Los Angeles a study showed that at least four adults in every one hundred had made an attempt to kill themselves. Those who attempt to kill themselves usually remain close to other people so as to be found and rescued.

66 Clinard, *Supra*, p. 632 see also Edwin S. Shneidman and Norman L. Farberow, "Statistical Comparison Between Attempted and Committed Suicide," in Norman L. Farberow and Edwin S. Shneidman, *The Cry for Help*, (New York: McGraw-Hill Book Company Inc. 1961).

Another study showed that women make more attempts at suicide than men and always give marital problems as the reason.⁶⁷ Suicide is related to the type of society, being more common in large cities than in villages; and very infrequent among what anthropologists call “folk societies”.

Edward Westermarck reported that whenever he asked the Australian Aborigines, they simply laughed at him treating his interview as a joke. Other reports say that suicide was unknown among the Bushmen and the Hottentots of South Africa; but is said to be common in other “folk societies” such as American Indians, Eskimos in Fiji and among some “folk’ groups in Africa.⁶⁸

Durkheim studied suicide and concluded that it was a measure of the degree of social integration and regulation in a society, the amount of group unity and the strength of ties binding people together. For Durkheim, suicide is a social phenomenon and not an individually determined act; it is related to certain features of the social organisation. He identified three major types of suicide.

The first, he named *anomie*. In this type suicide varies inversely with the degree of integration of the original group of which the individual forms a part. That is, if a society is not adequately integrated, the individual is likely to be less associated with his fellow persons in playing his roles in social institutions. When this happens, the individual is said to be anomic: he behaves in an antisocial manner because he lacks adequate internalisation of social values; he is not adequately integrated within the group, he suffers from normlessness. The individual may be on his way down the social ladder or he may have achieved all he wanted and see that there is nothing more, “all is vanity” and life has nothing in interest for him. People who face the possibility of a downward trend, or who suddenly find themselves out of jobs, or in financial problems frequently end their lives in suicide. People may also commit suicide when the social system is abruptly changed so that some persons do not know what to do, such situations occur after social disorders

67 Report in Clinard, op. cit.

68 M. D. W. Jeffreys, “Samsonic Suicide or Suicide of Revenge Among Africans,” *Africa Studies* Vol. XI no. 3 1952, pp. 118-122, cited by Bohannan, p. 11.

such as famine and political crises and in refugee groups; but tends to decline during the wars.

The second type of suicide, Durkheim called *egoistic*. This is common in societies where individualism is widespread, as is the case in Western European countries and America. The person is inadequately integrated into his group, he denies integration and remains unattached to the group of which he is a member; either the individual or the group is not integrated. Durkheim cited the Protestants as being less integrated as a group and as such very prone to the commission of suicide.

The third kind was termed *altruistic*, which is a result of being over integrated; the individual is over identified with his groups; over preoccupied with group process and values. The person values the group interest over his personal affairs. This kind of suicide is common among small communities or folk societies. The person believes that by taking his life, his group benefits; others first, self last, is the guiding philosophy in such societies.

Thus a soldier will venture into the war front not so much as fear of being court-marshalled for cowardice, but for the defence of his country even when he does not know why his country is at war. The same principle may be extended to Islamic Fundamentalists who in the name of God, Allah, and with a promise of up to 100 virgins in heaven, males and females are easily available to participate in Jihad, or a holy war, through suicide, which is perceived as necessary for the greater good of the community. People who are physically handicapped, such as the blind, the lame, those with long-standing illness commit suicide, which may be expected by the group. In such cases, suicide is not considered a deviation.

Years after Durkheim, Jeffreys argued that there was another type of suicide he had come across in Africa that did not fit the three types of Durkheim. This new type he called "Samsonic suicide" because it is taken as an exercise in revenge.⁶⁹ Edward Waestermarck had earlier mentioned, in 1908, vengeance suicide in his writing.⁷⁰ Bohannon says that vengeance suicide must not be

69 *Ibid.*

70 West, op. cit. p. 4.

confused with either altruistic or egoistic, nor even anomic, because it results from belief that as a ghost a man can take revenge on living persons who might have wronged him. It is in this sense that suicide resembles homicide; for in homicide, the offender kills his enemy and in suicide, failing to kill the enemy, the aggrieved person kills himself. Durkheim's categories of suicide may also be applied to homicide, since the two are two faces of the same coin, aggression.

Homicide differs from the rest of crimes in two major respects; first, it is in homicide that we find some of the offenders going to the police or to the chief to make a report of their crime. This never happens in other major crimes such as treason, robbery or rape. Second, it is in homicide that we find some of the offenders punishing themselves by committing suicide immediately after the homicide or some time later. It is common for a person to kill all members of his family and lastly to kill himself; or for a lover to kill his mistress and kill himself; or for a woman to kill her child or all her children and kill herself. Regarding the explanation of cases of homicides that are followed by suicide, West has proposed two theories; one is that a normal person may feel so remorseful and guilty following the killing of a person while in the heat of passion that he resolves to kill himself. The second is that suicide represents a form of escape when the murderer finds himself threatened with detection and punishment.

Another theory has it that the typical suicide victim is a very frustrated person; but on close examination, it is found to be almost the same as the samsonic type described by Jeffreys.⁷¹ Ruth Cavan has this to say on this type of suicide:

The person interprets his difficulty as sufficient to prohibit adjustment; he has, he believes, reached the end of the way, and suicide is a means of solution to him. But his happiness has been ruined or is prevented by some person. Before he kills himself he kills that person, in anger and revenge, or in jealousy and to prevent another from succeeding where he has failed.⁷²

71 Cavan, *op. cit.* cited by West; *op. cit.* p. 6.

72 John Roscoe, *The Baganda*, second edition (London: Frank Cass & Co. Ltd. 1965), p. 289 (first published 1911).

There is, yet, another theory that explains these episodes of homicide followed by suicide. It has been noted that people who suffer from mental abnormality such as depressive psychosis often commit homicides and then kill themselves, immediately or much later.

There are cases as noted above of parents who kill their children and then kill themselves. Very often the mentally ill person under delusion may imagine the suffering of his wife and children as he sees no prospects for a better future and on that account he kills the children and their mother almost in an altruistic manner and then kills himself.

Suicide is considered to be a very serious deviant behaviour in most African communities and is strongly disapproved. The disapproval and ostracism are cultural devices to control the incidence of suicide just as homicide is regarded as a ritual danger which if not adequately expiated may bring disaster not only to the family but the clan or the nation as a whole.

Different cultural groups impose different preventive safeguards; shame, ridicule, gossip and isolation are common in parts of Africa. A son whose father committed suicide may find it difficult to marry and may have to go far from home where heinous act his father committed is not known. Daughters of a suicide mother or father have even more difficulty in getting married. In Ankole marriage arrangements may break down suddenly when it is found out that the grandmother or grandfather of one of the parties committed suicide. The victim himself is used for public socialisation. Just when a person commits suicide, for example, by drowning in a well, the well is closed or if it was by hanging from a tree, he is not cut off the rope on which he is hanging, because this is considered to be ritually dangerous to the man who cuts the rope and to his descendants. This difficult is overcome by selecting an elderly person who is well beyond child-bearing age, or preferably one who has never had a child, to cut the rope. Secondly, the grave has to be dug right underneath the hanging body so that when the rope is cut, it drops in the grave without being touched by anybody; and only the very elderly and the nit-wits, the impotent and others of that type dig the grave and when the body drops into it they cover it with the minimum of care.

Thirdly, the tree on which he had hung is cut down and burnt, and nobody is allowed to shed tears lest other people commit suicide. Today Christian Churches deny Christian burial to the victims of suicide and this for the same reason; to discourage the rest.

The Baganda treated suicide cases almost if not worse than the Banyankole. John Roscoe writing on the subject stated:

A suicide's body was burnt on waste land by the roadside, or at crossroads, in order to destroy the ghost, if the suicide had not been a person of any consequence and his relatives did not claim his body, it was burnt to dust, if, however, he had been a person of some position, and his relatives claimed the body, it was first charred by fire before it was handed over to them. If the deed had been committed in a house, the house was also burnt; and if he had hanged himself on a tree, the tree was torn up by its roots and burnt with the body. In this way the ghost was thought to be destroyed so that it could not tempt any other person to commit suicide. Everyone passing the spot where the body of a suicide had been burned took the precaution to throw some grass, or a few sticks, on the place, so as to prevent the ghost from catching him, in case it had not been destroyed.⁷³

Roscoe's account of suicide and even of homicide among the Baganda shows that the underlying motive was, in sociological terms, the inculcation of abhorrence of suicide: this is expressed in terms of the ritual danger which can only be removed by performing certain cleansing ceremonies; or as in the case of homicide, the payment of fine, which was twenty cows, twenty goats, barkcloths and twenty women.⁷⁴

TORTURE

Torture as a method of running a government is a very widespread practice in the world and especially in Africa where it continues to cause more instability. It is common in those countries where there is internal conflict resulting from political, tribal or regional differences. What follows is largely taken from *Torture in the Eighties: An Amnesty International Report*.

⁷³ *Ibid.* p. 267

⁷⁴ For a full text of the problem of torture, see a recent publication, *Torture in the Eighties*, by Amnesty International, London, 1984.

Torture does not occur simply because individual torturers are sadistic, even if testimonies verify that they often are. Torture is frequently part of the state-controlled machinery for suppressing dissent. Concentrated in the torturer's gun, electrode or boots is the power and responsibility of the government.⁷⁵

However perverse the actions of the individual torturers, torture itself has a rationale which includes isolation, humiliation, psychological pressure and infliction of physical pain; all of these are means of obtaining information, breaking down the prisoner and intimidation of those close to him or her.

Torture is frequently used as an integral part of a government's security strategy. If threatened by guerrillas, a government may condone torture as a means of extracting vital logistic information from captured insurgents; and if the government broadens its definition of security, the number of people who appear to threaten it becomes larger. The more insecure a government feels, the larger the number of people to be rounded up arbitrarily and tortured. A specific motive of using torture is often to intimidate the victim and other potential dissidents from further political activity.

The intimidation of rural population by means of torture and killing may be part of government strategies to bring the population or part of the country under its control. In specific instances the torturers may want to keep their practice hidden from the local community. In such cases the victims are taken far away from home and torture is carried out in specially constructed structures or in forests where bodies are dumped after torture.

Torture is frequently used as a form of punishment, usually meted out against political prisoners and detainees. There were various methods that police and soldiers use to effect torture in order to extract needed information and to maximize suffering. The intensity of pain inflicted will depend on the amount of sympathy or "humaneness" the torturer has in his personality.

METHODS OF TORTURE

Some of the common methods include beatings, hitting the victim's head on a wall, making the victim stand for hours, starvation, shining bright light in the victim's face to prevent him from sleeping; making the victim stand night and day in knee-deep filthy water poured in the victim's cell. In Rwanda there are what are called *cachots noirs*, or black cells, tiny rooms totally devoid of light in which prisoners are known to have been held for as long as a year or more.

In Syria there is what they call the "black slave," an electric device that inserts a heated metal skewer into the anus of the victim,⁷⁶ who may be standing or kneeling on nail-sharp pieces of metal. There is the "black diet" in Zaire which consists of pure plain water with a slice of bread or one potato once every other day. There are innumerable and more heinous practices that are known to be practised by armed soldiers and the police in many countries.

Victims of torture include all types of people who, for one reason or other, find themselves in disfavour of those in government. These may include students, intellectuals, members of the opposition parties, church leaders who happen to be courageous enough to speak out; lawyers who make effort to represent the detainees and often family members of those that have been killed, detained or those who are in exile. Children and wives of dissidents are a special target for torture teams. Sometimes foreigners may be rounded up for harassment, beating and terrorism as when they are accused of aiding or supporting guerrillas.

The agents for torture are frequently the party members, especially the youth wingers and other petty party activists; the police, the armed soldiers, the paramilitary personnel and prison guards. In some countries there are specially trained men and women whose "national" duty is to torture, kill and terrorise the citizens; the state security agents or State Research Unit, Special Force etc.

Apologists for torture consider it as undesirable but necessary for the purpose of protecting the greater number of people. Political stability and economic progress are the main pretexts mostly advanced to justify torture.

The torture process follows the methods but it starts by the victim being seized at night violently, while the family and neighbours are terrorized into helplessness by being threatened with violence. The victim may be blindfolded and pushed into the boot of a car. He is taken to the torture chambers as already indicated. After torture, the victim may be held incommunicado, or he may just “disappear,” and any relative who tries to look for him or her may also similarly “disappear.”

The following is an indication of the process of torture in an unnamed country:

“After a while they disconnected the wire from my finger and connected it to my ear. They immediately gave a high dose of electricity. My whole body and head shook in a terrible way. My front teeth started breaking. At the same time my torturers would hold a mirror to my face and say: “look what is happening to your lovely green eyes. Soon you will not be able to see at all. You will lose your head. You see, you have already started bleeding in your mouth.” When they finished with the electric shocks they lifted me to my feet and several of those I mentioned above started beating me with truncheons. After a while I felt dizzy and could not see very well. Then I fainted. When I came to myself, I found I was lying half-naked in a pool of dirty water. They tried to force me to stand up and run. At the same time they kept beating me with truncheons, kicking me and pushing me against the walls. They then held my hands and hit me with truncheons in my palms and on my hands, each one taking turns. After all this my whole body was swollen and red and I could not stand on my feet.”

This is a torture statement, taken from Amnesty International Report: Conference for the Abolition of Torture, Paris 10–11 December, 1973. On 2 November, 1973 the 28th Session of the General Assembly of the United Nations unanimously adopted Resolution 3059 in observance of the 25th Anniversary of the Universal Declaration of Human Rights. It condemned torture in the following resolution:

The General Assembly,

Mindful of article 5 of the Universal Declaration of human Rights, which affirms that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Gravely concerned that torture is still practiced in various parts of the world. *Bearing in mind* that this subject has been brought before various reports relating to violations of human rights and fundamental freedoms,

Bearing in mind also that the sub - commission on prevention of discrimination and protection of minorities has asked the commission on Human Rights to authorize it to include in its agenda for the next session an item on the human rights of persons subjected to any form of detention and imprisonment.

Rejects all forms of torture and other cruel, inhuman or degrading treatment or punishment.

Urges all governments to become parties to existing international instruments which contain provisions relating to the prohibition of torture and other inhuman or degrading treatment or punishment. *Requests* the Secretary-General to inform the General Assembly, under the "Report of the Economic and Social Council," of the consideration which may have been given to this question by the Sub-Commission on Prevention of Minorities or by the Commission on Human Rights and other bodies concerned; *Decides* to examine the question of torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment as an item in future session of the General Assembly.⁷⁶

After ten years of the existence of the General Resolution 3059, the United Nations Commission on Human Rights agreed to send to the United Nations General Assembly, the draft convention on torture, which, among others, made torture a crime against humanity and alleged torturers are to be tried and have been tried at the International Criminal Court sitting at The Hague on crimes against humanity.

These draft proposals were indeed sent to the General Assembly, and were unanimously adopted, but, unfortunately, torture, inhuman and degrading treatment and punishment continues in Africa and other parts of the world today. There is only one voice which the self-appointed dictators who practice torture can listen to and that is the vice of Big Brothers with Aid; the threat to withdraw aid or refuse to supply weapons is perhaps the only way torture and inhumanity can be reduced; since education takes long!

76 See Resolution 3059 XXVIII of the UN General Assembly of 2 November, 1973. Also reproduced in Amnesty International Conference for the Abolition of Torture, Paris: 10-11 December, 1973. Final Report, p. 32.

CHAPTER V

CRIME AND DEVIANCE RELATING TO SEX

Sex as one of the major social institutions is very often at the centre of conflict between individuals or even groups of people. Crimes and deviant behaviours which are related to sex account for a large part of volume of crime and deviant behaviour in many or all countries the world over.

Murders, aggravated assaults, fights in which the participants may hurt each other, arson and destruction of property are annually committed in some kind of connection with the quest for sex. That sex plays a dominant role in the lives of human beings just as it does among the rest of the animal kingdom has been recognized for hundreds of years.

Sigmund Freud, the eminent Austrian founder of psychoanalysis, focused most of his analytical attention on unconscious sexual drives. The normal person, the psychoanalysts explain, develops through four stages some of which may overlap. The development of personality involves shifting interests and changes in nature of sexual pleasure from the oral and anal preoccupation of infants to love of self and love of parents of opposite sex, (the boy loves the mother, daughter loves the father) and finally love of a person of the opposite sex other than one's parent. Some people do not outgrow certain stages and find it difficult to adjust in adult life. According to psychoanalytical theory, every human being has both masculine and the feminine tendencies; but some people are more inclined to behave according to the dominant tendency in their personality; for that reason, some males with a dominant feminine tendency may be seen to behave like women. Similarly, there are women with dominant masculine tendencies who behave like men; some other people have the two traits in equal measure. This outline is very important in explaining the kind of sexual relationships human beings engage in such as heterosexuality and homosexuality.

For the newborn infant, the mother is the first person with whom to associate and from whom the oral pleasure and all other pleasurable feelings can be derived; she is the first love of the infant, but also it is the mother who, of all people, begins to curb the craving for gratification of the infant and so she is also the first person to hate. This is the outline of the *Oedipus phase*. In the development of the *Libido*, the male unconsciously hates his father for the sexual rights he has over his mother and in like manner, the female child develops unconscious hatred of her mother for the sexual privilege she enjoys from her father.¹

This is sometimes called *eletra complex*. The girl is in conflict with her mother because of the father.

In some cases, the girl may be overattached to her mother and this may lead to violent hatred either of the mother or the father for having sexual intercourse with the mother; this is called *Orestes Complex*.

The above outline clearly indicates that the family as the basic unit in human societies is characterized by unconscious conflict processes which are brought under control through adequate socialization in sexual roles, or else the family would be an institution of war. As such it would never have existed beyond the first generation of the human race. To maintain continued harmony within the family, certain prohibitions were institutionalized; incest, taboos, for example, the father is prohibited from having sexual intercourse with his daughters, the mother with her sons; sons are prohibited to marry their sisters and so on. These cultural devices for social control are included in many legal codes and in some religious dogmas. In some cultures in Africa, the taboo on incest is even extended not only to the members of the clan but even those of the mother's as well; this is the case among the Batooro and the Baganda.

But in spite of these cultural and legal constraints, sexual relationships among human beings is surrounded by social conditions

1 Marshall B. Clinard, *Sociology of Deviant Behaviour*, Fourth Edition (Holt, Rinehart and Winston, Inc. New York, 1974) pp. 203 - 209.

that very commonly cause conflict; and others are met with social disapproval.

ADULTERY

Adultery is a voluntary sexual intercourse by a married person with a person other than the offender's spouse. The law in Uganda states that any man who has sexual intercourse with any married woman not being his wife commits adultery; and that any married woman who has sexual intercourse with any man not being her husband commits adultery. The penalty for a man taken in adultery is imprisonment; but for woman, on her first conviction, it is caution: adultery in Uganda is a misdemeanour.²

Adultery is a very common deviance and, in some countries, it is a crime. It is common in nearly all communities of human beings. John Roscoe reports that the penalty for adultery among the Baganda, just at the turn of this century, was death; sometimes the offender's life could be spared and he would be fined two women if he were able to pay them, but in addition, the culprit was maimed, he lost a limb, a hand, an eye gouged out, all to show that he had been guilty of crime. But when a slave was found to have committed adultery with one of his master's wives, he was invariably put to death.³ The penalty for adultery in some of the Mohammedan countries is stoning to death.

Adultery is a crime (where it is a crime) with low visibility; because it is usually committed after careful arrangements have been made between the interested parties. Adultery has a low rate in criminal statistics because it is an offence that is settled out of court; few people are willing to risk being brought before the court on charges of adultery that would bring more shame to the parties involved and also to the husband of the woman concerned and for this reason, men who are found *in flagrante delicto*, are very often willing to pay huge sums of money as compensation. This practice is reported to have been developed into a commercial activity

2 Uganda Penal Code, section 154.

3 John Roscoe, *The Baganda*, Second edition, (Frank Cass & Co. Ltd 1965), p. 261-262. (First published in 1911.)

whereby a man encourages his wife to engage in adulterous unions but in such a way that her male partner will be apprehended by the husband who will demand cash payments for settlement of the case out of court.

As noted earlier on, adultery is not universally a crime. In most European countries it has since been decriminalized. In England, it is not a crime but is a legally accepted ground for granting divorce and this being so, it has become a social institution through which incompatible marriages can legally be terminated. In many countries, it is thus responsible for high divorce rates. Some people have argued that high divorce rates indicate higher social and economical advancement, but there are cases to indicate that even poor countries can have high divorce rates for example in Muslim Sudan, which is one of the Least Developed Countries (LDC), with a per capita income of USD 320 (1978 estimate).⁴ Fluehr-Lobban reports that “approximately one out of three marriages contracted ends in divorce and this pattern has held for some 20 years.”⁵

Adultery is frequently a major factor in crime of violence, especially criminal homicide and aggravated assault. In the event the adulterer is caught in the act, violent exchanges of injuries may ensue and may end in death or serious injury of the people involved or even of bystanders. Other crimes may be committed in connection with adultery; houses may be set on fire, property may be destroyed just because adultery evokes jealous feelings which, in some cultures, may be overwhelming. In some Eastern countries women who have committed adultery may themselves commit suicide as a sign of extreme disapproval of the deviant act. In a study of homicide in western Nigeria, Leigh Bienen found little relationship between homicide and sexual jealousy. This, again, may be a question of cultural definitions of what is expected in such situations. Be that as it may, love triangles will continue for some time to come, to be causal factors in cases of divorce, separations, desertions, altercation, wife abuse, homicide and general unhappiness and family violence.

4 The World Information Almanac and Book of Facts, 1982, p. 580.

5 Carolyn Fluehr-Lobban, “An Analysis of Homicide in the Afro-Arab Sudan,” an unpublished paper for Sudan Notes and Records (1972) p. 18.

Jealousy as a universal rope that binds the married couple together is utilized differently or even under similar circumstances.

BESTIALITY

Bestiality is a crime in a number of countries. It consists of a sexual act committed by a human being against an animal. This deviation appears to be more than is commonly thought. Herdsmen are known to practice it on cows, goats and sheep; small boys herding cows or goats also practise it. This deviant behaviour is said to be widespread among some people who inhabit western Kenya. Cases have been reported of men who have had or have attempted to have sexual intercourse with chickens.

Societal reactions to such acts is a strong disapproval; the deviant being regarded as mentally unsound; and when it is a child, the act is regarded as a gross deviation. Bestiality may also be taken to include all that is regarded as unnatural sexual act, such as sodomy, fellatio and oral sexual intercourse.

The law in East Africa states that any person who:

1. Has carnal knowledge of any person against the order of nature; or
2. Has carnal knowledge of an animal; or
3. Permits male person to have carnal knowledge of him or her against the order of nature, is guilty of felony, and is liable to imprisonment of 14 years.⁶

There appears to be no clear, rational explanation for this strong condemnation of deviation apart from the fact that it offends the common sentiments of the people.

BIGAMY

A person commits the crime of bigamy when, having a husband or a wife, marries another and thereafter cohabits in this condition. The law of bigamy, in some African countries, has proved impossible to implement because of cultural patterns of marriage in which polygamy is approved.

6 See for example Tanzania Penal Code section 154.

Prohibition appears to originate in Christian teachings, based not on Holy Scriptures but on ecclesiastical law which considers matrimony a sacrament. It has remained largely ignored because it lacks social support; and in a number of regions in Africa, bigamy has been decriminalized. In Mohammedan states, bigamy is not a crime although it appears that it is rarely practised among the middle Eastern Arabs, Moroccans and Egyptians; or by European Moslem such as the Turks and Armenians.

The law in previously British dependencies is that:

Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, is guilty of felony and is liable to imprisonment for five years provided that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife at the time of the subsequent marriage, shall have been continually absent from such a person for the space of seven years, and shall not have been heard of by such person as being alive within that time.⁷

Polygamous marriages are quite common in most of African societies, unlike in European societies where the order of the day is "one at a time." In a limited survey in Kigezi district in western Uganda, it was found that one in every three men was married to more than one woman.⁸

Open polygamy has been prohibited by Christian churches, and as a result there has developed a new type of polygamous marriage; the covert, hidden type. Prominent people in society have been turned into liars and hypocrites, a good number of them are known to maintain two or more wives in separate housing estates or towns, in order to remain acceptable as Christians, and in fact, some top church leaders are known to be doing the same. There is a bit of confusion here. The church disapproves of polygamy and at the same time condemns prostitution and fornication and yet does not

7 *Ibid*, section 164, Kenya Penal Code section 171.

8 Musa T. Mushanga (later became Tibamanya mwene Mushanga) "Polygamy in Kigezi," Uganda Journal, Vol. 32, 1970.

provide an alternative for sexual outlet of the increasing number of unmarried women; prayer alone cannot meet this psychological and physiological need. Unmarried women in Kampala are proposing to form an association in which their needs and aspirations will be disseminated; an alternative to Y.M.C.A. Bigamy has since been decriminalized in Uganda and Tanzania; but subsequent marriage is conditional on the first wife's consent; before such marriage can be recognized by the state and not the church.

PROSTITUTION

Prostitution is said to be the most ancient profession. It is followed by law and medicine; and it is the most universal in that there is no known human society now or in the past that has been free of prostitutes. Clinard and Quinney report that in the Middle Ages prostitution was widespread and was regarded as a necessary evil but not a crime; that the demand for prostitution from all classes was great and that it was not merely tolerated but protected and regulated by Law. It was, as it is now, a source of public revenue, and even the Catholic Church was involved in the maintenance of some of the houses of prostitution, particularly in France.⁹ A prostitute is defined as a woman who performs, offers to perform, or agrees to perform for money an act of sexual intercourse or an act of deviant sexual conduct.

The prostitute "sells" her sexual relations with emotional indifference to almost anyone. The relationship is purely commercial; it is the bartering of sexual favours for money or material goods. Although some prostitutes may be selective on the basis of race, age, economic status or physical appearance of the customers, the rule is that a prostitute may have sexual intercourse with almost anyone.¹⁰

From the above, it becomes clear that there must be categories of prostitutes. There are the professional and the semi-professional; of course, there are also rich and poor, young and old, experienced and apprentice prostitutes. The *Malaya* in Kampala may be one or more

9 Marshall B. Clinard and Richard Quinney, *Criminal Behaviour Systems: A Typology*, Second Edition, (Holt, Rinehart and Winston, Inc. New York, 1973) p. 78-79.

10 Marshall B. Clinard, *Sociology of Deviant Behaviour*, Fourth edition, (Holt, Rinehart and Winston, 1974) p. 506.

of these classes. There are also intervening classes. There are women who are employed as professionals in various institutions, such as clerical, teaching, nursing and so on who, after duty, go out with male acquaintances for free meals and drinks in exchange for sexual favours. Strictly speaking such women are not prostitutes because they do not offer their sexual favours purely for momentary considerations; they are, in a definite way, friends of their male sexual mates. They are no strangers to each other and their spending the evening together is more social than purely sexual; for an occasion, they may go out together to eat or drink or dance and not have sexual intercourse. Then there are those who are settled, being maintained by one, two or more men; each contributing to the upkeep of her rented room; one man paying the house rent, another buying her food while yet a third regularly keeps her in cash payment.

There are very many women who are engaged in either semi-prostitution practices or in free union with men based on man to woman friendship. These include all adult women employed as teachers, nurses, doctors, policewomen, prison guards, saleswomen, secretaries and the rest. Some engage in these sexual relationships to satisfy their sexual drives, while others do so for the material benefits the practice brings. They receive gifts such as watches, radios, furniture, dresses, shoes and even cars, in exchange for their sexual services to their “boy” friends; elderly men are nicknamed “uncle”. It is in this regard that Clinard says that many women are promiscuous but not prostitutes, because their sex relations have an element of affection, even if transitory.¹¹

The majority of the prostitutes give their sexual services to their customers in the usual form of sexual intercourse, or in legal terminology, according to the order of nature, but some prefer oral (fellatio) or anal (sodomy) methods.¹²

Prostitution like any other social institution has its function in society; but again, like all that human beings do, it has its antisocial consequences.

11 *Ibid.*

12 Walter C. Reckless, *The Crime Problem*, Fifth Edition, (Appleton Century -Crofts New York, 1973) p. 166.

1. In nearly all societies, there are men who find pleasure and mental satisfaction from having sexual intercourse with different women from time to time or even in a single day. A Prostitute can readily fulfil this need.
2. It is cheaper and simpler to use a prostitute than to permanently keep a wife; for most men, sexual intercourse is not an every night or everyday activity; most will be happy with one to three times a week. In that way it becomes cheaper for some men to pay for the services of a prostitute than have a wife. The wife needs daily food, shelter and clothes; she needs constant attention and care of her husband, she may also require her husband to be involved in what may be her own affairs, for example, matters relating to her own family; she also needs medical care when she feels unwell; she needs occasional visits to her relations during which time the husband cannot have sexual intercourse with her which also applies when she is menstruating.
3. Men who have sexual relations with prostitutes are not in the least worried about pregnancies that may result from such unions (and pregnancies in professional prostitutes are infrequent).
4. Some men want to have an experience of the variety of women and style in sexual intercourse. For example, few men in these parts of Africa would think of having oral or anal sexual intercourse with their wives, but with a prostitute all deviate acts are permissible.
5. In every society, there are men who are timid and uncertain about their manhood; they can therefore test themselves, for self-reassurance, on prostitutes; and fortunately most prostitutes do not discriminate and will have sex with anyone whether he is blind, deaf, deformed or even impotent, as long as the client is able to pay.
6. Sometimes married men cannot get sex relations with their wives for a good number of reasons; either the wife has a baby, or she is ill in hospital or attending to a sick relative or sitting up all night with a sick child or she had a quarrel with the husband; then the husband can get his desires met by paying a short visit to the prostitute.

7. Prostitution is a social service; it enables some men to carry on with their duties, men like soldiers, crew from airlines and ships, bus and train drivers, taxi operators, traders and politicians and all men who may find themselves far away from home for one reason or another.
8. Prostitution, whether approved or not, is a profession from which a lot of people earn their livelihood and means of support for their dependants, and as unemployment continues to spread, more and more women will find it impossible to resist the temptation to enter the ancient profession.
9. Prostitution, in capitalist economies, is a medium through which men who have grabbed huge sums of money can share this wealth with their less fortunate members of society through the extravagant and careless spending of most prostitutes.
10. Apart from giving sexual services to their clients, some prostitutes especially those we have labelled semi-prostitutes, very often give other services to their male clients. The man may have his clothes washed, mended and ironed; he gets good food and a good bath after a long journey if he is a pilot or a locomotive driver; and above all, prostitutes give company and friendship to their male clients when life for such men would be dull and monotonous.

But on the other hand, prostitution has been opposed, illegalized, prohibited throughout human history because of its inherently immoral nature. The social grounds for opposing prostitution are that:

1. It is a medium of spreading venereal diseases such as syphilis, HIV, gonorrhoea and other infectious diseases.
2. Prostitution is known to be responsible in a number of cases, for family disorganization and breakdown.
3. Prostitution contributes to deviant behaviour and delinquency especially among females.
4. It is highly correlated to other social deviant behaviour and to crime, such as criminal homicide, aggravated assaults, infanticide, illicit distillery of liquors and other vices.

5. By spending their money on prostitutes and drinking, a lot of men ruin their lives and their families too.

Time and again different regimes around the world resolve to rid their societies of the evils of prostitution, but no known country has ever succeeded in eradicating prostitution. It is a vice which is demanded everywhere, and just like alcohol; it can only be controlled so that its extent in a given society is reduced, but it cannot be wiped out. Society itself, without making a public announcement, would not allow it to happen.

In Britain, the famous Wolfenden Report, (named after Sir John Wolfenden who chaired the committee) recommended that prostitution should be more tightly controlled; insisting that if it was the law's intention to punish prostitution *per se* on the grounds that it is immoral conduct then, the man as well as the woman should be punished. But the British Parliament would not agree to this recommendation.

There are various ways in which different women in different societies carry on their business of prostitution; *modus operandi*. The most common here in Africa in the city and in small towns and rural areas, is the (bar) beer hall method.

In this method, the prostitutes come and settle themselves in bars and begin to drink coke or beer if they can afford it. As the night falls the men begin to come and order drinks for themselves and for the girls. By the time the men feel like going home, they take the prostitutes to wherever they live or the prostitutes take the men where they live. The male client pays whatever he feels, as there is no fixed amount, but depending on where you are, of course, the amount is higher in large cities than in smaller towns. This method is common among the inexperienced or the lowest type of prostitution.

The second method of operation is that the prostitute remains in her room and is visited by her clients just like a dentist. In all major cities there is usually a residential area exclusively occupied by prostitutes. In Kampala this is at Kisenyi, Kivulu, Mulago, Kabalagala,

Wandegeya, Nakulabye and other slum areas. In Nairobi, Mathare, Majengo and Kawangware are well known.

Here the prostitutes and their male pimps carry on illicit distillery and sell liquor such as *enguuli*, *Kweette*, *Munanaasi* (now there is what is known as 'science' a doubly distilled Nubian gin). In Kenya there is *chang'aa* and *buzaa*; and *timashenko* or *ogogoro* or "push-me-and-I-push-you" in Nigeria and many others.

The third fashion is the bus stop. In this the prostitute remains in the bar and drinks till it is quite late, she then walks to a bus stop and there hopes to be picked up by a car driver; or she herself stops drivers hoping that one will be very interested in keeping her for the night. The same method is applied whereby a prostitute, will wait outside one of the upscale hotels or restaurant usually lurking to attract tourists and well paying clients. This practice is reported to be very common in many countries.

The fourth is the system the Americans and European call the "call girl." The prostitute gives her telephone number to one or several hotels who will call her in case there is a visitor who would want to have her services. She does the same with taxi drivers and bar attendants. When she receives the telephone, she arranges with her client and on agreement, she goes to the hotel where her client will be waiting, or she directs him to come to her flat, whichever is convenient to both parties. These girls make large sums of money in relatively short periods especially when there are large gatherings of people such as conventions and conferences. Most of the call girls have invitation cards, and issued by young men at street concerns, these cards give the details of what is offered such as nude photography, live models, body rub by nude attendants and so on.

There is a fifth type which is difficult to classify; in this the woman attaches herself to one man and moves to live with him. She may stay for one week; one month or even one year before she moves on to another.

And finally there is organised prostitution in which a large number of women are housed in one building under the supervision of a manager or a Madame. New girls are "broken in" and are taught the rules and regulations of the profession and the techniques

of how to handle a large number of customers, or how to deal with different types of men and how to protect themselves against venereal diseases, but a good percentage of their earnings is taken by the management for linen, food, payment to the police so as not to be prosecuted and as profit to the syndicate directors.¹³ This is very common in all Mafia infected cities in America and Europe.

In Africa, it is almost impossible to make a guess of the number of prostitutes in a given town or city partly because of the inherent difficulty of defining who is and who is not a prostitute; and partly because the law in most countries does not explicitly prohibit prostitution, but the “living on earnings of prostitution.”¹⁴ Otherwise prostitutes are charged under other dubious sections such as being disorderly, or being vagrant even when the police and the court know that the woman is a prostitute. And perhaps more importantly, there is no research known to the author (in recent years) that has been carried out in these parts of the world.

In a study of prostitution in the United States of America in 1931 Ben Reitman showed that there were over 100,000 prostitutes in the city of Chicago alone;¹⁵ that is about half the population of Kisumu and about half the population of Entebbe.

In 1968, T.C. Esselstyn estimated the number of prostitutes in United States to be over 600,000¹⁶, that is approximately half the size of Kampala, or the city of Dar es Salaam. But that was 48 years ago. However, the rate of prostitution in the United States of America is said to be declining steadily; the explanation is given as organized opposition to the practice by other organizations; better education of the public about the mode of spread of venereal diseases; and also due to increased sexual freedom for women through the efforts of the women’s liberties; and of course more use of contraceptives which have made it easier and freer for young women to “date” men without fear, which in turn makes it unnecessary for the majority of men to go to the prostitute to have free sexual relations.

13 Clinard, *op. cit.* p. 513.

14 The Penal Code of Uganda section 131

15 Clinard, 3rd edition, p. 372.

16 Reckless, *op. cit.* p. 173.

Clinard has estimated that about 69 percent of the total male population in the United States have had an experience with prostitutes while ten percent of the total non-marital sexual outlet for males is achieved through visitation to the prostitutes.¹⁷

CHARACTERISTICS OF PROSTITUTES

A group of prostitutes exhibit distinguishable characteristics that identify them as a type of their own. They normally range from the age of about 16 to about 30, the majority being in their mid-twenties. The too young and the too old tend to be ignored by customers. Age cannot be a very significant criterion because there are other women in those age groups but there are more obvious traits that prostitutes tend to have in common. These include the method of dressing; prostitutes tend to dress in expensive and flamboyant clothing, usually unconforming to common fashion. Very expensive necklaces, armlets, bracelets, anklets, watches and shoes; they tend to be attracted by the unusual designs and colours. Expensive perfumes, expensive earrings and “out-of-town” hair styles.

They are extremely showy, being heavily ornamented; they wear heavy make-ups, lipsticks, of nails and “eye paints.” They tend to dress in short dresses as a mode of self-advertisement. Most prostitutes smoke cigarettes; in Uganda, in some parts, they chew tobacco. The use of tobacco is to be taken very carefully as different cultures have different attitudes and definitions relating to the practice by women. For example, some American and European women smoke even in public but this must not be taken to mean that they are prostitutes. Prostitutes also are known to be great consumers of alcohol; a prostitute can drink an enormous amount of beer in one evening and not show any effect.

Again, we must point out that not all women who drink heavily are prostitutes; but we are referring to a general tendency among them; for heavy cigarette smoking or heavy drinking are not general traits among women, married or unmarried.

Another common characteristic is the lack of concern for religious worship. However, prostitutes in Mexico do have the statues

17 Clinard, 3rd edition. p. 373.

of the Virgin Mary to whom they offer prayers and money everyday so that she can bless their efforts by bringing in more customers.¹⁸

Nearly all prostitutes live a way of life quite different from that of other women. Prostitutes go to bed late and get out of bed late. They have their breakfast late, almost in the middle of the day, and generally have one meal a day; some kind of late lunch but early supper. They tend to have husky and unfeminine voices; they frequently speak in raised and loud voices. They easily make friendship with male strangers but easily pick up quarrels with men whom they suspect of being disinterested in their affairs as much as they may pick quarrels and even fight with other women whom they suspect of wooing men from them.

They are, on the whole fat, presumably due to lack of exercise as they do not do manual or other energy-consuming work; but some may be bony and thin.¹⁹ The majority of them are single women; some were once married and are divorced. Others may be semi-prostitutes. Pre-marital pregnancy is mainly responsible for a large percentage of these prostitutes, as young girls from schools who become pregnant before they finish schooling and are sent down without any training or skills like typing, nursing, teaching etc. They have no alternative but to turn to the universal profession in order to support themselves and their children. There are those who are recruited by their friends, for prostitution as profession recruits; new members in order to keep it going. There are elderly women who specialize in the recruitment of new members. This is very common, especially when old prostitutes visit rural villages where they exhibit affluence in dresses, shoes and ornaments, all which attract ignorant young girls for manners are contagious.

18 For more detailed information on this, see the works of Oscar Lewis, *Five Families*, *The Children of Sanchez*, and *La Vida*.

19 The author was once attacked by an American student of his for the statement that "Most prostitutes smoke cigarettes" which appears on p. 100 of this edition. She smoked a lot; it is therefore to be noted that these are broad generalizations which make no sense if taken out of context and singly; but which help to create a general profile of a prostitute; one would not like to be treated like a distinguished British lawyer and insinuate that all actresses were prostitutes. Shortly after the book was published, the wife of Charles I took part in a play at the Court; and for his act of majesty, Prynne was sentenced to stand twice in the pillory, to be branded in the forehead, to lose both his ears, to pay a fine of 5,000 pounds, and to suffer perpetual imprisonment. (See Wines, *Man, Crime and Society*, (Random House, 1964), P. 362.

The reason why retiring prostitutes wish to turn young girls into prostitutes is not entirely clear. It could be a combination of unconscious drives wishing other women to have the same experience as themselves or sheer malice induced by the wish to ruin the future of the young women. But since most prostitutes do not consider their business illegal or even deviant and think of themselves as being no worse than other people and in fact they believe, and in some sense they are, less hypocritical than most other people; they may genuinely be trying to help their friends by introducing them or recruiting them into a suitable profession.

In regard to self-concept, most prostitutes do not mind being labelled so. One prostitute said in an interview that “we prostitutes are like a plate in a hotel, whoever comes eats from it.”²⁰ But some do not accept the label, especially those like models, secretaries, students and businessmen who practice prostitution as a part-time occupation for earning extra income. Most of the so-called semi-prostitutes or part-time prostitutes are those who do not entirely depend on the practice for their livelihood.

Clinard has categorized prostitution into primary and secondary categories. In the primary stage are found all women who engage in sex relations for monetary reasons, promiscuously and without much emotions being aroused, but who have not developed the secondary characteristics. The transition from primary prostitution to secondary prostitution is accomplished when a woman comes to acquire the positive self-conception, social roles, ideology and language of prostitution.²¹ Many prostitutes leave this business and get married or get regular employment as waitresses, domestic servants or salesgirls; but for some of them, their lives are ruined by venereal diseases, alcoholism and drug addiction.²²

20 Aidan Southall and Peter Gutkind, *Townsmen in the Making. Kampala and its Suburbs*; Kampala, East Africa Institute of Social Research, 1959)

21 Clinard, *op. cit.* 519-520.

22 *Ibid.*

HOMOSEXUALITY

Homosexuality is the act of having sex relations with a member of one's sex. It is homosexual for a man to have sexual relations with another man, just as it is for a woman to have sexual relations with another woman.²³ Homosexuality is therefore not restricted to male deviants only. The confusion comes from the use of the word "homo." In Latin the word "homo" refers to man, but even then it refers to a man (or human) usually not in the sense of "male" but the human race as opposed to other mammals. But in Greek "homo" refers to "sameness." In this sense sameness²⁴ of sex gender.

Defining the homosexuals, Robert Lindner, a psychiatrist, said that they are "those individuals, who more or less chronically feel an urgent sexual desire toward, and a sexual responsiveness to members of their own sex and who seek gratification of this desire predominantly with members of their own sex."²⁵ In a further comment, Lindner notes that as "an attitude basic to the personality wherein it resides, as a compulsion with all the urgency and driving energy that account for its resistance despite the obvious disadvantages of homosexuality as a way of life."²⁶

Homosexuality can successfully be carried out between males in a number of such ways as sodomy (anal), fellatio (oral-genital) and mutual masturbation. And in the case of women, homosexuality can take the form of stimulation of the clitoris by another woman either by manual palpation or by cunnilingus; mutual masturbation, or the use of an artificial penis.²⁷

For some psychological reasons, there are many people who regard homosexuality as a more satisfactory sexual outlet than heterosexual relationships that are commonly upheld. Clinard argues that "homosexual identity refers to a person's sexual self-concept and

23 *Ibid*, p. 511.

24 Block & Geis, op. cit. p. 321

25 Robert Lindner, "Homosexuality and the Contemporary Scene," in *Must You Conform?* (New York, Grove Press, 1961) p. 31 - 76. See also Edwin Schur, *Crimes Without Victims*, (Prentice - Hall, Inc. Englewood clippis, N.J. 1965) pp. 69-70.

26 Schur, *Ibid*.

27 Clinard, op. cit. p. 540.

is the appropriate way to refer to a “homosexual” person, rather than identifying the individual by the sexual behaviour engaged in...”²⁸

This view is contrary to social identification of actors in social situations and in the interaction between human beings; for a thief is a thief even if his self-conception is contrary to his outward behaviour. The same applies to an alcoholic. He does not have to develop the kind of self-concept that he is actually an alcoholic before society can label him as such. Clinard also states that it is a myth to hold that male homosexuals can be recognised as physically effeminate persons and that women homosexuals are masculine in manners and in appearance.²⁹ Later, Clinard refers to a British study of homosexuals which found that 17 percent had slight or pronounced feminine characteristics, but 66 percent said they could be recognized by other homosexuals. Homosexuals can be recognized by other homosexuals by glances, gestures, walk, voice, clothing and vocabulary.³⁰ Another study states that many male homosexuals display feminine traits because they believe that they are conforming to a stereotype; that they feel impelled to adopt what they consider to be feminine characteristics because of the traditional dichotomy between sex roles.³¹

Homosexuality is strongly disapproved in most African societies below the Sahara. But recent reports originating from Britain and the United States of America have indicated that it is quite widespread among the herding communities such as the Turkana, the Karamojong and Maasai primarily because of their marriage patterns in which marriage is delayed and young male adults are excluded from the society of women as they move far away from home with the herds of animals. This transpired on radio interviews in connection with a recent disease that was discovered in the United States of America, AIDS (Acquired Immune Deficiency Syndrome),

28 *Ibid.*

29 *Ibid.* p. 541.

30 Gordon Westwood, *A Minority: A report on the Life of the Male Homosexual in Great Britain*. (London: Longmans, Green & Company Ltd., 1960) p. 62. cited by Clinard, *op. cit.* p. 541.

31 Clinard *op. cit.*

a virus infection said to be resistant to all known antibiotics and other modern medicines.

The disease is said to be found in homosexuals, wives or husbands of homosexuals and people who have had blood transfusion drawn from these groups. The suggestion is that the disease had its origin in Africa from among herdsmen; but the counter argument may also be possible; that the disease could have been introduced into these herding communities from outside Africa.

Homosexuality is also known to be prevalent among prison inmates and in non-co-educational institutions. Preliminary interviews done in Kampala and Nairobi showed that the practice is common among the coastal people of Arab or semi-Arab origin, but no conclusive evidence on this is available.

Like prostitution, homosexuality is an ancient sexual act. It is reported to have been common among the ancient Greeks and Romans. It also appears to be quite rampant among famous names in history, philosophers, military leaders, composers, musicians and writers.

Socrates and Plato made no bones about their homosexuality; Catullus wrote a love poem to a young man whose "honeysweet lips" he wanted to kiss; Virgil and Horace wrote erotic poems about men; Michelangelo's great love sonnets were addressed to a young man, and so were Shakespeare's. There seems to be evidence that Alexander the Great was homosexual, and Julius Caesar certainly was the Roman Senator Curio called Caesar "every woman's man and every man's woman." So were Charles XII of Sweden and Frederick the Great. Several English monarchs have been homosexuals...About some individuals of widely different kinds, from William of Orange to Lawrence of Arabia; there is running controversy which may never reach a definite conclusion. About others; Marlowe, Tchaikovsky, Whitman, Kitchener, Rimbaud, Verlaine, Froust, Gide, Wilde and many more — there is no reasonable doubt.³²

The causes of homosexuality are difficult to determine, and those that are available are contradictory. Some theorists have

32 Bryan Magee, *One in Twenty, A Study of Homosexuality in Men and Women*. (New York: Stein and Day, 1966), p. 46, cited by Clinard op. cit. p.542.

sought the explanation in “innate” characteristics, but this is not conclusive. One report states that “there is so much evidence on the side of the nurture hypothesis, and so little on the side of the nature hypothesis, that the reliance upon genetic or constitutional determinants to account for the homosexual adaptation is ill founded.”³³ It is of interest to note, as Schul says, that homosexuals themselves say that their practice originates from “internal” drives. This may not, however, be mere rationalization, as it is now, “widely accepted that homosexuality constitutes, or at least reflects, some kind of psychological disturbance.”³⁴ Some experts have singled out oral fixation, others have pointed to castration anxiety while psychoanalysts have emphasized that adult homosexuality is rooted in childhood situation; indicating the role played by the process of socialization in the genesis of homosexual tendencies. The psychoanalytical literature suggests that confirmed homosexuality invariably represents a basic psychosexual orientation whether one chooses to call it a disease or not.³⁵ Sigmund Freud in a letter to an American concerned mother seems to have indicated that homosexuality was not an illness.

Dear Mrs.....

I gather from your letter that your son is a homosexual. Homosexuality is assuredly no advantage, but it is nothing to be ashamed of, no vice, no degradation, it cannot be classified as an illness; we consider it to be a variation of the sexual function produced by a certain arrest of sexual development. By asking me if I can help, you mean, I suppose, if I can abolish homosexuality and make normal heterosexuality take its place.

The answer is, in a general way, we cannot promise to achieve it. The result of treatment cannot be predicted. What analysis can do for your son runs in a different line. If he is unhappy, neurotic, torn by conflict, inhibited in his social life, analysis may bring him some harmony, peace of mind, full efficiency, whether he remains a homosexual or gets changed...³⁶

33 Irving Bieber, et al. *Homosexuality: A Psychoanalytical Study*, (New York: Basic Books, Inc., 1962) p. 306; cited by Edwin Schur, in *Crimes Without Victims*, op. cit. pp. 70-71.

34 Schur, op. cit. p. 71.

35 *Ibid.*

36 *Ibid.* p. 72.

Thus the genesis of homosexuality may have to be traced to the impact of upbringing as outlined in Sutherland's theory of differential association which emphasises the role of frequency, duration, priority and intensity of social interaction.

Homosexuality *per se* is not a crime in most countries; for example in the United States (with the exception of a few states like Illinois and Colorado) what is prohibited are the homosexual acts among adults as well as between adults and minors, whether in public or in private.³⁷

But in other countries it is not a crime if carried out between two (even more) consenting adults provided that such acts are not done in public. That was a recommendation made by the Wolfenden Committee in 1957. In former British States of Africa, the law states:

Any male person who, whether in public or private, commits any act of gross indecency with another male, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person, with himself or with another male person, whether in public or private is guilty of a felony and is liable to imprisonment for five years.³⁸

There are no statistics to show the extent of homosexuality in Africa south of the Sahara. In America, one report concluded that four percent of adult white males were exclusively homosexual throughout their lives after the onset of adolescence and that³⁸ percent of the total male population has had some overt homosexual experience between puberty and old age.³⁹

Another study indicated that the number of homosexuals in the United States could be as high as one in every six men.⁴⁰

Homosexuals are reported to be concerned about their everyday existence and the need to pass as normal and keep their discredited behaviour unexposed. In spite of this, homosexual "marriages" are

37 *Ibid.* p.77.

38 See Tanzania Penal Code section 157 and Uganda Penal Code section 148.

39 Alfred C. Kinsey, W. B. Pomeroy and C. E. Martin, *Sexual Behaviour in the Human Male* (Philadelphia: W. B. Saunders Co. 1948). Cited by Schur, *Supra*.

40 Jess Stearn, *The (Sixth) Man* (New York: Macfadden Books. 1962)

known to exist and some are reported to have lasted for many years.⁴¹ In many other countries, homosexuals are organized so that they have their own recreational facilities, clubs, bars and even churches.

Homosexuality among women, generally known as lesbianism is said to be as widespread as male homosexuality, and other reports indicate that it could even be more.⁴² Female homosexuality appears to be more tolerable than men homosexuality. One explanation for this is suggested by psychiatrists that the male *ego* does not wish to recognize that women could possibly achieve sexual satisfaction without the participation of males, that in fact the judge's reluctance to prosecute females for homosexuality is, perhaps, an unconscious expression of denying its existence.⁴³ Simone de Beauvoir regards female homosexuality as arising from the female's protest against her sex's subordinate role in society; as an expression of her unwillingness to play the subservient role to the male.⁴⁴

Finally there is a recent development which is closely related to homosexualism which is a wish and a desire to change one's male sexual structure to the opposite sex. To effect this, the male organs are removed surgically and an artificial vaginal opening is created where the scrotum had been removed.

INCEST

A male person commits the crime in incest when he has sexual intercourse with a female be it his own mother, sister, aunt, grandmother or daughter, whom he knows to be his blood relative to the degree prohibited by law. A woman commits incest when she has sex relation with a person she knows to be her son, daughter or father.

Incest appears to be more widespread than is generally recognised. In some of the royal families, such as those of Buganda and Tooro, the rules of incest taboo are strictly restricted only to son

41 Schur, op. cit. p. 88.

42 *Ibid.* p. 76-77.

43 Frank S. Caprio, *Female Homosexuality*, (New York: Grove Press, 1962) p. 72 cited by Schur, op. cit. pp. 76-77.

44 Schur, op. cit.

and mother and to father and daughter leaving the door open for brother and sister to engage in sexual intercourse.

In Europe, the ruling families are in the habit of exchanging women and men to the extent that the rules of England are related to those of Germany, Greece, Holland and Denmark.

Incest is an offence which has very low visibility in spite of the fact that it is very frequent for men to have sex relations with their sisters, aunts and even their mothers and also with their daughters. Sexual intercourse is common between cousins and even commoner between cross-cousins.

Incest as deviant behaviour appears to be universal. Among some African people, incest prohibition is extended to the entire clan (in those communities where clans do exist) and in some, the taboo is extended to include the mother's clan as among the Batooro, Baganda and Banyoro in Uganda.

The explanation of incest prohibition is not entirely clear. In psychoanalytical theory incest is explained primarily in terms of unconscious processes in which each individual child develops an unconscious wish but which the child learns to control or to suppress. The persistence of this wish which in males is directed at the mother and in female children towards the father may partially explain incest among certain persons. This unconscious desire for sexual gratification by an individual is part of the Oedipus Complex.⁴⁵

In sociology, incest taboo is explained in terms of group solidarity through social control. Sexual competition and jealousy had to be removed from this basic human institution if the family was to serve its basic social function, the propagation of human beings and the socialization of children.

Had a man to compete and indeed fight with his sons over the same woman, his wife, who is also the mother of his sons; and over his daughters who are also his sons' sisters, the family as a unit would not exist; it would be destroyed by disorganization, disharmony, conflict and violence.

45 Julius Gould and William L. Kolb, (editors) *A Dictionary of the Social Sciences*, (The Free Press of Glencoe) pp. 321-323.

The rules of exogamy serve the same purpose, they maintain clan cohesion and mutual assistance which would not be possible if clan members (who in the past lived near each other) were to be in conflict over the same women.

Another explanation was given by L.H. Morgan; that incest taboo grew out of the group's effort to prevent biological deterioration through in-breeding. E. Westermarck saw incest as a very harmful sexual deviation which was prevented only through the development of instinctive aversion based on familiarity.⁴⁶ But, on the other hand, Ralph Linton has argued that it is not conclusively determined that sexual intercourse between related persons actually leads to the deterioration of the species; that if this were the case, the various royal families would be extinct by now and that in fact marriage between father and daughter is permitted among the Azande of the Sudan.

Whatever its origin, incest prohibition is one of the major social control measures society has ever devised for the maintenance of society. Every society teaches its members that certain patterns of behaviour are unacceptable; that some rules are more important than others, and through socialization some of these rules and prohibitions are internalised and become part of the personality structure of the individual to the extent that observance becomes almost an automatic reaction requiring no thinking. People just react the way they have been reared.⁴⁷

The law in Uganda and in all former British dependencies prohibits incest without explaining why it is a crime. The law in East Africa states:

1. Any male person who has carnal knowledge of a female person, who is to his knowledge his grandmother, daughter, sister or mother, is guilty of a felony, and is liable to imprisonment for five years. Provided that if it is alleged in the information or charge and proved that the female person is under the age of twelve years, the offender shall be

46 Edward Westermarck, *The History of Human Marriage*, Vol. 1.

47 Ralph Linton, *The Study of Man* (New York: Appleton-Century Crofts, Inc., 1936) p. 125.

liable to imprisonment for life. (In Uganda the age is put at fourteen).

2. It is immaterial that the carnal knowledge was had with the consent of the female person.⁴⁸
3. If any person attempts to commit such offences as aforesaid he is guilty of a misdemeanour.⁴⁹

Incest committed by a female person is a felony punishable by imprisonment for five years.

PANDERING

A person commits the crime of pandering when he compels a female to become a prostitute, or arranges or offers to arrange a situation in which a female may practice prostitution. This law is related to soliciting or the law prohibiting living on the earnings of prostitution. Soliciting or pandering is quite common in African towns especially the big towns and cities: in bars, hotels and restaurants and lodges. In most cases girls are hired to work as barmaids, cleaners and cashiers. In other places the girls are not hired but are persuaded to come and hang around the drinking places by bar owners with a view to inducing the male clients to buy more drinks.

Pandering, in many respects, is the same as prostitution. In many countries it refers to a situation in which a man persuades his wife or sister or daughter to engage in sexual activities for cash payment on which he and his other dependants count for a livelihood. This practice is reported to be common in India and some Arab countries.

Along with soliciting there is pimping. A pimp is a male person who receives cash payments or goods from a prostitute not for lawful consideration but for his services as a broker. It is the broker in the pimp who goes round hotels looking for new arrivals to whom he makes suggestions. Pimps are to be seen swarming big hotels in all large cities. In America, they can easily be recognized, especially

48 For social control and conformity see Edward Sagarin, *Deviants & Deviance*, (New York: Praeger Publishers 1975), pp/. 370 - 373.

49 Kenya and Tanzania Penal Code sections 158 and 166 respectively and Uganda Penal Code sections 149-150.

the black ones; they wear one earring and very often have their hair plaited.

They also work as bodyguards to their mistresses, the prostitutes with whom they very often have sex relations. Very often they work in pairs especially in those parts of the city where customers may refuse to pay prostitutes for their services. Pimps are also known to be thieves and pickpockets.

It is common practice for a pimp to hide underneath the bed of a prostitute while she lies in bed with a customer. The pimp removes money from the pockets of the trousers or coat of the customer and when the victim comes to pay and he finds he had no money, he cannot suspect the prostitute who may have been the first to go into bed. In such cases the man may leave his watch or coat behind to be redeemed later or never.

RAPE

The law in East Africa provides that:

Any person who has unlawful carnal knowledge of woman without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed "rape".⁵⁰

The penalty for rape is life imprisonment with or without corporal punishment.

There are two legally recognizable forms of rape. The most common is the forced rape, and the other is giving sexual intercourse with a female below the legal age of maturity. Forcible rape is an extremely common act except that it has very low visibility due to some cultural factors. Very few women would have the courage to go to report to the police that they had been raped. The general tendency is to keep quiet about the whole affair. A rape case is most likely to come to the public attention when a third party chanced to intrude during the act or soon after it has just taken place. A woman

50 See Uganda Penal Code sections 123 & 124.

who would otherwise be willing but reluctant to participate in the sexual act, may all of a sudden begin to scream when another person finds her in the sexual act; she would then (if married) insist on going to court in order to protect her marital status.

Cultural values are very much involved in cases of rape. In some societies a woman may derive social support and sympathy as a result of her victimisation, but in other cultures she may be ridiculed, looked down upon by others, and despised for this act which, if she is unmarried, will be a problem in her future relations with men. In societies where rape brings shame to the woman, very low rates of forcible rape are continually shown, but where no stigma attaches to it, women or their relatives will press for legal action. Being a culturally defined act, rape takes quite different patterns. In some societies, the woman expects the man to use some amount of force before she can yield; and there are societies in Africa in which a woman is not expected to say "Yes." In such situations "No" may actually stand for both "no" and "yes." But it has to be interpreted in a cultural context.

In a study of rape among the Gusii of Kisii in Western Kenya, Robert A. Levine showed how cultural attitudes such as those of approval may be given to make a forcible rape an acceptable form of sex relations for the unmarried males. Forcible rape among the Gusii is to be explained in terms of sexual frustration of young men as a result of very strict sexual restrictions or interclan sexual relations; sexual contracts and the sexually provocative behaviour of Gusii girls; late marriage due to high brideprice and, more recently, these factors have been reinforced by the rigid religious teaching of the Seventh Day Adventist Church which has a very strong following among the Gusii.⁵¹

Rape, just like robbery, aggravated assault, and homicide, is frequently committed by more than one person against one or more persons. Group rape is becoming common in many countries, being committed by armed soldiers. Reports of group rapes have been

51 Robert A. Levine, "Gusii Sex Offences: A Study in Social Control," *American Anthropologist*, 61 (December 1959) pp. 696-990; also reported in Clinard and Quinney, *Criminal Behaviour Systems: A Typology*, Second Edition (New York: Holt, Rinehart and Winston, Inc. 1973), p. 39.

coming from areas where soldiers are allowed to terrorise the general public. Eridadi Mulira, one of the foremost staunch spokesmen of Human Rights in this country recently had this to say:

Reports come everywhere of acts of armed people attacking villages raping wives in front of their husbands, and mothers in front of their children, and children in front of their parents. Schoolgirls no longer feel safe to go to school.⁵²

While groups of men are known to rape one or several women, it is not common for a woman to rape a man. Students at the University of Nairobi confirmed to the author that it is not uncommon for women to rape a man; but such cases are not widely known.

In a study of multiple rape, Fritz Redl identified two categories, one in which two men rape one woman, and the second where a group of three or more men rape one victim. And from Mulira's report, a third category of rape is clear, that is one in which a group of men rape a group of women. This type of rape had also been mentioned by Levine, when a group of over 100 women on their way from a market were raped in a single day by a group of young men in Kisii.⁵³

Clinard has indicated that aggressive sexual behaviour such as forcible rape is usually a response to cultural patterns of aggression and situational factors. The average rapist is a young man aged between 15 and 25 years, with little education, a product of lower class or working class family. If he lives in the city, it is in the slum.⁵⁴ Studies done in the United States indicate that these characteristics are common to all rape offenders.⁵⁵ In another report, the Federal Bureau of Investigation showed that in 1971, 40 out of every 100,000 women in the United States of America had been victims of rape. In all, there were 41,890 reported cases of forcible rape and the rate increased with the population size of the city, so that the larger the

52 For a full text of the violations of the Human Rights in Uganda, and the breakdown of the Rule of Law, see *The New Century*, the newspaper of the church of Uganda, Vol. 1 no. 71, April 1984.

53 Levine, op. cit

54 Marshall B. Clinard and Richard Quinney, *Criminal Behaviour Systems: A Typology*, (New York: Holt, Rinehart and Winston, Inc. 1967) p. 66.

55 Alfred C. Kinsey, et. al. op. cit.

population, the higher was the rate of rape. While the national rate was 40 in every 100,000, the rate for large cities was 85 per 100,000 women, while the rate in rural areas was around 22 per 100,000 women.⁵⁶

Statutory rape is distinguished from forcible rape in that it does not involve the element of force or threat of the use of force or lack of consent on the part of the female partner. Different legal systems prohibit sexual intercourse with females below a certain age whether the female consents or not. In most legal ages of maturity is 16 or 18 years of age. Statutory rape is one of those legal norms that are very difficult to enforce, for by the age of 18, most girls have had two or three babies, which means that they engage in illegal sexual relations long before they are legally capable of consenting to such relations. Social reaction regarding sex relations with minors is one of tolerance if not of acceptance. It is only when the minor is forced or is too young, that the relatives of the victim begin to seek legal aid.

INDECENT ASSAULT

This is assault as legally defined but which is accompanied by indecency. The concept is not precisely defined but it refers to an assault with a sexual motive; that is, kissing a girl against her will with a suggestion of sexual intercourse is an indecent assault. It is an act of indecent assault to pat a waitress on the buttocks, or to palpate her breasts or her pubis. In some countries a common indecent assault on women is when a group of young men, four or five or more in number meet a woman; two get hold of her and turn her dress as they finger her genitalia to the greater amusement of the rest. Usually no violence is involved if the woman does not resist or use bad language or make an effort to raise an alarm, the boys may just laugh and jeer and jump up and down in sheer deviant excitement.

In Uganda, it is a common occurrence for working men, especially those working on power line extensions, to make remarks of a sexual nature as soon as a woman approaches. In fact the larger

56 Uniform Crime Reports of Federal Bureau of Investigation (of USA), 1971 (U.S. Department of Justice.)

part of their working vocabulary is full of sexual terminologies that are common among the uneducated and labouring classes. Indecent assault, in general, is nothing more than to indicate one's sexual desire to a woman, verbally or by touching her, without her consent.

In every society there are certain words which are considered to be unacceptable, or which are not uttered in public, but this goes with the level of education or with religious beliefs of the individuals. Such words when addressed to a woman in public may constitute indecent assault.

SWINGING

There has developed a new form of sexual relationship in Europe and America, it is known by various names such as swinging, group sex, mate swapping, life-exchange and co-marital sexual intercourse. This pattern of sexual behaviour first became known in the 1950s and 1960s. It consists of sex relations involving two or more couples and sometimes single persons may also take part. In the United States alone, the number of swingers is estimated to run into hundreds of thousands to several million couples and the numbers are reported to be increasing.⁵⁷

This sexual activity requires the agreement of the man and his wife for each to engage in sexual intercourse with another person at the same time and at the same place. The sexual intercourse takes place within an organized institutionalized pattern. During these relationships, efforts are made to keep the act of coitus as enjoyable as possible but impersonal and free from emotional attachment or jealousies. The individual engages in the sexual act purely for its sake and for enjoyment but each person keeps an eye on his or her spouse to minimize the possibility of a romantic-love relationship developing. In spite of the safeguards, emotional attachment does develop occasionally and leads to the breakdown of some of the marriages.

57 Clinard, op. cit. pp. 523 - 529.

Most swingers are members of elite classes, the well educated; what Americans call the middle class and are mostly politically conservative.

New members to the society of swingers are recruited in a number of ways. They may read an advertisement; or may be invited to a bar or a club patronised by the swingers (for they have their own clubs, bars, restaurants etc. just like homosexuals); or they may be approached by individual swingers or even seduced by them.

Swinging may be done in private or in the open when those who are not swinging at the time may just stand or sit and watch. One woman described her first experience at swinging: "I never experienced anything like that in my whole life. I have never had an experience like that with quite so many. I think in the course of three hours I must have had 11 or 12 men and one greater than the next. It just kept on getting better every time. It snowballed."⁵⁸

The functional aspects of swinging are varied; they include the adaptation of the view that women can also enjoy sex as freely and as much as men with the widespread use of the pill, free sexual unions are now possible. Swinging also breaks the monotony of monogamous marriages; and affords the couple new and varied experiences provided under the system. Swinging is therefore an alternative to polygamy a system in which a man marries more than one woman, or a woman is married to more than one man. This sort of marriage is reported to have been practised by savages but now it is already invaded the most advanced nations of the world.

FORNICATION

Fornication may simply be defined as sexual intercourse between an unmarried married man and woman, but the Little Oxford Dictionary defines it as sexual intercourse between a man and an unmarried woman. In most countries fornication is not a crime; it is just a deviant sexual behaviour. While some African communities strongly prohibited premarital sexual intercourse, there are others

58 Charles and Rebecca Palson, "Swinging in Wedlock", *Society*, 9:28 -37 (February 1972).

where this activity was almost encouraged. For example, Okot p'Bitek, writing about the Acholi of northern Uganda, tells how unmarried girls are allowed to visit unmarried young men in their houses.⁵⁹

In Acholi, Buganda and in other communities, unmarried boys and girls are not expected to sleep under the same roof with their parents. This is primarily done to leave the parents alone, free from the presence of their grown up sons and daughters, but also to give a chance to the young men and women to be together.

But in Ankole and Kigezi, and probably in other areas, young men and women are still expected to stay with their parents under the same roof till they are married.

In Acholi and Buganda, although the young men and women are expected to live on their own, usually they live with their grandmothers, aunts or any other elderly female relatives.

Fornication as a sexual deviant behaviour is now on the increase especially in urban areas and trading centres.

With facilitated means of transport and communication, it is now much easier for people to meet and have sexual intercourse. This practice is extremely common in all post secondary institutions of learning and other places where unmarried people happen to be grouped together or near each other. Girls now start on this sexual career while quite young; even at the age of 13, they can engage in sexual intercourse with young boys or with men as old as their own fathers. It is from such young girls that prostitutes are mostly recruited. Large cities and towns are teeming with unmarried mothers who have no source of income except what can be derived from prostitution.

Premarital sex relations have been facilitated by the introduction of the pill. Unfortunately some of the young girls, especially those in upper primary classes know very little about the use of modern devices of birth control.

59 Okot p'Bitek, *Africa's Cultural Revolution* (Nairobi: MacMillan, 1973.)

In Kenya, private persons and newspapers have been suggesting to the government that sex education be given in schools. As far back as 30 years ago, *The East African Standard* stated that: "It is time the government came out with a sex education (Programme) in order to help them (young girls) guard themselves against unnecessary pregnancies which often ruin their chances in society and embarrass their families."⁶⁰ The paper went on to show that a large number of pregnancies result from sheer ignorance. One girl went to bed with a man because she was told that the sperms would "give her proteins she needed."⁶¹ In a public lecture, Dr. Mulago Gachuli, formerly of the Institute of Development Studies at the University of Nairobi said that "over 7,000 girls lose their school places every year in Kenya because of pregnancies," and that cases of illegal abortions were very many in the country.⁶² That was about 30 years ago; the situation must certainly be different today, as it must be getting worse as the years go by.

DIVORCE

Divorce is the legal dissolution of marriage. Marriage in a number of countries is a legal institution; or a contract between two parties. As such only a competent court can invalidate it. Like any other African social institution marriage has undergone tremendous modifications, changes and alterations in structure and functions; in the last three generations of physical contact with the outside world.

As a social institution marriage has social functions to fulfil. This is crucial for its survival. Divorce takes place when the roles and expectations of marriage are not satisfactorily met.

Some people have insisted that the major and in fact the only function of marriage is the procreation of children. These people stubbornly refuse to look around themselves to see how many children are born each year outside of marriage. So, obviously, the procreation of children is not the only major function of the marriage. The major functions of marriage are, yes, the procreation

60 *East African Standard*, Monday, 14 January, 1973.

61 *Ibid*

62 *Ibid*.

of children, the desire for companionship and consortium, the sexual gratification of the parties and the economic benefits each party derives from the marriage.

There are, of course, many marriages without children. Many of them break down because of this, but some do survive. There are also marriages in which economic factors are not paramount. There are also marriages which are generally characterized by friction, quarrels and unhappiness and yet they do not end up in divorce. One reason why an unhappy marriage may endure is the presence of children, old or young. Children constitute a very strong tie between a man and woman. When they are young, their mother feels bound to withstand all the hardships so that she can bring them up, and the husband knows very well how cumbersome little children can be and very few women are willing to marry a man with several children, whose mother has been divorced. When children are grown up the parents feel embarrassed to divorce. Some religions, notably the Roman Catholic Church, consider marriage as a sacrament, meaning that it is a holy bond sanctified by God and should never be dissolved; that however unhappy the marriage is, it should not be nullified after all it is a bond with God. This view is steadily changing with new ideas about marriage. Another important reason is that in some countries, the law requires that the party to the marriage which is initiating the divorce process should show cause why the divorce should be granted, and in many cases, the cause is not clear. People just get fed up with each other or feel attracted to someone else and wish to have a replacement.

The causes of divorce are too many to enumerate here; but the following are some of the important ones that appear to be more frequently voiced as the “reason” for it.

Incompatibility is perhaps one of the frequent reasons why married people decide to divorce. Often a man and his wife realize soon after marriage or later that they are actually unsuited for each other. This may be a result of disagreements, arguments, conflict, fights and general unhappiness but even then, the courts will require proof that the parties are experiencing something more than the ordinary wear and tear of everyday marriage life. Either the man or

the woman may be too quarrelsome or too stringent with money; or may be hostile to the visiting relatives of the other partner; or may be an alcoholic.

The second and perhaps the most frequent reason for divorce is sexual infidelity. The third, at least in Africa is childlessness. Divorce is accepted readily in such cases. The condition being always blamed on the woman; for it never occurs to the majority of the people, including women, than men also could be barren.

In some societies, a woman may be divorced for not producing sons, but this is a rare practice. What usually happens is that the man marries another woman. But in other countries, like Europe and America, it hardly matters whether the children are girls or boys or even whether they are adopted. In many cases, the mother of the girls encourages her husband to marry another woman so that she can bear sons for the family and the clan; for a family without sons is regarded as a cloud; which comes and goes without leaving a trace behind.

Divorce is said to be lowest in “primitive” societies and higher in advanced ones. Clinard has reported that United States has the highest divorce rate in the whole of the Western world. In 1980, the number of divorced marriages totalled 1,182,000 against 2,413,000 marriages which is approximately one in every two.⁶³

When Clinard wrote, about 30 years ago, the annual number of dissolved marriages was around 400,000 all that was one in every four. We would expect this situation to get worse, so that by the end of the first quarter of this century the divorce rate will equal the marriage if not surpass it.

Divorce in Africa is difficult to estimate because of different marriage systems and rules regarding marriage and divorce in different countries and even within one country.

Under customary law, divorce is permitted in the traditional cultural context. If we go by official (court) records, we may end up by saying that divorce is virtually non-existent, as hardly any divorce cases reach the courts. The truth is that there is divorce, and that the

63 The World Almanac and Book of Facts 1982, p. 955.

rates may be increasing especially among the wealthy, the educated and the urban workers.

Most of the divorce cases take place in the traditional manner, without having to go to the courts. Divorce is, under normal circumstances, a process and not a sudden act. It takes time to mature. During this period, affection is progressively withdrawn, irritation with the partner increases, but, nevertheless, there is necessity for life to continue uninterrupted. Clashes may increase in frequency and intensity; disagreements and quarrels become more frequent, tension and avoidance and silence more and more prolonged.

These may be followed by temporary separation and reunion; and they may be repeated a number of times before divorce takes place. Sleeping in different beds and even in different rooms is common. Sitting at table for meals without exchanging words is also common. If he is a drinker, he intensifies his drinking, he shortens his stay at home very considerably and comes home only to eat and go to bed. As time goes, the situation is made worse by sexual dissatisfaction of one or both partners. Threats of divorce by either party are not uncommon. The woman may actually pack and leave, only to return or be returned a few days or weeks later. On her return, things appear to be going well for few days or weeks or even months before conflict and tension build up again, followed by quarrelling and fighting which may end in permanent divorce.

John Roscoe, writing about divorce among the Baganda, points out that a man did not bother to divorce his wife, if she was unfaithful; he merely neglected her by not inviting her to share his couch, and reduced her to the status of a slave. He often left her with very scanty clothing.⁶⁴

Marriage as an institution is undergoing tremendous changes and will experience much more as time goes. Divorce may keep on fluctuating, but as Alvin Toffler has indicated, human relationships are becoming more transient and modular, and the pursuit of love is becoming more and more frenzied.⁶⁵ We anticipate an increase in temporary marriage and more frequent changes of marriage partners. Social change that is taking place in other sectors of society,

64 Roscoe, *op. cit.* p. 97.

65 Alvin Toffler, *Future Shock*, (Bantam Books, 1971) p. 251.

for example, in the economy, in politics and in lifestyles of people, will continue to have an impact on the institution of the family and particularly on marriage on which the family is founded.

Another element that will affect marriage is rent. It is the “in-thing,” the fashion to rent. You can rent a house, rent a car, rent an office space, rent a house-servant, rent land, and rent anything including a woman.

In every town large or small, a man cannot fail to find a woman to rent for an hour, a day, a week or a year. This kind of sexual outlet may attract increasingly more people because of the convenience. Alvin Tofflar reports of a young black American woman saying: “I can’t imagine myself promising my whole lifetime away. I might want to get married now, but how about next year?”⁶⁶

In addition to divorce, there are many cases in which the married couple are separated but not divorced. Separation is partial which allows each partner to live alone with separate domestic arrangements. Separation could be mutual or judicial and it has its rules and regulations such as non-molestation clauses or *dum custia* that prevent one party from engaging the other in sexual activity. Similarly, the parties are not permitted to engage in sexual relations with other persons. This is stringent and hard to enforce but it is usually allowed to give the parties some time to cool down and attempt to save the marriage one last time.

Desertion is yet another common problem in modern society. Desertion takes place when one of the married partners leaves the home and goes to seek accommodation elsewhere.

It is common in America and Europe; usually it is the man who quits the home leaving the woman to look after the children. Desertion is prevalent in large cities and more frequent in those social groups among whom divorce is not readily accepted; and therefore is commoner among Catholics than it is among Protestants. In the United States, the rate of desertion among the Catholics is reported to exceed that of the general population by about 40 percent. Continuous desertion for a period of 3 years without conjugal fulfilment is a valid ground for divorce.

CHAPTER VI

OFFENCES AGAINST PROPERTY

Offences against property are by far the most numerous of all violation of law in nearly all Africa. Cases of theft, of armed robbery, of pickpockets, of cattle theft, theft of motor vehicles and motor vehicle spares, of foodstuffs directly from the gardens or from food stores, the malicious destruction of property like fencing wire and so on are just too numerous to enumerate.

Writing about armed robbery, Clinard and Abbot have noted that as a country develops, there is an increase in robbery with violence, or the threat of violence, to secure money or material objects.¹ In Uganda, armed robbery or robbery with violence is reported to be widespread.² It is also on the increase elsewhere in Africa. It was an increase in property crime rate that led to the introduction of the death penalty in a number of African countries, among them Uganda, Kenya, Zambia and Nigeria. In 1971 Nigeria publicly executed by firing squads more than 40 persons for armed robbery before thousands of spectators in some cases.³

The fact that property crime is increasing fast can be seen from the number of reports in the local press and radio.

In a study of property crime in Kampala, it was found that the majority of the perpetrators were above the age of 25 years and 62.9 per cent had been in prison before for similar offences.⁴

There are two main methods by which property can be acquired. One is by the wilful act of the owner giving it away to another person either as a gift or as a reward for some service rendered. The second is by purchase. When a man purchases a car, a cow or a piece of land, he acquires the bought object and the right to own it.

1 Marshall B. Clinard and Daniel J. Abbott, *Crime in Developing Countries*. (New York: John Wiley & Sons, 1973) p. 39.

2 Eridadi Medadi K. Mulira, "The Uganda Tragedy and The Way Out;" *The New Century*, Vol. 1 No. 71, April 1984, p.2.

3 Clinard and Abbott, *op. cit.*

4 *Ibid.*

In legal terminology, property refers to and includes everything animate or inanimate which is capable of being the subject of possession or ownership. It is therefore clear that whatever is capable of being owned is also capable of being a subject of robbery and theft.

All crimes against property or property crimes involve one common element: the assumption of property rights over objects against the consent of their owners. Things are owned because of their value or the utility they render to their owner, and it is for the same reason that they are stolen. An item or object that is of little or no use to the owner if stolen is not likely to cause the owner great concern; and the more useful or valuable an article is to the owner, the more he is likely to defend it. Property crimes deprive the owner of their possession, utilization and enjoyment and of his goods.

The criminal element in the act of stealing or robbery is the intention to permanently deprive the owner of the item and the absence of *animus revertendi*, or the intention to return the item. This is not a crime if Kamau takes Njoroge's bicycle with intention of returning it later in the day; because there is no intention of permanently depriving Njoroge the ownership of the bicycle. The problem, however, is for Kamau to prove that he meant to return the bicycle when he is caught with it some miles away from Njoroge's home.

THEFT

A person is guilty of the crime of theft when he knowingly and intentionally obtains or assumes unauthorized control over the property of another or, by means of deception, threat or fraud, obtains control over the property of another with intent to permanently deprive the owner of the use or benefit of the property, or by knowingly concealing, abusing or abandoning the property so as to deprive the owner of its benefit or beneficial use.⁵

In this definition, theft covers such offences as larceny, embezzlement and cheating without distinction. Theft is the

5 See the Penal Codes of Uganda, Kenya and Tanzania sections 254, 268 and 259 respectively.

category of all crimes involving property. Stealing of foodstuffs from the gardens is theft as much as stealing a motor vehicle or robbing a bank. The only difference between theft and robbery is that in the latter the deprivation of property rights from the owner takes place in his face by the use of or the threat to use force.

On the other hand, embezzlement is not larceny or robbery. While larceny is the unlawful taking, embezzlement is a form of white collar crime in which the offender violates a trust. Usually embezzlement refers to financial arrangements in which money is intentionally transferred from its legal owner to the embezzler without the consent of the owner. Hence the offence is commonest among banking clerks, officials and cashiers, pay clerks, senior government and business officials who handle money; headteachers, hospital clerks who are responsible for the purchase of patients' food, school bursars, road headmen, court clerks who receive money in the form of fines and court fees, church leaders, and people who come in contact with money. Briefly, embezzlement may be defined as unauthorized conversion of the property of another for a purpose not intended by the owner. Legally, this time; the plea of *animus revertendi* is inadmissible since the intent is the misappropriation itself.

In this sense, it is a crime of embezzlement for a road or building constructor or a works supervisor to order 20 tons of cement from the government store and send ten tons to help build his own house while he uses the other ten tons on the official construction work. It is also a crime of embezzlement for a school bursar to send meat, sugar or soap, or firewood, intended for the school to his own house.

Embezzlement, or theft by servant as it is sometimes called, is extremely common. It is not just confined to government departments, but also universities, parastatal institutions, companies, business firms and other agencies.

In times of national crises, as when there is a general shortage of such things as fuel, sugar, cement, timber, embezzlement becomes a quick means through which individual employees enrich themselves.

CHEATING

Cheating, like embezzlement, is not corruption; but one form of stealing. Legally, cheating is the fraudulent obtaining of another's property by means of some false pretence or some false purpose. For example, it is cheating for a government officer to make a journey of 50 miles and claim mileage for 80 miles; or to make the journey through a ride by a friend, and on return to claim mileage. The core of the definition is the concept of fraudulence; which means delinquent deception or dishonest trick. Cheating is an extremely common practice in the commercial undertakings which crooks call business. The use of false weights and measures is one method; very often one goes to buy 10 kilograms of sugar and the shopkeeper gives him eight; or a customer pays for 24 tons of cement and only 20 are loaded on a truck and he may not find this out till he arrives home or several days later. A very common practice among building contractors is the use of inadequate cement-sand ratio; very little cement is used, the surplus being sold privately to other people. Cheating in East Africa is a misdemeanour. ⁶The law provides that:

Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device is guilty of misdemeanour, and is liable to imprisonment for three years.⁷

With increase in the volume of manufactured goods such as beer, soda, biscuits, sweets, jams, butter and all that can be produced on a large scale for domestic consumption, the volume of fraudulent crime is likely to increase correspondingly. We should expect fraudulent sales, illegal financial manipulations, and misrepresentation in advertisement, violation of a fraudulent nature of income tax; misuse of patents, trademarks, and copyrights; the manufacture of unsafe foods and drugs, unfair labour practices, pollution of the

6 Tanzania Penal Code, section 95.

7 *Ibid*, section 304.

Environment,⁸ unfair competition, adulteration of food items and all kinds of illegal businesses, including non-fraudulent violations of law.

ARSON

The crime of arson consists of the malicious and wilful burning of a house of another person. In the British legal tradition, this referred to the burning of a dwelling house; but modern statutes have tended to eliminate the distinction between a dwelling house and other structures not used for human habitation. In some statutes arson applies to all buildings and structures of some permanent nature. In accordance with this view, arson is defined as knowingly and intentionally burning or damaging by fire or explosives any building (including dwelling house, vehicles, watercrafts, and aircrafts used as a house) of another person without his consent. In some countries, arson is categorized to the first, second and third degrees; the first degree arson being the burning of a dwelling house in the night time; the second the burning of a building at night, a building other than a dwelling house, but which is so situated as to endanger the neighbouring dwelling house. The third is the burning of any building the subject of which is not arson in either the first or second degree.⁹ In East Africa, the law states:

Any person who wilfully and unlawfully sets fire to:

- (a) Any building or structure whatever, whether complete or not; or
- (b) Any vessel, whether complete or not; or
- (c) Any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or
- (d) A mine, or the workings, fittings or appliances of a mine is guilty of a felony, and is liable to imprisonment for fourteen years.¹⁰

8 Marshall B. Clinard, *Sociology of Deviant Behaviour*, fourth edition, (Holt, Rinehart and Winston, New York) p. 317.

9 M. Cherif Bassiouni, *Criminal Law and Its Process*, PP. 279-281.

10 See the Penal Codes of Uganda, Kenya and Tanzania, sections, 327, 332, and 319 respectively.

Arson is not merely an act of setting a building on fire just to destroy it. It is frequently done in a calculated manner to cause a homicide of the occupant or occupants. Cases are frequently reported to police where petrol is used to burn down houses and their occupants; and a lot of arson cases result from sexual jealousy, land disputes and general hatred and conflict between neighbours or otherwise related or acquainted persons.

CORRUPTION

Corruption refers to a state of affairs in which a public official uses his position of power and influences for his personal and private benefit, preferment and prestige. It involves a violation of public duty or a departure by a public official from the established moral standards in exchange or in anticipation of material or other gains. Corruption is a worldwide phenomenon, but few will disagree with Samuel Huntington who observed that “corruption may be prevalent in some cultures than in others, but in most cultures it seems to be most prevalent during the most intense phases of modernization.”¹¹ Still fewer people will disagree with Gunnar Myrdal who, writing on corruption in South Asia concluded that corruption is more prevalent now than before independence, and that, in particular, it has recently gained ground in the higher echelons of officials and politicians.¹² Rene Dumont has pointed out that embezzlement and fraud among African elites is a widespread problem that saps the development potential of the newly independent states.¹³ Stanslav Andreski, who was a professor at Reading University, has written that: “Venality pervades through and through the fabric of African states. After only a few years in office the top politicians have amassed fortunes worth a hundred times the sum of the salaries received.”¹⁴

11 Samuel P. Huntington, “Modernisation and Corruption,” in Arnold J. Heidenheimer, *Political Corruption: Readings in Comparative Analysis*, (New York: Holt, Rinehart and Winston, 1970) p. 492, cited in Clinard and Abbott, *op. cit.* p. 51-57.

12 Gunnar Myrdal, “Corruption as a Hindrance to Modernisation in South Asia,” in Heidenheimer, *Political Corruption*, p. 233.

13 Rene Dumont, *False Start in Africa*, (London: Sphere Books, 1966) pp. 72-73.

14 Stanslav Andreski, “Kleptocracy as a system of Government in Africa,” in Heidenheimer, *Political Corruption*, p. 348, see also Stanslav Andreski, *The African Predicament*, (New York; Atherton, 1968) p. 95.

Another observer of corruption on the African continent has noted that:

“Ministers receive from a promoter a gift of money or goods in appreciation for services they have rendered. In the local governments all the advisers want to be part of the public works committees, where side payments are frequent, while no one wants to be on education or health committees.”¹⁵

Another pointed out that the most striking similarity between Nairobi and Kampala politics since independence has been the rise of extensive corruption, the violation of one’s duty to the state as a citizen or public official.¹⁶ Henry Okullu, the Bishop of Maseno in western Kenya, almost a decade ago complained of bribery as the worst manifestation of corruption, noting that:

“Many leading people and others with good employment are known to be living off bribery. For some it has become a way of life.”¹⁷ In fact corruption has become a way of life in Uganda to the extent that it is hardly regarded as a social problem; even church leaders like the politicians hardly ever condemn it or advocate its eradication as they do the eradication of poverty, ignorance and disease. Corruption, in reality, is the second biggest enemy of the African people. That some African politicians transfer large sums of money from the treasury to their own bank accounts was noted by Andreski almost 35 years ago; he added that this chief source of illegal income is from cuts received on government contracts,¹⁸ or what has come to be known as “ten percent.” Most of these illegal incomes are banked in foreign banks, notably Switzerland. In fact some years ago, the Swiss people, in a referendum, rejected their government proposals to abolish the banking system in which personal accounts cannot be revealed even when the account holder is being investigated. The same has been said of the Cayman Islands

15 Frank C. Ferrier, “Considerations Sur Certains Problems Politiques de L’Afrique Occidentale: in L’Afrique Occidentale: Development et Societe, Centre Internationale de Criminologie Comparee; Universite de Montreal, 1972, p. 120.

16 J. David Greenstone, “Corruption and self-Interest in Kampala and Nairobi”, in Heidenheimer, *Political Corruption*, pp. 459 - 469.

17 East African Standard, Tuesday, 15 January 1974.

18 Andreski, *African Predicament*, p. 95.

and Monaco where the business environment is a banking haven for corrupt public officials.

In a preliminary research on criminal homicide in Kampala in 1972, the author found that over 90 percent of all cases of criminal homicide that were reported to the police never reached the magistrate's court. Nearly all the files were put away as *Nolle prosequi* meaning that there was insufficient evidence for the prosecution to proceed with the case. When senior police and criminal investigating detectives were questioned on this matter; the usual reply was that the people in Kampala were unco-operative and unwilling to come forward to give evidence. The most likely explanation may have been that the offenders or their relatives knew how and where to block the legal process by bribing the investigation officials. The common expression in Uganda is that money speaks; and it speaks a language the men understand, even those of them who are illiterate. It is not uncommon to be requested by a public official or a policeman to talk like a Ugandan, simply meaning "cough up some money."

Corruption is commonest among magistrates, policemen, customs officials, directors of business, secretaries, politicians, priests, headmasters, chiefs, prison guards, education officers, district commissioners, administrative officers, veterinary surgeons and practically all those who handle official money and are responsible for official purchases.

The evils of corruption are numerous. Through corruption the wrong people are appointed to responsible positions and others are promoted in complete disregard of merit. Corruption interferes with the smooth administration of law; it benefits a few people at the expense of the majority. Through corruption, citizens are made to pay for services to which they are entitled as a right. It undermines the morals of public servants, such as the police and other officials.

The decline in the social services is a sure certainty; delays become endemic, shortages of supplies become chronic, absenteeism is frequent; inefficiency runs through all institutions; human dignity is subordinated to monetary gain; moral standards become

unnecessary obstacles; religious instructions go unheeded. In general the common man suffers tremendously, but the big fish, the social parasites continue to accumulate stolen wealth without shame. The Latins have a saying *corruptio optimi pessima*, which means that the worst of all (evils) is the corruption of the best. A corrupt society is a socially sick society, and worse still if its leaders are corrupt, the entire society is in a very precarious situation.

Corruption and bribery are two facets of the same beast. The offence of bribery is very closely related to corruption. Generally, a government or public official commits bribery if he receives money, goods, favours or services in order to do a favour to another person in a manner not permitted by the law. So it is a bribe to pay for the service a citizen is entitled to have. As the Kenya Attorney-General once complained in Parliament in 1968:

“It has now become a practice among our government departments that you cannot get a paper or certificate unless you have paid something to an official.”¹⁹

The truth is that Kenya might be much better off, many times better, than some of her more inland states in this regard.

Corruption becomes more intensified when it is practised along with tribalism, nepotism, religionism and regionism. Under these malignant social ills, appointments to offices, promotions and scholarships are awarded on these criteria rather than on merit. But while those who have the right political connections will get appointed to high government posts and others will get promoted despite the fact that they do not deserve such promotions, and those who have performed poorly in school exams get scholarships; those who are excluded because they are of other tribes or because they belong to the opposition parties will have to resort to corruption in order to get the appointments, the promotion and the scholarships. In this way corruption operates as a catalyst in a corrupt social system.

19 Reported in Clinard and Abbott, op.cit. p. 52

We have given a general outline of what this is, but for a more detailed account, we will include here the following excerpts, all taken from Andreski's book, *The African Predicament*:

Teachers' salaries are sometimes embezzled by the headmasters or higher officials. Moreover, in the same way as people in other public services, many teachers had to pay for getting appointed, and continue to pay ransom for being kept on the payroll. (p.98) Officials in charge of public works use lorries and other equipment, materials and man-hours belonging to the state or the municipality to build houses for themselves or hire them to other people. Customs officers have, of course, plenty of scope for speculation: In exchange for bribes they pass goods without levying the duty or at least reducing it substantially, whereas people who give them nothing may have to face interminable delays with the added danger that their goods will be damaged or stolen. (p.98)

Verification of bicycle and car registration, trading licences and opening hours, enforcement of traffic regulations and hosts of other functions provide the policeman with the opportunities for squeezing out bribes (p.99).

The allocation of posts in the public service (including the most humble) is mostly determined by criteria which have nothing to do with fitness for the job. Apart from a flair for manipulation and intrigue which everywhere in the world always helps the main criteria of selection are kinship and the ability to offer either a bribe or some other services in return — often on the principle of “if you appoint my kinsman, I shall appoint yours”. (p. 100)

Many people have argued, as does Kiapi,²⁰ that giving gifts to chiefs and other leaders is an old African custom; yes, that was a custom when chiefs depended on these gifts of cows, goats, and women when there was no cash payment for the services rendered; and even if it was continued long after the British had introduced monetary remuneration, this African custom should be discouraged because it has been abused, and in any case any social institution, however far back it goes in history, if it proves to be inimical to the well-being of society it should be discontinued. There are many African cultural practices that have been allowed to disappear when they do not

20 Abraham Kiapi, “Legal Control of Official Corruption in East Africa,” University of East Africa Social Science Conference, Kampala, Uganda, December, 1968; p.9.

fit into the new social structures that the new states are trying to create. The custom of offering gifts needs to be illegalized as it has encouraged corruption and inefficiency.

In fact the law in Uganda categorically forbids the giving of gifts; but unfortunately this law has been violated time and again with impunity. There is nothing wrong with giving gifts, what is wrong is their influence on the recipient. Through the giving of gifts, inefficient officials who should be reprimanded are promoted; those who should be dismissed are merely transferred from one area or station to another.

Foreigners have also tended to make the situation worse. Those who are seeking business permits, and those who are trying to influence the national foreign policy; the majority of those who are competing to sell armament, motor vehicles, drugs, tanks, uniforms, and to get government tenders are frequently known to bribe the officials concerned. This is how the concept of “ten percent” was introduced into the Kenyan economic system. The multinational corporation directors seeking to sell their produce or seeking contracts for construction work make ten percent of the amount involved available to the official who will sign on behalf of the government; usually in foreign currency.

An explanation of corruption, on a national level is difficult to attempt; but as Huntington has noted, some cultures are more corrupt than others, and that implies a differential organization that exists among those cultures. Differential organization means that some societies are organized for corruption while others are organized in such a way that corruption is strongly condemned, disapproved and therefore prohibited. We have already noted that there is no known society where corruption does not exist; but the rate of its infiltration into the civil service and business is not the same. Manners are contagious; corruption is also contagious and can easily spread from one society to another if not checked in its early stages. In East Africa corruption is merely a misdemeanour and the penalty is only imprisonment for three years; implying legal acquiescence.

FORGERY

The offence of forgery occurs when a person wilfully and knowingly makes, alters, issues, delivers, or possesses with intent to issue or to deliver any document capable of defrauding and designed to defraud another person.²¹ In this definition to defraud means to cheat or to fraudulently deprive a person of possession of the property that is capable of being forged. Forgery of bank cheques, land titles, school certificates and college diplomas, driving licences, trade and business permits, and passports is very common indeed, but only a small fraction of it is known to the police.

This is partly due to widespread illiteracy in most of these states of Africa; and partly because of lack of skills and detective devices in place where forgery is most expected, such as banks and government offices, which handle the kinds of documents that are capable of being forged.

Edwin M. Lemert has identified two kinds of forgers, those who may be called professionals and others he has referred to as naïve cheque forgers. The latter are persons who have had no previous criminal record and no previous contact and interaction with delinquents and criminals.²² Lemert also makes a distinction between an embezzler and a forger; the former being a person in a position of trust while the naïve cheque forger may be a thief who is not quite knowledgeable. In a study of 1,023 persons convicted of forgery in the county of Los Angeles in California in 1938 and 1939, Lemert found that nearly 30 per cent had no record of previous criminality; 18.5 per cent had previous record of cheque forgery; 20.6 percent had forgery criminal records plus other criminal records and only 30 percent had previous criminal records without forgery records.

Lemert's theory of naïve cheque forgery is a four-dimensional one; it includes the characteristics of the crime; the kind of person most prone to commit the crime; the situation under which the given person is likely to act in a criminal manner and the socio-psychological process that may be conducive to cheque forgery.

21 See Uganda and Tanzania Penal Codes sections 342 and 333 respectively.

22 Edwin M. Lemert, "An Isolation and Closure Theory of Naive Cheque Forgery", *Journal of Criminal Law, Criminology and Police Science* Vol. 44.

Lemert found that, on the average, the cheque forger was older than the average inmate and was endowed with higher intelligence. These findings have been supported by other studies on the same topic, and nearly all show that the forger starts when he is 25 years and older, is better educated, comes from 'good' family background and generally had no problem of getting a good job. Another study found cheque forgers to be more intelligent than other criminals. The mean I.Q. of the general prison population was 89.1 on the Alpha test which is the average intelligence of the average person in most societies; but the score for the forgers was 99.4.²³ Lemert found that as a group, forgers characterized by impulsiveness.²⁴ In a similar study in a Canadian Penitentiary at Kingston, Maurice Gautier found that the forgery of these inmates resulted from "inner conflicts which demand relief from tension."²⁵

Many of the inmates told of the pleasure they derived from outwitting their victim; and one of them is reported to have remarked: "When they accept your cheque, you feel proud of yourself. After all, it was so easy to fool somebody who was supposed to know all the angles."²⁶

Lemert's conclusion was that cheque forgery arises at a critical point in a process of social isolation, and out of social situations and was made possible by the closure of constriction of behaviour alternatives which are subjectively held as available by the forger.²⁷

ROBBERY WITH VIOLENCE

Robbery with violence is also variously known as robbery with menace or robbery with aggravation. In Uganda it is known as *kondo* and in India as *dacoity* and also by different names in other countries. This kind of robbery, has for some time now, been on the increase.

23 Irwin A. Berg, "A Comparative Study of Forgers," *Journal of Applied Psychology*, 28 (June 1944) pp. 232-238. See also, Herbert A. Block and Gilbert Geis, *Man, Crime and Society*, (New York: Random House, 1964) pp. 204-207.

24 Lemert, op. cit.

25 Maurice Gautier, "The Psychology of the Compulsive Forger," *Canadian Journal of Corrections*, 1 (July 1959), 62-69. See also Bloch and Geish, p. 204-206.

26 Gautier, op.cit.

27 Lemert, op. cit.

In Uganda, the situation has been aggravated by the breakdown of the Rule of Law under the terrorist regime of Amin; it is now being mixed up with looting or plundering. In a recent newspaper article, Eridadi Mulira notes that:

Robbery with violence has been of several kinds. Innumerable homes have been attacked by armed men and robbed of everything and in many cases the owners left dead. The value of property that has been robbed in this way is in billions of shillings, and all this national asset only to be laid to waste!

Cars have been robbed at gun point! Roadblocks have come to stay and to be a means of enriching men and women in uniform, either by open plunder of the passengers' goods or by corrupt means of taking bribes.²⁸

Robbery with violence is still reported in several cities, but it has declined in the city of Kampala; and in the last 30 years, very few cases have been reported in the news as far as the author is aware. The explanation for this is not entirely clear but it has to do with more cash being available elsewhere, the would be bank robber need not risk an encounter with soldiers and other armed men guarding banks; instead the robbers raid private businesses and homes. Armed robbery in Africa, just as in the other countries is mainly an urban phenomenon,²⁹ but as urbanism spreads into rural areas, these too will experience increases in armed robberies.

The rate of robbery increases with the size of the city. Cities with populations of over 250,000 are the core of violent robbery. Robbery with violence within cities is frequently committed by use of firearms, and often in the streets. Banks, as noted above, are very attractive for armed attacks, but so are petrol stations, bars, restaurants, shops, hotels and residences, all can be singled out for attack.

Armed robberies, or *kondo*, are commonly committed by a few armed men, not in scores as is the case with the *dacoity* in India in which 30–50 armed men may be involved.

28 Mulira, op. cit. p. 2.

29 Daniel Glaser (editor), *Crime in the City*, (New York: Harper and Row Publishers; 1970).

Sometimes robbery with violence ends in homicide. In a study of criminal homicide in Uganda, cases of armed robbery accounted for 49 out of 150 victims, or about nine per cent.³⁰

Robbery with violence, or *kondo*, unlike the Indian *dacoity* is of recent origin and has no history behind it. *Dacoity* is organized almost on the same lines like the Italian Mafia. Some reports of it go back to 1802.

Armed attacks on banks, especially in Nairobi, hardly ever cause grievous harm to bank officials, the robbers usually shoot in the air to scare the people and to clear the way of escape.

Clinard and Abbott, in their study of crime in developing countries indicate that as a country develops, there is an increase in robbery with violence, or the threat of violence, to secure money or other material objects.³¹ They also point out that the basic reasons for the increase in armed robberies lie within the development process itself.³² This assertion implies that when development is fully achieved, robbery with violence will decrease correspondingly. On the face of it, this appears to be a partial explanation since the most affluent nations in the world, with the exception of the United States of America, have the lowest rates of not only armed robbery, but of all types of crimes.

These include Sweden, Switzerland, and Japan. But the prevalence of armed robbery in the United States indicates that there are other contributory factors to the incidence of criminality in general and robbery with violence in particular. Some strange element that exists within the developmental process directly or indirectly contributes to armed robbery and criminality by (a) disrupting the traditional mechanisms of social control; (b) through urbanization and industrialization, bringing alienation to a lot of people in urban and semi-urban areas; (c) urban unemployment, especially of the young males; (d) inexperience of the national

30 Tibamanya mwene Mushanga, *Criminal Homicide in Uganda*, (East African Literature Bureau, 1974) p. 105.

31 Marshall B. Clinard and Daniel J. Abbott, *Crime in Developing Countries: A Comparative Perspective*, (New York: John Wiley and Sons, 1973) p. 39.

32 *Ibid.*

planners who fail to minimize income disparity of the people; (e) failure to raise the productivity of the poor; (f) failure to introduce the anti-crime, or crime preventing measures.

As an extreme form of stealing, robbery with violence cannot be explained in terms of poverty. Commenting on the study of crime in developing countries by Clinard and Abbott, H. Odera Oruka, rejects the suggestion that criminal behaviour is a product of the criminal persons or community that one associates with. He asks: "But are not the persons or community that a person associates with (one's friends or class) dependent on the material or socio-economic status of that person?" If this is true then the idea that a person develops criminal behaviour because he associates with criminal persons or community is only secondary truth. The primary truth is that a community is criminal or charged to be criminal because it is *poverty-stricken*.³³ Odera concludes by emphatically asserting that, "There can be no doubt whatsoever, that poverty and social frustrations are the greatest causes of criminal behaviour. It will, therefore, not do for the authors of (*Crime in Developing countries*) to suppress this fact."³⁴

In support of this view, Odera quotes from Patricia Ward's *Poverty and Criminal Justice*:

"Poverty breeds crime. The poor are arrested more often, convicted more frequently, sentenced more harshly, rehabilitated less successfully than the rest of society. So long as the social conditions that produce poverty remain, no reforms in the criminal process will eliminate this imbalance."³⁵

By taking the above view, Odera has joined the group of those who hold poverty to be the "cause" of crime. But the opposite view is that poverty cannot be the "cause" of crime because it is not a sufficient or even a necessary factor in the causation or existence of criminality. In the cause-effect explanation of social phenomena, poverty would be accepted as a cause of crime if and only if whenever

33 H. Odera Oruka, *Punishment and Terrorism in Africa*, (Nairobi: East African Literature Bureau, 1976) p.79.

34 *Ibid*

35 *Ibid*

we see crime, we would also find poverty; and that whenever we see poverty, we would be sure to find criminality. But this is not what we all know. The poor may be arrested more often, convicted more frequently, sentenced more severely not because they commit more serious crimes but because they are victimized. They cannot afford influential advocates; they have no political connections, and have generally no recognizable social status that would mitigate against the harsh treatment they receive from the criminal justice system.

Robbery and thievery in general have a negative impact on the social and economic development of a nation. The harm caused by the theft of the poor is nowhere to be compared with the harm caused by indirect or covert robbery that is committed by government officials and politicians. The amount of money that is stolen by government officials and politicians in one day is ten times more than what is stolen or robbed by the poor in a whole year.

In developing countries, and especially in the least developing countries, white collar crime is responsible for economic stagnation, political extremism, dictatorship and terrorism of the masses. The big thieves who are draining national treasuries in Africa are not poor; those who are stealing national produce and selling them to deposit the stolen money in foreign banks are not the poor.

One aspect of armed robbery that we wish to note, in passing, is the lack of participation in this type of criminal activity by women.

One explanation is that of self-conception. "Women are regarded (as they do themselves) as weak; and since robbery with violence requires strength in the use of force, they are excluded. Thieves need to be very agile, and women, generally, are slow of foot, and this factor is a hindrance in the profession of robbery. Social determinants are also important. A young man in financial problems may resort to forgery or open robbery; but a young woman who finds herself in the same situation, may resort to part-time prostitution to alleviate her economic plight."

Very infrequently a woman may be involved in the crime of armed robbery in the company of men or more often she may be charged as an accomplice before or after the fact. There is a case on

record in Kenya where a woman, together with a number of men, raided and robbed a bank. Women participation in armed robbery is expected to increase as their liberalism becomes widespread.

Robbery may or may not be committed by an organized group of men. It is mostly committed, as we have noted, by those who have had previous prison experience. Robbers start as petty thieves and progressively get more and more hardened as they come into contact with the law. In a study of a sample of 21 persons sentenced to prison in Kampala for *kondoism* in 1968, 62.9 percent had been in prison before and of these 38.1 per cent had been in prison two or more times.³⁶ Armed robbery is a tough job and only men who are tough, rough and over daring can engage in it. One robber had this to say:

“One day some of my friends asked me to do a robbery. They asked me because I was the most experienced driver in that group and was a very good mechanic. I was promised some money. It was daytime when we decided to go. We stopped the car of a certain Asian whom my friends knew well and whom they knew was carrying money from a bank to his company for his payroll. When he stopped we beat him and took all his money, £20,000. We ran back and each had his share; I got £7,000 and gave it to another friend to run his bar. There was another friend who had not gone with us but who was given a very little amount of money. He was not satisfied with this and so he went and reported us. After two months I was arrested and here I am. I haven’t heard of my friends yet as we scattered so I do not know where they are now.”³⁷

In another case, an underground garage was discovered a few miles out of Kampala in which there were more than 70 vehicles, all stolen. The robbers sold these vehicles in pieces and the garage was discovered when one of the thieves became dissatisfied with the way their ill-gotten money was being shared; so he reported the matter to the police.

These two cases indicate lack of organization and absence of a code of ethics which would be binding on all members as is the rule with *Omerta* of the *Mafia*, which is the law of silence. All Mafia

36 Clinard and Abbott, op. cit. p. 39.

37 *Ibid*, p. 41

members take the Oath of *Omerta*, pledging never to disclose or make known to the authorities the names of the members of the group; and this is the same as the *dacoity* in India.

Of all criminals, robbers are the most difficult to “reform” because most of them have very negative self-concept and through repeated prison experiences, they are filled with hatred of society and its institutions.

These are the “real” criminals who define their roles as such. They are what are commonly called the habitual, the professional career offenders. Robbery with violence differs from other major offences in many respects. It is a profession; like prostitution, or forgery; unlike other crimes in which one cannot turn into a profession such as arson, rape or assault; but one may make and many have made fortunes in the crime of robbery with violence like in any other professions, while many more are making huge fortunes through white collar criminality and embezzlement; especially in the civil service.

SHOPLIFTING

Shoplifting is a relatively common criminal behaviour commonly committed by all age groups but often more by women than men, although this view has been challenged. Shoplifting is usually listed under theft so that it is not possible to make even a rough guess at its extent. The majority of shoplifting offenders are amateurs who outnumber the professionals about 9 – 1. The amateurs steal goods to sell so as to earn a living. Shoplifting is an offence with very low visibility especially in the rich countries of Western Europe and North America. The victims of shoplifting are generally reluctant to go to court because the offender, for example, may be very sorry indeed for his own misconduct; or because of his social status, age, financial standing, race, religion, party affiliation or tribe. Many shop-owners find it a bother to have to go to the police and court to prosecute an offender who stole something worth a few dollars. In a survey done in the United States of America, Thorsten Sellin found that there were more cases of shoplifting known to three

department stores in the city of Philadelphia than there were thefts known to the police for the entire city.³⁸

Most shop-owners brand their losses in shoplifting as inventory shrinkage in which they include all breakages, damages, and those goods that are found to be fit for selling at reduced prices for one reason or other. Practically anything movable can be shoplifted, from dresses to books, foodstuffs, watches, necklaces, typewriters, and, the smaller the item the easier it is to shoplift. There is the recorded case of a woman in Tennessee who, in a false pair of oversize bloomers hid a tinned ham, a jar of olives, three sausages, two cans of meat spread, a slice of bologna, a wedge of cheese, a package of gum, and a carton of cigarettes.³⁹

In London, a common practice of female shoplifters is entering a shop or store with a tightly-buttoned raincoat, but no dress underneath. The woman then takes a number of dresses to the fitting room, removes the price tag from one, and leaves the shop wearing it.⁴⁰

Another form of shoplifting is the changing of covers, labels and price tags on such items as shoes, pullovers, garment, watches, suits and others which cannot be written on; these are the easiest to change. A high price is removed and replaced with a low one and the item can then be bought at half its original price. Another method is for the shoplifter to bring his own price tags and labels. In order to achieve this, he pays a brief visit to the shop to check on the kinds of labels, or price tags that are on the items and also to note what ink or marker was used to write the prices on the tags. After this the thief returns to the shop with the labels and proceeds to remove the real ones and to replace them with his own. He may buy the items himself or he may be followed soon after by his accomplices who will buy the price-reduced items.

Shoplifting like pilfering must not be taken lightly, for it can ruin business if not checked in time. Many businessmen may find

38 Thorsten Sellin, *Research Memorandum on Crime in the Depression*, (New York: Social Science Research Council, 1937).

39 Block and Geis, *op. cit.* p. 208.

40 *Ibid.*

themselves closing their business with huge debts partly because of daily shoplifting by customers or by shop-assistants. In business activity, whatever costs money, if taken freely, is money lost; and if this goes on, it will not be long before the owner of the shop is out of business, and he may not even know what happened; possibly he will attribute his failure to bad luck, misfortune or bewitchment.

There are explanations which relate this high incident of shoplifting to women. These include tensions of a psychological nature especially when a woman is menstruating or when she is approaching menopause; but there are also other factors. For example, women in the Western countries do the shopping. In the United States, 80 percent of shopping is done by women.⁴¹ Women are under considerable pressure from TV and advertisement to buy and this exerts stress and strain and produces ambivalences and inculcates constant want of new things. Through advertisement women are pressurised to the point of being turned into neurotics. It would therefore appear that if the same amount of pressure was directed at men; and if it was a man's role to do the family shopping, male rate of shoplifting would be higher than that of women.

Some cases of shoplifting have been explained in terms of a psychological condition commonly known as kleptomania, which is pathological stealing in which the offenders are found to steal almost useless items like one earring or one sock or one glove which is thrown away the moment the thief gets out of the shop.

To control or reduce shoplifting many stores in the United States use closed circuit television systems, or radar to detect thieves; others use detectives; or reflectors, two-way mirrors and magnetic devices on items that can only be removed by other special devices. These preventive measures are reported to have drastically reduced the amount of shoplifting where they have been implemented.

41 *Ibid*, p. 209.

CHAPTER VII

ALCOHOL AND DRUG ADDICTION

The use of alcoholic beverages is an ancient custom among some African communities, as it is in other parts of the world. The preparation of fermented beverages was one of the early technologies that man developed over millennia. Unlike the use of drugs, the consumption of alcoholic beverages has never been an illegal act. Drinking has in fact become a generally accepted social habit in many countries of the world and especially in poor states where, in some countries, the revenue earned from the trade in alcohol constitutes a large percentage of the national income.

Historically, Africans have always been accustomed to the consumption of fermented beverages which, as a group, have less alcohol content than the distilled beverages. These beverages are obtained from ripe bananas, or millet or honey and sorghum. In many parts of Africa, alcoholic beverages are obtained from tapping palm trees and collecting the sap which is allowed to ferment before it is consumed. Usually, the consumption of alcoholic beverages is restricted to elders of the community and drinking is a social rather than an individual activity. Women are generally excluded from drinking parties but not entirely.

More recently, the consumption of distilled alcoholic beverages has been introduced. Rene Dumont says that alcoholism was the first “gift” presented to Africa by Europe.¹ Thus the coming of the Europeans and Arab slave traders introduced distilled alcoholic beverages into Africa. Today, the consumption of distilled alcoholic beverages is increasing as more people engage in illicit distillery all over the continent. Many parts of Africa south of the Sahara are facing starvation partly because the manpower that would go to the production of food is spent in the distillation of alcoholic drinks; and partly because, the little grain that should be preserved for harder times is used up in the preparation of beverages for distillation.

1 Rene Dumont, *False Start in Africa*. (London: Sphere Books, 1966) p. 48.

FUNCTIONS OF ALCOHOL

The consumption of alcoholic beverages is viewed by most people as socially useful and even necessary. This is historically true and will continue to be viewed in this way. Alcohol is always present at meetings when elders meet to settle domestic or inter-clan disputes; or when a marriage or divorce is being organised. In societies where marriages are formalized by the payment of cattle as brideprice, this transaction must be accompanied by several pots of beer. It is an occasion for drinking when men return from a hunting expedition; people drink when a son is born to the family; there is drinking when a visitor comes to spend a night. Drinking is especially important to celebrate the new harvest, or to enter a new house.

Alcoholic consumption occupies a very central role at funerals, at ceremonies that mark the birth of twins; at naming of children, at baptism, at graduation, at promotion, transfer or retirement. Winning an election or even losing is an especially important occasion marked by drinking.

People drink for happiness as much as for unhappiness; people drink day and night; unlike animals, human beings drink whether they are thirsty or not.

In most communities, both distilled and fermented beverages play an important role in the religious, medical and dietary needs of the people.

In a modern setting, having a good social evening means drinking as much as possible. Traffic in liquor is, of course, a common source of income for individuals as well as the state.

The drinking of the alcoholic beverages has lost some of its traditional values as much as it has acquired new ones. Drinking by teenagers, women and girls is becoming a socially accepted norm. Family and religious sanctions against drinking by young people are no longer applicable.² Widespread use of alcohol is, itself not a problem; it only becomes one when drinking becomes individualized, and when it becomes excessive and end in alcoholism.

2 Harry Gold and Frank R. Scarpitti, (eds.), *Combating Social Problems*, (New York: Holt, Rinehart and Winston, 1967) p. 463.

Social drinking in urban areas is becoming more widespread and can be seen in all major cities. In Nairobi and to a certain extent Kampala, this kind of drinking is organised on tribal, religious or political lines. There are, of course, general bars or clubs that have little or none of the tribal or political connections and these cater for the non-affiliated or foreign patrons.

At these drinking places, people meet and exchange views; they discuss their local or national political issues. There is a lot of gossip and rumour mongering in these places which serve a very important social function in the absence of reliable information media.

EVILS OF ALCOHOL

The misuse or abuse of alcohol has an anti-social aspect as well as a personal negative aspect. The abuse of alcohol, in many cases, leads to the breakdown of families through divorce, separation or desertions and homicide. Fights between husbands and wives become frequent leading to a common phenomenon now known as spouse abuse; which means frequent use of violence by one of the spouse against the other. Cases of wife-beating wife-abuse, wife-victimisation and battered husbands and general violence within the family revolve, in most cases, on the abuse of alcohol.³ Family disorganization in one way or other contributes to juvenile delinquency as children lack parental supervision.

Serious and sometimes fatal road accidents are reported to be generally due to drunkenness, the drunken drivers care less about the other users of the road. Widespread drunkenness reduces production and development through absenteeism, industrial accidents, inefficiency and carelessness; delays and reduced input. Corruption, forgery and embezzlement are the common crimes that some people engage in, in order to support their drinking habits. Very often the drunkard loses his employment which in turn

3 On "Wife-beating" see Murry A. Straus, on "Battered Women", see Elaine Hilberman and Kit Munson, on "Wife Abuse" see Sarah Haffner; on "Wife Victimisation" see Tibamanya mwene Mushanga and on "Battered Husband Syndrome", see Suzanne K. Steinmetz all in *Victimology: An International Journal*, vol, 2 1977-1978 Nos. 3-4 Special issue on Spouse Abuse. Also see Richard J. Gelles and Claire Pedrick Cornell, eds, *International Perspective on Family Violence*, Lexington Books, D.C. Heath and Company, Lexington Massachusetts, 1982.)

seriously affects his social roles especially his family. Chronic abuse of alcohol, in the long run, may have adverse effects on the health of the victim; first his brain and nervous system may be damaged, then his other internal organs, and he may eventually, after many years of alcohol abuse, maybe 15 to 25 years, die of cirrhosis of the liver.

Drunkenness, not alcoholic addiction, plays a big role in the genesis of some of the criminal acts and deviant behaviour. It has been found in many studies in sociology and criminology that drunkenness is closely correlated to crimes of violence. In a Finnish study, Veli Verkko found alcohol played a significant role in cases of homicide and suicide in that country.⁴ In Philadelphia, Wolfgang found that when alcohol was present, a general description of the circumstances leading to homicide indicated in most cases, that drinking was excessive and had occurred over a prolonged period of time. He found that alcohol was present either in the offender or the victim, in both the offender and his victim, or in the homicide situation; and that all these combinations accounted for 63.6 percent of the 588 cases of criminal homicide; and alcohol was absent in 36 per cent of these cases.⁵ In a Ugandan study of criminal homicide, it was found that alcohol was mentioned to have been present in about 37 per cent of cases.⁶ This low percentage is misleading, first there was no effort on the part of the police to find out how much alcohol was involved in the homicide drama; secondly, there were no facilities to test the level of alcohol either in the blood or urine of the offender or of the victims.

The percentage given above only indicates the presence of alcohol in the homicide situation; and this by merely mentioning that there was drinking.

Alcohol drunkenness plays a leading role in crime and deviance because of its effect on the brain. Following the intake of alcoholic beverages, a certain amount of alcohol is absorbed into the

4 Veil Verkko, *Homicide and Suicide in Finland and Their Dependence on National Character*, (Copenhagen, 1952.)

5 Tibamanya mwene Mushanga, *Criminal Homicide in Uganda* (Nairobi: East African Literature Bureau, 1974) p. 128.

6 Marvin E. Wolfgang and Franco Ferreaenti, *The Subculture of Violence: Towards an Integrated Theory in Criminology*, (London: Tavistock Publication, 1967) p. 190.

circulation of the blood system in the stomach, but most of it is absorbed in the small intestines. The brain is not directly affected as there cannot be more than one per cent of alcohol in the blood, so brain cells are not affected directly. But once alcohol gets in the blood it functions by realising emotions and by lowering the cortical control over the manifestations of anger.⁷ It acts by arresting the functions of the *superego* and by leaving the individual to respond to emotional states without further reference to socially approved norms of behaviour. Very often the drunk may use violence because of failure to regulate motor discharges especially when these erupt as a result of persecutory or pathological jealousy, delusional states and hallucinations. In some cases, the abuse of alcohol leads to very serious psychiatric disorders such as delirium tremens, Korsakow's syndrome and chronic dementia.⁸

Drunkenness in many countries of the free world is not a crime; but it is a crime if it takes place in public. A drunken person may be charged with being disorderly and drunk, or for vagrancy, trespass or being a nuisance in public. In some countries, the drunk may be charged for drunkenness and being disorderly while the bar owner may be charged for continually selling alcohol to an already drunk person. Furthermore, some statutes provide that if a drunk person gets injured while drunk, he may sue the bar owner for damages. In connection with this, in some states of the United States of America, bar owners are expected to be men and women of high reputation within their communities, with no previous criminal record and who are capable of protecting their clients.⁹

In many countries there is no qualification for ownership of a bar or a place for public drinking of alcohol; but many states prohibit people below the age of 18 from entering bars. The reason must be legal not sociological or biological; legal here simply means arbitrary. This kind of law is impossible to enforce and in some cases quite

7 W.L. Linford Rees. *A Short Textbook of Psychiatry*, (London: The English Universities Press Ltd, 1967) pp. 219-224.

8 Marshall B. Clinard, *Sociology of Deviant Behaviour*, Third edition, (New York: Holt, Rinehart and Winston 1968) p. 392.

9 Marshall B. Clinard, *Sociology of Deviant Behaviour*, Third edition, (New York: Holt, Rinehart and Winston 1968) p. 392.

ridiculous, for there are women who may, at the age of 18, have had two children, and cannot be considered minors and therefore forbidden from entering bars.

DRUNKENNESS AND ALCOHOLISM

A distinction must be made between heavy drinkers and alcoholics or those people who have become addicted to alcohol. A lot of people drink alcoholic beverages even in enormous quantities and over long periods of time but do not become alcoholics. Alcohol is not physiologically habit forming in the same way as drugs are; one cannot become an alcoholic as a result of the first, twentieth, or even one hundredth drink of alcohol.¹⁰

In 1951 a World Health Organisation (WHO) Committee of experts used the term “alcoholism”:

To signify any form of drinking which in its extent goes beyond the traditional and customary “dietary” use or the ordinary compliance with the social drinking customs of the whole community concerned, irrespective of the etiological factors leading to such behaviour and irrespective also of the extent of which such etiological factors are dependent upon heredity, constitution or acquired psychopathological and metabolic influence.¹¹

The 1952 World Health Organization Sub-Committee further stated that:

Alcoholics are excessive drinkers whose dependence upon alcohol has attained such a degree that it shows a noticeable mental disturbance or an interference with their bodily and mental health, their interpersonal relations, and their smooth social and economic functioning or who show the prodromal signs of such developments. They therefore require treatment.¹²

Alcoholic addiction is a disease which, in many countries constitutes a major public health problem.

10 World Health Organisation, *Prevention of Alcohol-Related Problems: Measures, Policies and Programmes*, compiled by Joy Moser, Division of Mental Health, (Geneva: February 1979).

11 *Ibid.*

12 Mark Keller and Vera Efron, “The Prevalence of Alcoholism”, *Quarterly Journal of Studies on Alcohol*, 16 (1955) p. 621. Also quoted by Gold and Scarpitti, *op. cit.* p. 463.

Mark Keller and Vera Efron have noted that:

Alcoholism is a chronic illness, psychic or somatic or psychosomatic, which manifests itself as a disorder of behaviour. It is characterized by the repeated drinking of alcoholic beverages, to an extent that it exceeds customary dietary use or compliance with the social customs of the community and that interferes with the drinker's health, or his social or economic functioning.¹³

We have drawn a clear distinction between drinking, and alcoholic addiction. There are far too many people in a nation who drink heavily but who are not alcoholics. They may frequently find themselves in trouble with the law for fighting, assaults, and even in criminal homicide.

Numerous studies have been done to show that heavy drinking does not necessarily lead to alcoholic addiction.

For example, Jews as a racial category, are reported to have a high rate of drinking alcohol, but have an extremely low rate of alcoholic addiction. Riley and Marden have written that Jews report the highest incidence of drinking, Catholics next, and Protestants last, with percentages of 87, 79 and 59 respectively.¹⁴ The real distinguishing characteristic is the true alcoholic's addiction, to alcohol and his inability to control intake once he has begun to drink.¹⁵

Alcoholism and drunkenness are also known to differ in terms of national and genetic factors. Italians and Irish not for being generally Catholics, like Jews, are reported to have high incidences of both heavy drinkers and alcoholics. This is very difficult to determine in regard to Africans; it is not possible to say that

13 John W. Riley and Charles F. Marden, "The Social Pattern of Alcoholic Drinking", *Quarterly Journal of Studies on Alcohol*, 8 (September 1947) pp. 265-273. Reported in Gold and Scarpitti, op. cit. p. 466.

14 E. M. Jellinek, "Phases of Alcohol Addiction", in David J. Pittman and Charles R. Snyder, (eds), *Society, Culture and Drinking Patterns*. (New York: John Wiley & Sons, Inc.) See also E. M. Jellinek, "Phases in the Drinking History of Alcoholics," *Memoirs of the section of studies on alcohol*, No. 5 (New Brunswick, N.J. *Quarterly Journal of Studies on Alcohol*, 1946).

15 Gold and Scarpitti, op. cit. See also Charles R. Snyder "A Sociological View of the Etiology of Alcoholism" in S. N. Eisenstalt, (ed) *Comparative Social Problems*, (New York: The Free Press 1964).

Rwandese or Kenyans have higher or lower rates than say Ugandans or Burundians for there is no organized system of data collection of any description on the matter, although earlier reports indicate that there is much more widespread drunkenness in Zambia than there is in surrounding states.

In the 1947 study by Riley and Marden mentioned above, it was found that 75 per cent of adult males drank whereas only 56 percent of adult females did so; and that of the regular drinkers (three or more times a week), 27 percent were men and eight per cent women. Although many women drink alcohol, their ratio to men in the United States is still small, at 1:6; 1:12 in Scandinavia, but 1:1½ in United Kingdom.¹⁶

Studies of drinking and alcoholic addiction have shown that drinking declines with age. Drinking reaches its peak between the ages of 21 and 35 and reduces considerably after the age of 55.

Many studies also show that drinking starts around 16, the college and university students drink as much and as frequently as the general public. Other studies have shown that children who are brought up in rigid prohibitionist families tend to end up being heavy drinkers and very often alcoholics more than those who are brought up in more or less permissive and tolerant conditions. Some psychologists and sociologists in fact have advised that children be introduced to alcohol quite early in life so as to avoid the growth of the desire to drink alcohol to excess.

While alcoholic addiction and drunkenness are reported to be prevalent in all classes of human beings, the upper classes who are associated with high incomes and greater education are reported to rank higher than the rest.

The lower classes, the poor, and the working classes are more frequently involved in police cases but this does not mean that the members of this category abuse alcohol more than their more fortunate counterparts.

THE ALCOHOLIC

We have noted that alcoholism is an illness, a disease that can be a public health problem; the alcoholic is a patient, but alcohol, the substance that causes alcoholism, is a drug. Many nations prohibit the use of certain drugs, especially narcotics, and other habit-forming ones, but alcohol is universally (except in Mohammedan fundamentalist states such as Saudi Arabia and the Sudan) legally tolerated. The possession of certain alcoholic beverages such as *enguli* in Uganda, or *chang'aa* in Kenya, is an offence but not in the same sense as being found in possession of Indian hemp or morphine.

The explanation of alcoholism is as disputable as the “cause” of crime. But psychological explanations attribute alcoholism to a number of factors, such as faulty personality development and emotional problems. Alcoholics are viewed by psychologists and psychiatrists as feeling inadequate, being latently homosexual, desiring self-destruction and self-punishment, attempting to escape from their inner guilt and conflicts, or being insecure and dependent upon others for support.¹⁷ These personality traits which are a result of differential socialization create enormous tension and anxiety which can be overcome with the drinking of alcohol. Three skid row alcoholics are reported to have commented:

Alcohol is marvellous at removing obstacles for a while. Everyone gets to the point where he is just fed up and scared and worried. He doesn't know where to return. Alcohol takes care of that. The important becomes unimportant. Your problems aren't anywhere near what you thought.¹⁸

The suggestion that there is an alcoholic personality is contested because there is no evidence to indicate this trait; also these personality traits that are found in alcoholics may be the result of alcoholism and not the cause of it; and, those traits that are found in alcoholics may frequently be found among non-alcoholics.¹⁹

17 Clinard, op. cit. p.457

18 Gold and Scarpitti, op. cit.

19 Clinard, op. cit.

In the final phase of a long history of heavy drinking, the drinker turns into an alcoholic whose main characteristics are solitary drinking, morning drinking and general physical deterioration.

A United States of America study in 1972 stated that the presence of one or more of the following major criteria would indicate alcoholism:²⁰

1. *Withdrawal Symptoms* - Gross tremor, hallucinations, seizure or delirium tremens when deprived of alcohol.
2. *Tolerance* - High blood levels of alcohol without gross evidence of intoxication, daily consumption of a fifth of a gallon of whisky, or an equivalent intake of beer or wine, by an individual weighing 180 pounds;
3. *Continued Drinking in the face of strong penalties* - Medical warnings, loss of job, disruption of marriage, arrest for drunkenness or drunken driving;
4. *Major illness* - Fatty degeneration, alcoholic hepatitis, cirrhosis, pancreatitis, and a number of other syndromes and ailments associated with alcohol such as irregular heartbeat, gulping drinks, drinking on the sly, morning drinking, drinking to relieve anger, insomnia or depression.

As the patient progresses, he feels a pressing need to keep a certain amount of alcohol in his circulation. Indeed, without a small amount of alcohol, he experiences a great deal of anxiety and cannot hold a spoon or sign his name without tremours.

He irregularly eats and may actually spend several days with little or no solid food at all; his major preoccupation is how to get a drink of alcohol.

It is at this stage he considers it a catastrophe to be without a drink; for he now drinks to live and lives to drink. Perhaps one of the major signs of impending last phase is the sudden abstinence from drinking of a well known chronic alcoholic. This may last up to a year but once the patient resumes, he drinks with renewed enthusiasm; and may drink anything such as clinical spirit, shaving lotion or even urine when he cannot find an alcoholic beverage.

20 Task Force Report: Drunkenness, The President's Commission on Law Enforcement and Administration of Justice; U.S. Government Printer, Washington, D.C. p. 32-35.

Death usually follows, due to cirrhosis of the liver, tuberculosis or any disease that may invade his weakened and malnourished body.

Jellinek, the one time leading dean of an alcoholologists, suggested that alcoholism be considered and treated as a disease in which various bodily organs and systems are progressively involved. According to the Greek alphabet his outline is as follows:

- (a) *Alpha*: At this stage, alcoholism is characterised by a purely psychological continual dependence on alcohol to relieve bodily or emotional pain. This type of drinking is not associated with loss of control nor is there any progressive process.
- (b) *Beta*: Organic complications of a medical nature are present especially cirrhosis of the liver, and polyneuritis; dependence is either physical or psychological and drinking may occur as a result of customs, but there are no withdrawal symptoms.
- (c) *Gamma*: At this stage alcoholism is characterised by tolerance to alcohol; the alcoholic needs more dosage, he may crave for more; and if alcohol is withdrawn, symptoms appear at once. The patient at this stage has already lost control over his drinking habits and the amount of drinking. The patient progressively moves from psychological to physical dependence on alcohol and there is more damage to health and interpersonal relations.
- (d) *Delta*: This is like the Gamma stage, but instead of loss of control of the amount of intake on any one occasion, there is greater inability to abstain even for a day or two without the appearance of the withdrawal symptoms.
- (e) *Epsilon*: This phase is characterised by periodic overuse of alcohol as in dipsomania.
- (f) *Omega*: Omega alcoholism is what the present author would term the last stage of alcoholic addiction, which is characterised by gross debilitation, wasting, and chronic lack of appetite, chronic jaundice, impotence, lethargy, ascitic and death. It is at this stage that Karl Menninger considered alcoholism as a form of chronic suicide, a wilful, but unconscious effort at slow self-destruction.²¹

21 Report of United Kingdom Department of Employment for the year 1975; quoted in WHO fourth draft report on Prevention of Alcohol – Related Problems, Geneva

PREVENTION OF DRUNKENNESS AND ALCOHOLISM

The prevention and treatment of drunkenness and alcoholism is as elusive as that of malignant tumours of a cancerous nature. For centuries people have known that the history of liquor is a history written in blood and tears; for liquor has shed more blood, broken more homes, armed more murderers, slain more children, men and women, than any other scourge ever recorded in the annals of human existence. Each year, alcohol claims more lives, costs more money than what the Allied Forces spent on the Second World War. The annual expenditure on alcohol beverages for United Kingdom in 1975 was estimated at 13.1 million pounds per 100,000 of population; or approximately 642 million pounds.²²

In the field of public health, the prevention of disease consists of dealing with the causative agent, the patient and the environment, and this includes cutting off the lines of communication between the agent, the patient and the environment.

Similarly and preventive measure that is likely to yield any fruitful results must apply this scheme; cutting off communication between liquor, the drinker, and his social milieu.

Numerous suggestions, policies and programmes have been drawn up by individual national governments and by international agencies in an effort to reduce the cost of intoxication and alcoholic addition but nearly all have met with limited success. Efforts to curb the extent of the consumption of alcoholic beverages have often been frustrated by interested parties; those who benefit from the trade in alcoholic beverages. In some cases the governments themselves may encourage the trafficking in liquor or even in illegal trade in order to raise funds.

This is the case with smoking. In spite of world-wide outcry against smoking, and in spite of available information based on existing evidence that smoking of cigarettes is correlated to the genesis of cancer, national governments continue to encourage

1979.

22 Edwin Lemert, "Four Models of Social Control," in Gold and Scarpitti, *op.cit.* Pp.472 480.

people to grow more tobacco; and even to advertise the smoking of cigarettes on national news media.

Today, it is almost inconceivable to suggest to any of the national governments in Africa to begin to initiate preventive programmes in respect of alcoholism. The desire to collect revenue from the sales, taxes and fines from trafficking in alcoholic beverages outweighs the dangers posed by alcoholism. The suggestion would in fact cause some stir in diplomatic circles for the “Big Brothers” would feel that the move to restrict importation of liquor would hurt their national interests. Britain (for whisky), France for (brandy), Soviet Union (for Vodka) would protest that such a measure was an unfriendly act. It is interesting to note that in 1981-1984 when hospitals were in bad need of supplies to basic drugs and medicines, shops in Kampala were overpacked with imported liquor, especially whisky, gin and even champagne. There was no money to buy drugs, just like an alcoholic person, the nation had to make sure it was supplied continually with alcohol.

Alcoholism, we noted above, is a disease; but it is both a physical/psychological as well as social problem. Were it wholly physical or biological, there would be hope of eradicating it from the surface of the earth as the World Health Organisation has done with smallpox; and time will surely come when the world scientist will rejoice at the discovery of a cure for cancer. But the prevention of alcoholism is difficult to achieve because alcohol has very many social functions to fulfil whereas smallpox did not; and not only that, because there is no single causative agent for scientists to concentrate on; and over and above that, there are millions and millions of people whose livelihood depends on the availability of this substance and who are ready to dodge, outwit or outright fight any attempts at the control of drinking alcohol.

The public health model of prevention of diseases focuses on the agent that is the causative germ, or any harmful substance; then the host or the patient, and finally the environment.

In the prevention of the disease of alcoholism the focus is to be directed at the agent of the disease, and this agent is alcohol which has two aspects to it, one is the substance itself and the other is

the society in which it is consumed. When scientists were fighting to eradicate yaws or smallpox no single group rose to frustrate the efforts to develop preventive or curative drugs; but as noted above, the causative agent in alcoholism has a human aspect to it in that there are interested parties who will suffer if alcoholism is controlled.

The next is the host or the society in which he lives and forms part and which also drinks alcohol. The patient is, therefore, the individual as well as the society and prevention must be directed at both the individual and the community. In other words what would be required is the individual prevention and general prevention. Finally there is the environment, which, in our scheme of strategy is the larger community in which alcoholism as a disease may be prevalent or widespread.

Edwin Lemert has suggested four models of social control of alcoholism.²³ The first is legislative. This is legal prohibition of the manufacture, distribution, purchase and consumption of alcoholic beverages.

It is possible to pass laws that will criminalise the manufacture, distribution and consumption of liquor but the major drawback is the enforcement of such a law. First, it is not true that all law enforcement may be interested in the measures directed at the control of drinking.

Secondly, there are those who directly benefit from the prevalence of alcoholism; and thirdly, there is the general public who may be demanding the supply of alcohol.

This model is destined to fail because the law-makers themselves may be interested parties either as drinkers or as profiteers in liquor trafficking. And even if the prohibition law is passed, enforcement may fail for reasons already stated. Then there may be general resistance against prohibition, and the people may resort to the manufacture to illicit liquor which is equally difficult to control.

For this model to achieve any measure of success there must be first nation-wide demand for prohibition; and those who benefit from the prevalence of alcohol must be in favour of such prohibition.

23 *Ibid* p.475.

Then the legislators must be willing to legislate or to legalize the manufacture, distribution and consumption of alcoholic beverage; and finally the law enforcement agents must be willing to enforce the prohibitive legislation and also control the illicit manufacture of alcohol.

The second model of Lemert is the education about the consequences of using alcohol which would lead to moderation in drinking if not complete abstinence. Under this scheme, school children would be taught about the inherent dangers of drinking alcohol; adults would be encouraged to attend classes on alcoholism and films and video shows on the problems of alcoholism would be taken to rural places in order to inform the public about the evils of alcoholism.

The problem with this policy of educating the masses is that generally people do not believe what they are taught; apart from imparting skills, through instruction or training as we train drivers or doctors, classroom education is neither training nor indoctrination. The education model may also fail because there may be many teachers who may not be keen on curbing the use of alcohol. Education about alcohol is most likely to fail just like preaching has failed to turn people away from alcohol. Lemert points out that "The arousal of fears, implied warnings, or threats as to what will happen if one drinks too much have been noted to provoke avoidance reactions towards further propaganda."²⁴

The most viable alternative to the education model would be to educate the parents, but this has to be done with great care lest they begin to avoid the educative programmes. Indoctrination of the young through socialization is, perhaps the most likely alternative to make an impact on society. Research into factors which account for the long history of Jewish sobriety indicate that indoctrination of social values is significant.²⁵ The problem here, especially in those parts of Africa where states or nations are composed of heterogeneous conglomeration of polyglotal tribes, is to identify the values that are to be reinforced in the indoctrination programmes. The values that

24 *Ibid.*

25 *Ibid.*

are upheld in one part of the nation may be strongly disapproved in another part of the same nation, and this makes determination of values difficult.

Lemert observes that a more serious flaw in the educational model of alcohol control lies in the probability that values surrounding drinking and embedded in drinking patterns are primarily shaped by experiences in the family and in the peer groups rather than by formal educational agencies.²⁶ This means that if primary group values are favourable to drinking of alcohol, educational model is not likely to succeed because what is taught at school is discounted as soon as the children return to their homes. Parental example and pressure from peer groups have a more lasting impact on an individual than what he is taught at school or told by a preacher. Temperance crusades met with limited success because of the counter norms prevalent within the domestic and neighbourhood circles.

The third model is that, again, of legal regulation of the kinds of liquor to be consumed; its pecuniary cost; the methods of distribution, the limitation of time and place of drinking; the availability of liquor to consumers according to age, sex and other social-economic criteria.

The implied assumption here is that the state or its agents can determine what amount and what percentage of alcohol are harmful to the person and can therefore control it through law. Government action can in effect reduce the prevalence of alcohol by restriction of the issuing of trade or retail licenses; by restricting and limiting drinking time, and by heavy taxation on the manufacture or importation of liquor. But the majority of the poor nations cannot embark on these proposals because they need the money from the revenues, moreover, in Uganda, taxation on alcoholic beverage has continued to be hiked every year since independence and the custom of drinking has not shown any sign of abatement; and in any

26 Tibamanya mwene Mushanga, "Profile of Programmes in The Prevention of Alcohol Related Problems in Kenya", a paper read at a World Health Organization Conference at Brazzaville Congo, February 1979; see also Mushanga - Related Problems and Suggestions for Control in Kenya". A lecture delivered at Nyeri on 13 March and at Kerugoya on 14 March 1979 in honour of H.E. President Moi, in appreciation for his efforts to control drunkenness. University of Nairobi, 1979.

case, very few nations have even begun to consider alcoholism as a national problem.

The use of the legal arm of the state for the control of injurious materials is still to be appreciated in Africa; for example, the use of dangerous insecticides, such as D.D.T. is prohibited in a number of countries in the world, but not in any one African country.

And of course, legal prohibition has to be sanctioned by the multinational corporations whose goodwill can only be assured by not passing legislation that may be harmful to their basic interests.

The last of the model in Lemert's scheme of policies is aimed at reducing drunkenness and alcoholism by substitution of functional equivalent of drinking. The major assumption under this suggestion is that values or social or individual function performed by drinking alcohol can be fulfilled through other activities.²⁷ The aim is to divert drinkers into participating in sports, games, gardening, listening to radio, seeing motion pictures, travelling and other diversional activities.²⁸ The main if not the only problem is that diversionary programmes do not alter social values regarding the drinking of alcohol. Even the attempt to reduce the drinking of alcohol through religious indoctrination has had very limited success.

What needs to be done is to isolate those values that tend to discourage alcoholism and work on those in the attempt to promote them so that they become much more widespread.

From the above outline, based on Lemert's models, it is evident that prevention and control of alcoholism is not an easy task. Many authorities feel that the prevention of alcoholism "can be achieved only if and when the social structure is significantly altered ...Alcoholism can be averted by developing behavioural controls which eliminate the possibility of drinking as a means of adaptation."²⁹

27 Lemert, *op. cit.* p. 478.

28 Gold and Scarpitti, p. 470.

29 Harrison M. Trice, "Alcoholics Anonymous", in *The Annals of American Academy of Political and Social Science*, 315 (January 1958) pp. 108-116. See also Elmer Hurbert Johnson, *Crime, Correction and Society* (New York: The Dorsey Press, 1968) p. 125.

Perhaps one of the most successful alcohol prevention programmes is what is known as Alcoholics Anonymous (AA); a fellowship of compulsive drinkers, both men and women who join each other in a mutual effort to remain sober. It was started by alcoholics in their despair and hopelessness.³⁰

Membership in Alcoholics Anonymous is free and the only requirement is the indication of the desire to give up drinking. The individual alcoholic must, out of his own free determination, decide to give up drinking. The programme demands that members admit that they have reached the bottom and must be willing to turn to others, including a “power” that is greater than themselves for help.

Through spiritual re-examination in addition to group process and identification the alcoholic’s self-conception is changed and individual behaviour is altered. The main objective of Alcoholics Anonymous is to assist the individual to remain sober; and to do this, the alcoholic is encouraged to keep in touch with fellow alcoholics, and many alcoholics live in Kibutz-like communities such as Synanon.

The programme, as the Alcoholics Anonymous refer to it, consists of suggestions for recovery from alcoholism and these are:

1. We admit we were powerless over alcohol – that our lives had become unmanageable.
2. Came to believe that a power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God as we understand Him.
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
6. We’re entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.

30 Clinard, op. cit. po.492.

8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would injure them or others.
10. Continue to take personal inventory and when we were wrong, promptly admitted it.
11. Sought through prayer and mediation to improve our conscious contact with God as we understand Him, praying only for knowledge of His will for us and the power to carry that out.
12. Having had a spiritual awakening as a result of these steps, we tried to carry this message to alcoholics and practice these principles in all our affairs.

This programme is obviously a religious one, and would be of very limited value to the agnostics and the atheists who would find constant reference to God unacceptable. The reference to God “as we understand Him” was a compromise between the non-believer alcoholics and Christian alcoholics.

Alcoholics Anonymous, in the United States, is continent-wide; its membership now runs almost into several millions or more in over several thousand local chapters.

Commenting on this programme Clinard has noted that Alcoholics Anonymous has demonstrated that alcoholism is not a personality trait of an alcoholic personality, that alcoholics can be delabelled and relabelled out of their stigmatization.³¹

Religious preaching and outright condemnation by churchmen may have done more harm than good. All available evidence that alcoholism is a disease, that it may cause cirrhosis of the liver and even death can easily be defeated by asking whether non-alcoholics never suffer from cirrhosis of the liver or even whether they do not die. It is in this way that preaching or merely talking to an alcoholic may help to push him deeper into the problem.

Alcoholism is such a national and public health problem that governments would better be advised to initiate preventive

programmes especially in those areas or among those communities within the national boundaries that appear to suffer most.

The basic objective in policy would seek to achieve the following:

1. The permanent separation of the alcoholic from the causative agent that is alcohol;
2. The repair (and prevention of further damage to the physical and emotional well-being) of the damage already caused by alcohol;
3. The changing of community institutions, programmes and services in order to meet particular needs and problems of the individual alcoholic.

All what the above is all about is an attempt to introduce a social change that will be less favourable to the consumption of alcohol excessively by introducing new social values. In this regard, the United States government report has suggested:

1. That the children be exposed to alcohol early in life, within a strong family or religious group. Whatever the beverage, it should be served in much diluted form and in small quantities, so that the blood-alcohol level remains low.
2. The alcoholic beverages commonly although not invariably used by the groups should be those containing relatively large amounts of non-alcoholic components, which also give low blood-alcohol levels.
3. The beverage is considered mainly as a food and usually consumed with meals, again with consequent low blood-alcohol levels.
4. Parents should present a constant example of moderate drinking.
5. No moral importance should be attached to drinking. Drinking should be neither a virtue nor a sin.
6. Drinking should not be viewed as proof of adulthood or virility.
7. Abstinence should socially be accepted; and it should be no more rude or ungracious to decline a drink than to decline a piece of bread.

8. Excessive drinking or intoxication should be socially disapproved. It should not be fashionable to be intoxicated.
9. Finally, and perhaps most important, there should be wide and complete agreement among members of the group on what might be called the ground or basic rules of drinking.³¹

A programme such as the one outlined above would require changes in private organization of drinking habits, changes in the age levels for drinking alcohol, extensive education about the use and misuse of alcohol; changes in the commercialization and promotion of alcohol, a different system of alcohol taxation, and adjustment in the regulations governing alcohol sales and consumption of alcohol.³²

Under this programme, alcohol would be consumed just in the same way as any other drink, but with the full knowledge that it is an intoxicant and has to be drunk in moderation. Wines and beers for general use and distilled alcoholics should be reserved for festivities and should be served with food. The youth must be given an opportunity to learn moderate drinking in controlled rather than clandestine conditions. Those who campaign against alcohol must not stigmatise it as something dangerous, but as an acceptable drink that is enjoyed in social contexts and in family circles. To be able to bring this about, the price of beer and wine should be reduced considerably and this is not just to make people drink more beer and wine but to keep them from drinking the much more potent illicit distilled liquors such as *enguli*, *chang'aa* and Nubian gin; for the more difficult the refined alcoholic beverages are to obtain, the more the drinkers will resort to the less hygienic beverages which are even more injurious to health than alcohol in general.

In conclusion, the following are some of the guidelines suggested to help an alcoholic. He or she could be your father, son, brother, husband, friend, or your mother, wife, daughter, or relative, and by following these suggestions the alcoholic patient could be rescued before it is too late.

31 Alcohol and Alcoholism, (Washington, D.C.: Department of Health, Education and Welfare, National Institute of Mental Health, 1967), p. 28.

32 Clinard, op. cit. p. 492.

1. Never argue with an alcoholic when he or she is drunk.
2. Do not attempt to punish, warn, preach to, and threaten an alcoholic; in so doing you could make his disease worse.
3. Always talk to the alcoholic when he is sober, and remain calm and serious.
4. Never try to shield an alcoholic by inventing excuses for his or her behaviour.
5. Never try to hide money, bottles or other containers in an effort to make it difficult for the alcohol to obtain alcohol.
6. If you drink alcohol, let the alcoholic know that you drink, but never drink with him, make it clear to him that you are fully aware of the dangers of alcoholism.
7. Discuss some of the alcoholic's problems with some of his friends especially those you know that he or she respects.
8. Do not take over the responsibilities of the alcoholic, this could alienate him further.
9. Make efforts to educate the members of his or her family that alcohol is a disease rather than a purely deviant behaviour.
10. Do not allow an alcoholic to give you a lift in his or her car while he or she is under the influence of alcohol.
11. Do not accept personal guilt for an alcoholic person's behaviour.
12. Talk to the alcoholic about the dangers of alcoholism when he or she is not drunk and preferably in the presence of other alcoholics.
13. Help the alcoholic person to seek professional aid where this is available.
14. Remember alcoholism is a chronic disease, and takes time to be cured, and relapses are frequent.
15. Very often alcohol runs through families, so it is important that the children and other relatives of the alcoholic learn more about the dangers of alcohol.
16. Help organise village discussion meetings at which the dangers of alcoholism can be discussed.

DRUG ADDICTION

The use of drugs in Africa has been sporadic and stretches back into distant history. Around the world, the use of drugs is reported to be an old custom; and in some countries the habit goes back even up to 2,000 years. The reason for use of drugs today would appear to have changed very little from what they have been throughout history.

Drugs are frequently used in medicine to treat various types of diseases; to ease pain, to control appetite under certain dietary conditions. They are also used for sedation, relaxation, and for relief from tension, boredom and nervous anxiety. In some cases they are used for bringing on pleasurable feelings that some people experience after the use for the substances. Drugs are also frequently used to increase sexual performance or simply to cause sexual stimulation in semi-impotent persons.

In some countries, such as India and in Mohammedan states where alcoholic beverages are religiously unacceptable and therefore legally prohibited, the would-be drinkers resort to use of drugs, and it is for this reason that alcohol-prohibitionist areas of the world are the leading traders in drugs, *vide* the Middle East, South-East Asia and The Arab World.

When we speak of drugs that can bring about addiction, we refer to cocaine, morphine, amphetamine, heroin, methedrine, L.S.D., Marijuana, Indian hemp or Bhang, and opium.

Marijuana, also known as marihuana, is perhaps the commonest and the mildest; this plant grows locally in many parts of Africa. Marijuana is so mild that some people have doubted whether in fact it is a habit-forming drug in the same way as cocaine or morphine. The mild types also have mild effects on the body but the most dangerous ones such as L.S.D (D-Lysergic Acid diethylamide) are known to cause even more dependence than alcohol.

These drugs can be administered orally, intravenously or intramuscularly and once in the body, cause time disorientation, depression, hallucinations, unresponsiveness, and general loss of inhibitions or self-control. As a general rule all narcotics have one

thing in common, the lowering of the level of nervous and other bodily activity.³³

The drugs have two but opposed effects on the body. In the early stages of the use the main effect is depression which includes analgesia or relief from pain; sedation or freedom from anxiety and tension and decreased motor activity; hypnosis which is characterised by drowsiness and lethargy, and euphoria or general sense of well being and contentment. But in the addiction stage or later stage of addiction the drug is not taken primarily to obtain positive pleasurable feelings but rather to avoid the negative effects of withdrawal. The change is usually a swift one and it is in the later stage of drug use that the addict experiences emotional and physical changes within himself.

The World Health Organisation has defined drug addiction as a:

“...state of periodic or chronic intoxication produced by the repeated consumption of a drug (natural or synthetic). Its characteristics include (1) an overpowering desire or need (compulsion) to continue taking the drug and to obtain it by any means; (2) a tendency to increase the dose; (3) a psychic (psychological) and generally a physical dependence on the effects of the drug; (4) an effect detrimental to the individual and to society.”³⁴

In Africa, the commonly used drug is marijuana or Indian hemp scientifically named *Cannabis Sativa*. It is usually smoked after mixing its dry leaves, stem or seeds with tobacco. Alfred R. Lindesmith says that the primary fact about marijuana which ought to be taken into account by legislators but is not, is that it is not a habit-forming drug. This means that the regular use of the drug does not produce tolerance, and its abrupt cessation does not lead to withdrawal distress.³⁵

33 Edwin M. Schurr, *Crimes without Victims*, (Englewood Cliffs, N. J.: Prentice-Hall, Inc. 1965), p. 120.

34 Expert Committee on Addiction – Producing Drugs Seventh Report. World Health Organisation Technical Report Series No. 116, 1957; quoted in Edwin Schurr, *Supra*.

35 Alfred R. Lindesmith, “The Marijuana Problem”, in Marvin E. Wolfgang, Leonard Savitz, and Norman Johnston, (eds.) *The Sociology of Crime and Delinquency*, Second Edition (New York: John Wiley and Sons, Inc. 1970) pp. 654–665.

Regarding the explanation of why some people become addicts to drugs and others do not, Lindesmith concluded that the knowledge or ignorance of the meaning of withdrawal distress and the use of opiates thereafter determines whether or not the individual becomes addicted.³⁶ Other writers have found addicts to be highly concentrated in the deteriorating and generally disorganised zone in transition near the cities. Dilapidated buildings overcrowding, high concentration of low socioeconomic and minority groups and other types of social pathologies are all related to the incidence of drug addiction.

In relation to crime, many sociologists do not find any direct causal relationship between drug use and crime; but some point out that the use of narcotics is so expensive that an addict must often engage in various illegal activities in order to maintain his drug supply. But this is not to say that drug addiction causes crime; it is like someone stealing money to buy a dress for his girlfriend; it is not the friendship or the girl that caused the theft, if it were all the men who wished to buy new dresses for their girlfriends and mistresses but had no money would have been engaged in stealing to be able to buy dresses.

Many countries in the world regard addiction to drugs, just like addiction to alcohol, as a disease and not as a crime; and for this reason there is widespread campaign to decriminalize drug use (and prostitution, gambling, vagrancy, abortion, adultery, fornication, bigamy, incest, homosexuality etc.) because, Clinard has argued “such laws try to control personal morals and personal conduct;” and he went on to say: “I just don’t think this is in the realm of criminal law. Every man has the right to go to hell in his own way.”

³⁷Suggestions made in regard to the control of alcoholism may equally be applied in efforts to control drug addiction. That is, by legislation for control of manufacture, importation, possession or distribution and use of drug. The education of the general public about the dangers of drug use and the deliberate alteration of social values regarding the use of drugs especially by the youth.

36 Alfred R. Lindesmith, *Opiate Addiction* (Bloomington: Principia Press, 1947) p.69. See also his “A Sociological Theory of Drug Addiction”, *American Journal of Sociology*, 43 (1938) 593-613.

37 Marshall B. Clinard reported in *Milwaukee Journal*, 4 April, 1971 pp. 184.

CHAPTER VIII

PUNISHMENT OF OFFENDERS

The punishment of wrong-doers is as old as wrong-doing and as old as society itself. Wherever human beings have lived, there has always been a behaviour that is socially approved and considered good and proper by the majority of the people; similarly, there has always been aspects of social behaviour that hurt the interests and the feelings of the members of the same group. In most human societies today there are rules that have been codified and set out as laws whose main purpose is the maintenance of order among human beings; the violation of these laws calls for societal reaction.

Punishment is therefore one of the many devices to which society resorts to restore harmony or to repair the damage done by violation of the law.

Wolf Middendorff has defined punishment as the unpleasant consequence which penal law prescribes for socially undesired human conduct, and which courts impose according to the law of penal procedure. Or, briefly, punishment is the deliberate infliction of suffering. The aims of punishment, according to Middendorff are;

1. Retribution.
2. General deterrence.
3. Special deterrence.
4. Incapacitation.
5. Reformation.

Rupert Cross,¹ a judge like Middendorff, has defined punishment as the infliction of pain by the state on someone convicted of an offence.²

Retribution is perhaps the most ancient method of treating offenders. *Lex talionis* forms the laws of Hamurabi (C1772 - 1750

1 Wolf Middendorff, in *Punishment: For and Against*, (New York: Hart Publishing Company Inc., 1971) p. 11

2 Rupert Cross, *Punishment, Prison and the Public*, (London: Steven & Sons, 1971) p.46

B.C) which he codified for the Amorites which have biblical similarities. The Law of Moses, of an eye for an eye, is retributive and revengeful. *Lex talionis* as a philosophy in penology is regarded by many penologists as representing a great development in the morality of human beings; for it replaced a penal code which allowed a greater injury to be inflicted on the offender than that which he had himself inflicted on his victim. The doctrine required that no punishment should go beyond that limit; no more than an eye for an eye, and no more than one tooth for one tooth; and accordingly, one life and no more.

The Law of Moses was to be disapproved by prophet Ezekiel when he wrote:

As I live, saith the Lord God, I have no pleasure in the death of the wicked, but that the wicked turn from his ways and live. (Ezekiel XXXIII: 11)

Retribution and the expiatory aspect of punishment have been opposed by those who are engaged in the prevention of crime and the treatment of offenders; as having very little value in the reformation or rehabilitation of the offender.

Retribution was and still is believed to have some deterrent value. William the conqueror of England is reported to have decreed:

...That no one shall be killed or hung for misdeed, but rather that his eyes be plucked out and his feet, hands and testicles cut off so that whatever part of his body remains will be a living sign to all of his crime and iniquity.

Deterrence, both general and specific is meant to reduce crime; and for this reason some have thought that the harsher the penalty or the more horrid the more effective. But Cesare Beccaria (1738-1794) argued against the severity of punishment saying that punishment was not to provide a social revenge to the criminal and that it was not the severity but the certainty and expedition in punishment that secured the best results of deterrence.

For Cesare Beccaria, the political intent of punishment was to instil fear in other men.³ There is, however, continued controversy

3 Cited by Franklin E. Zimring and Gordon J. Hawkins, *Deterrence*. (Chicago: The

over general and specific deterrence of crime; some penologists being in favour of individual or specific prevention or deterrence while others go so far as to regard general prevention as the only possible argument to support both punishment and the awarding of damages.⁴

General prevention or deterrence has been defined by Johannes Andenaes as the ability of the criminal law and its enforcement to make citizens law-abiding. He goes on to say that “If general prevention were 100 percent effective there would be no crime at all. General prevention may depend on the mere frightening or deterrent effect of punishment – the risk of discovery and punishment outweighing the temptation to commit crime.”⁵ For Andenaes, punishment has three sorts of general preventive effects: It may have a deterrent effect, it may strengthen moral inhibitions (a moralizing effect), and it may stimulate habitual law-abiding conduct.⁶ Specific deterrence is what Zimring and Hawkins have termed simple deterrence which is based on legal threats; that if the individual is to be kept law-abiding, the process of simple deterrence must confront him, making each form of illegal conduct a risk not worth taking.

The third objective of punishment of law-breakers, according to Middendorff, is incapacitation. Incarceration of offenders is incapacitation as is the death penalty. The offender is locked up so as to make it impossible to engage in further acts of crime.

Lastly, there is reformation; as one of the major objectives of punishment. There are many people who actually believe that the punishment of offenders should aim at reformation, sometimes called rehabilitation or even reclamation. In order to achieve this objective, prisoners are put to all kinds of programmes such as carpentry, tailoring, hair-dressing, gardening, dairy farming, pig

University of Chicago Press, 1973) p. 75.

4 Johannes Andenaes, *Punishment and Deterrence*, (Ann Arbor: The University of Michigan Press. 1974) p. 4.

5 *Ibid.*, p. 7.

6 *Ibid.*, p.8. For further reading on deterrence, see Franklin E Zimring. *Perspectives on Deterrence, Crime and Delinquency Issues*; Public Health Service Publication No. 2056 (U.S. Government Printing Office. Washington D.C 1971).

keeping, painting, shoe-making and all sorts of time-consuming occupations. The problem with the philosophy of reformation in penology is the absence of causal relationship between lack of skills and criminality. If it could be demonstrated that it was due to lack of skills in woodworking that made an offender to rob, then the acquisition of such skills would be necessary to remove the illegal behavioural tendencies.

It cannot be demonstrated that skills in woodworking are related even remotely, to the reduction in the urge to rape or a decline in the desire to get rich quickly. The growing of cotton in prison farms, or the making of mattresses is not related to the reduction in violent crimes. Reforming implies, in some sense, that the criminal is deformed but this is not the case with the majority of men and women who fill the prisons today. These offenders hardly differ in all human attributes from the rest, including those who are in government offices, in the markets, in the streets.

They need no more reformation than others who are free. The real motive for punishment is not deterrence,⁷ and it is not reformation. Reformative argument is purely a rationalization.

CAPITAL PUNISHMENT

Capital punishment or the death penalty is the intentional infliction of death on an offender by the state as a punishment. This is an ancient practice which was widely used in many parts of the world till recent times when humanitarianism and enlightenment combined to reduce its application with the hope of abolishing it completely.

The death penalty was used in so many cases that in England as late as the nineteenth century there were over 200 offences for which a person could be put to death. The so-called Bloody Code included such crimes as stealing turnips, damaging a fishpond, writing threatening letters, being found armed or disguised in a forest cutting down a tree, poaching, forging, picking pockets, and shoplifting. It is reported that in 1820, the British Parliament

7 A. S. Neil, in *Punishment: For and Against*, p. 145.

was still debating whether or not the death penalty should be abolished in cases of shoplifting.⁸ The Bill was eventually passed by the House of Commons, but was promptly thrown out by the House of Lords where the majority of those who voted against the abolition of the death penalty for shoplifting included all judicial members, one archbishop and six bishops.⁹ Very often, the death penalty was inflicted on the very young as well as the old indiscriminately. In 1808 a boy aged seven and his sister aged 11, were hanged at Lynn; and in 1833 a boy of nine was condemned to death at the Old Bailey for stealing two penny-worth of children paint.

Thorsten Sellin states that in Rome, the death penalty was commonly inflicted on slaves and other non-citizen residents for a variety of offences. That by 509 B.C., there existed a law that prohibited magistrates from executing or flogging Roman citizens for crimes before receiving the approval of the Centuriate Assembly to which every citizen had a right of appeal.¹⁰ In Africa, the application of the penalty, as William Clifford notes, varied in time and space.¹¹ In Nigeria Talbot reports of the use of beheading amongst the Yoruba and Edo speaking groups, Ruxton mentions stoning to death among the Maliki, in some other areas death was inflicted by drowning and in the Kingdom of Benin people were buried alive.¹²

In pre-colonial era, the Kikuyu provided for death by burning for murder and by poisoning for witchcraft or for habitual stealing; but generally, Kenyatta reports, murder and other offences were settled by compensation.¹³

8 James B. Christopher, *Capital Punishment and British Politics*. (Chicago: The University of Chicago Press, 1962) P.S.

9 Gerald Gardiner, *Capital Punishment as a Deterrent, and Alternative*, (London: Victor Gollancz Ltd. 1956) p. 29.

10 Thorsten Sellin, *Slavery and the Penal System*, (New York: Eisevier, 1976) pp. 26-30.

11 William Clifford, *International Norms Affecting the Death Penalty*. Undated paper. (Clifford is currently the Director of The Australian Institute of Criminology in Canberra).

12 *Ibid*

13 Jomo Kenyatta, *Facing Mount Kenya*.

Among the Banyankore and other kindred people of Western Uganda, Rwanda and North-Western Tanzania, death was provided for premeditated homicide and for premarital pregnancy. Among the Basoga, for stealing bananas, a thief would have unripe bananas inserted into his rectum till some internal organs ruptured, he would then be left to bleed to death. In Buganda an adulterer could be put to death.

Roscoe writes that although death was usually the punishment inflicted for adultery, an offender's life would sometimes be spared, and he would be fined two women, if he were able to pay them, but he was in addition, maimed, he lost a limb, or had an eye gouged out. In case of accidental homicide the offender paid a fine. The fine for homicide was generally 20 cows, 20 goats, 20 backcloths, and 20 women.¹⁴

With the introduction of European rule in Africa, a lot of crimes for which people could be punished with death were reduced considerably. For example, by 1972 Uganda provided the death penalty in cases of treason, murder, kidnapping but with intent to murder and robbery using deadly weapons; but robbery with violence was a later development. The penalty of death was abolished in the Portuguese territories of Angola and Mozambique as early as 1870, which is three years after it had been abolished in Lisbon.¹⁵ After 100 years of abolition of the death penalty, the African leaders who replaced the Portuguese in Angola and Mozambique restored it, and on 10 July 1982 six Mozambicans and one South African were executed by firing squad after being convicted on 17 June, 1982 by a military court in Maputo of treason, armed rebellion and terrorism.¹⁶

14 John Roscoe. *The Baganda*, London: Frank Cass & Co Ltd. 1965) pp. 261-167.

15 Clifford, *op. cit.*

16 Amnesty International, *Death Penalty Log*, July 1982; AI Index: ACT 05/12/82.

THE CASE FOR DEATH PENALTY

Public opinion

Public opinion is divided on the issue of the deterrent value of the death penalty. In the majority of cases, public opinion favours the retention of the penalty. A public opinion poll in United Kingdom showed that more than 80 percent were in favour of capital punishment; and two thirds of those in the United States were in favour as was a clear majority in Japan, West Germany and France; only in Norway and Sweden was there a very large percentage against it.¹⁷ The overwhelming support for the death penalty by public opinion has the backing of the law enforcement personnel. In most countries the judges, magistrates, policemen and prison guards favour the retention of the penalty. Only a small percentage of national communities are in favour of abolishing it. These usually include the intellectuals, academicians, social workers, church leaders, sociologists, psychologists and almost all criminologists drawn from all the disciplines.

The advocates of the death penalty argue:

1. That the death penalty is a deterrent and that if it was abolished dangerous elements, who now fear the scaffold, would be unleashed and society would be in greater danger. Some even go further and argue that the deterrent value of the death penalty is enhanced when the penalty is carried out in public.¹⁸
2. That in the majority of cases, those who are sentenced to death are usually those who are beyond hope of rehabilitation, and that imprisoning them would be wastage of taxpayers' money. In this case, execution is less costly.
3. That it is more humane to hang a person than to imprison him for the rest of his life.

17 Marcel Berlins, Capital Punishment. Public Opinion and The Mass Media. A paper read at Amnesty International Conference on The Abolition of The Death Penalty. Stockholm 1977 (Ref. DP 20/01/77)

18 Tibamanya mwene Mushanga. The Death Penalty and its Alternatives. A paper read at the conference on Death Penalty in Africa at Ibadan 3 – 8 October, 1977 and also at Amnesty International Conference on the Abolition of the Death Penalty at Stockholm, December, 1977. CDP 20/03/77

4. That with the abolition of the death penalty, the lives of law enforcement personnel, such as policemen and prison guards will be put in grave danger; and not only that, the law enforcement officials would be driven to self-defence measures, and that they would be prone to killing felons thus creating a vicious violent circle.
5. That without the death penalty, society would return to lynching of even petty offenders.
6. That the death penalty was sanctioned by God in Genesis 9:6 which says: Whoever sheds man's blood, by man shall his blood be shed: for in the image of God made he man.

And in Exodus 21:23:

“But if the woman herself is injured, the punishment shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.”

THE CASE AGAINST THE DEATH PENALTY

The advocates of the abolition of the death penalty insist:

1. That the death penalty is not a punishment at all, for the victim does not live to learn to avoid wrong-doing.
2. That the death penalty has no deterrent value to justify its retention.
3. That the use of the death penalty in cases of murder is illogical, since true murders are usually few; about less than one per cent of all homicides and less than one per cent of all major crimes, moreover murderers are known to be least inclined to recidivate.
4. That the death penalty is contrary to the highest ideals of civilized communities, for it is cruel, inhuman, unkind and degrading.
5. That for those who are Christians, the death penalty contravenes God's commandment of “Thou shalt not kill”.
6. That the penalty of death brutalizes society and those who carry it out.
7. That society cannot rid itself of murderers by becoming a murderer itself.

8. That had capital punishment been deterrent, Britain, which only 160 years ago had over 200 crimes for which a person could be given the death penalty should be without crime today.
9. That the death penalty, especially public executions dull human sensitivities and harden criminals; the exercise therefore, is self-defeating.
10. That hanging is a hangover from the barbaric past and a symbol of imperfection, and hypocrisy of political leaders.
11. That the death penalty is evil, and frequently it is the wrong person who gets hanged, and very often it is inflicted on the poor, ignorant members of minority groups, and those who are politically ineffective.
12. That in the act of putting an offender to death, it is his family and friends who suffer for the crime they never committed.
13. That the death penalty is blatant violation of fundamental human rights particularly the right to life.

In view of recent criminological research findings and general enlightenment due to the spread of knowledge of sociology and psychology many countries around the world have abolished capital punishment. In the United States, the States of Michigan (1846), Rhode Island (1852), Wisconsin (1853) were the first to abolish the barbaric practice. In 1972 the Federal Supreme Court ruled that the death penalty was an unusual and cruel penalty which should not be allowed to exist in a civilized society; but some politicians insisted on its restoration, it was restored and by 1982, there were 1,058 condemned persons in United States prisons; and 38 of the states had abolished the death penalty.¹⁹

There are many ways in which the deterrent effect of the death penalty can be evaluated; but three will suffice for the present discussion.

1. The most common method is to compare homicide rates in countries where the death penalty has been abolished with those of countries where it is carried out. Sutherland and

19 Amnesty International, *Death Penalty Log*, op. cit. See Hugo A. Bedau, *The Case Against The Death Penalty*, 1977.

Cressey say that, “In general, such comparisons show that in abolition states the homicide rate is only about one third to one-half as high as it is in the other states.”²⁰

2. Another method is to compare crime rates just before and after one or more executions had taken place. No significant difference was found in this respect in a study of homicide rates 60 days prior and 60 days subsequent to five executions in Philadelphia. And in another Philadelphia study, Leonard Savitz analyzed the rate of capital crimes for a period of eight weeks just before and eight weeks after the sentencing of four men to death. His conclusion was that “No significant increase or decrease in the murder rate occurred; there was no pattern that would indicate deterrence”.²¹ Sutherland and Cressey end the discussion of this argument by stating that, “The argument that the death penalty is an effective deterrence is not, at least substantiated by the data available”.²²

Thorsten Sellin carried out research in a number of states in the United States with a view to determining the effect of abolishing the death penalty, and here is what he found.²³

Arizona

This state temporarily abolished the death penalty from December 1916 to December 1918. During this period, 46 murderers were convicted, and 41 had been convicted two years before abolition; and 45 were convicted during the two years following the restoration. That is:

- 2 years before abolition 41
- 2 years during abolition 46
- 2 years after restoration 45.

20 Edwin H. Sutherland and Donald R. Cressey, *Criminology*. Ninth edition. (New York: J.B. Lippincott Company, 1974) P.331.

21 *Ibid.* p. 33.

22 *Ibid.* p. 334.

23 Thorsten Sellin, (ed.) *Capital Punishment*, New York: Harper and Row Publishers, 1967).

Colorado

Death penalty was abolished in 1897 and was restored in 1901. The average conviction for murder in five years before abolition was 15.4, during the abolition the rate was 18 and the rate for five years following the restoration was 19. The correspondings on manslaughter convictions were 2, 6, 4 and 1.5. That is:

(a) For murder

5 years before abolition 15.4

5 years during abolition 18

5 years after restoration 19

(b) For manslaughter

5 years before abolition 2.6

5 years during abolition 4

5 years after restoration 1.5

Delaware

The death penalty was abolished in April of 1958 and was restored in December 1961. The average annual number of murders and non-negligent manslaughter was 22.3 during 1956-1958, and 14.3 during the period of abolition 1959-1961.

Iowa

There was no death penalty from 1872 to 1878. Seven years before the abolition, the rate of murders was 2.6. The rate rose to 8.8 during the period of abolition, but when the death penalty was restored, the death rate went up to 13.1. The state eventually abolished the penalty. That is:

7 years before abolition the rate was 2.6

7 years during abolition the rate was 8.8

7 years after restoration the rate was 13.1

Kansas

There was no death penalty in 1907 and 1935. From 1930 to 1935 the rate was 6.5; the rate went down to 3.8 during the next five years of abolition.

Missouri

The death penalty was abolished in 1917 and brought back in 1919. The homicide rate per 100,000 populations during 1911–1916 averaged 9.2 a year and during abolition, 10.7, but during 1920–1924, years following the return of the death penalty, the rate was 11.

Oregon

There was no death penalty during 1915–1920. Five years before the abolition there were 59 murders, and 36 during the period of abolition.

South Dakota

South Dakota had abolished the death penalty in 1915 and restored it in 1939. The rate was the same for the five years period before and after the restoration of the death penalty.

Professor Sellin concluded that: “If any conclusion can be drawn from all the above data, it is that there is no evidence that the abolition of the death penalty caused an increase in criminal homicides or that its reintroduction is followed by a decline. The explanation of changes in homicide rates must be sought elsewhere,”²⁴ and as if responding to Sellin’s suggestion, Sutherland and Cressey pointed out that, “The composition of the population and the general culture of the section is much more important than the presence or absence of the death penalty in determining homicide rates.”²⁵

24 *Ibid.* pp. 122–124.

25 Sutherland and Cressey, *opp. Cit.* p. 331.

The penalty of death was abolished in England in 1868. This decision was largely prompted by the evidence put before parliament by a Royal Commission of 1866 which showed that of 167 persons who had been under the sentence of death in one town during a number of years, 164 had themselves witnessed a public execution.²⁶ In a debate in the parliament of Sierra Leone in 1973, to extend the death penalty for robbery with violence, the Attorney-General of the time, Mr. L. Brewah, contributing to the debate in support of the Bill, inadvertently indicated why African leaders prefer firing squad in public when he said that he “felt” the firing squad more humane than hanging and was even a better way of showing the “illiterates” that the sentence is carried out.²⁷

METHODS OF INFLECTING DEATH

1. *Flaying and impaling*

This was a widely used method of inflicting death in ancient Orient and came down to be adopted in Europe. It was still being practised in the age of Canute. The victim was skinned alive; he was then placed on a sharp stake where he remained till he died. In the meantime, the victim was left exposed to the hot rays of the sun and the depredation of insects and ravenous birds.

2. *Exposure to insects*

This was a common method in the Orient; the victim was exposed to gradual death as a result of the work of insects. An account given by an eye-witness of this method goes like this:

“He was encased in a coffin-like box, from which his head, hands and feet protruded, through holes made for that purpose; he was fed with milk and honey, which he was forced to take, and his face smeared with the same mixture; he was exposed to the sun, and in this state he remained for 17 days, until he had been devoured alive by insects and vermins, which swarmed about him and bred within him.”

3. *Exposure to snake-bite*

An Oriental practice, the victim was exposed to the bite of poisonous serpents. The method was carried out by sewing the

26 Mushanga, *The Death Penalty and its Alternatives*. P.s.

27 H. Odera Oruka, *Punishment and Terrorism in Africa*, (Nairobi: East African Literature Bureau, 1976) p.69.

victim in a sack in the company of a very poisonous serpent.

4. *Use of animals*

The infliction of the death penalty by throwing the convict to lions or other ravenous beasts was a common practice. Very often the victims were thrown before enraged elephants to be trampled underfoot or to be torn into pieces.

5. *Drowning*

Drowning has been widely used as a method of inflicting death. The victim was thrown into the water and before he died, was taken out, revived and this process was repeated amid cheers and laughter before allowing the victim to pass out completely.

6. *Stoning*

Stoning of thieves went on in England till the tenth century. It is prevalent in Uganda and Kenya. Stoning of adulterers is even decreed by the Mohammedan religion.

7. *Casting from a height*

This was a common practice in olden times. The victim was cast from a high rock or precipice to the rocks and stones below. The Carthaginians are reported to have frequently flayed their victims before pitching them from high rocks. Girls who became pregnant before marriage, among the Banyankore and kindred people, were put to death by pushing them over high rise rocks.

8. *Poisoning*

Was very common in ancient Greece; the great Greek philosopher, Socrates, was killed by poisoning.

9. *Crucifixion*

This is an ancient method of inflicting death. It was also popular. It was in use when Jesus is said to have been crucified; and it continued to be used long after Jesus. The victim was usually tied rather than nailed on the cross; death usually resulted from exposure to the elements, bleeding from the wounds sustained by beating and cutting, hunger and exhaustion; usually the victim died several days later.

10. *Burning*

The burning of culprits is an ancient practice which is still being practised here in Africa. In the middle Ages, the victim

was first flayed, and then put on fire to burn to death—death by roasting. It was also usual for the victim to be snatched from the flames after being thoroughly scorched, and then he would be left to suffer with these burns and to be returned to the fire later on. The following story illustrates the fate that was the experience of many Black people in America; it was written by Dr. Llewellyn Hughes in April 1924.

Tom Price was a Negro, married and father of two children. While he acted as porter in the town hotel his wife did washing for a number of white families. Price had little education and was in no way extraordinary, except that he was rather more consistent in attention to his job than is usually the case. His wife, a rather attractive Negress, in August of that year was fired by one of her male employers because she insisted on remaining faithful to her legal spouse. Price, in a moment of angry bravado, threatened the white man. On the second night after the occurrence, Price was awakened and dragged from his bed by three hooded figures. Before the small house, which was on the outskirts of the town, waited a group of 15 or 20 more, all similarly attired, and each provided with a horse. The Negro was tied to the end of a rope and then dragged behind the cavalcade to the centre of the town. Here he was wired to an upright post and faggots soaked in kerosene were piled about his legs. To the crowd that was gathering the leader of the hooded band declared that Price was to be “executed for attacking a girl” The mob growled approval and shouted advice to the captors. The first step in the execution was the whipping which raised crimson-gorged weals on the Negro’s naked body. Then a match was set to the straw and sticks – but not too many of these – the flame was not intended to kill. As the flames reached his flesh the Negro writhed and screeched in agony, but only now did the real torture commence. So tightly was Price wired to the post that his tense body could not shrink when one of the white men advanced with a brace and bit into the muscles of the groin cut the biting tool. Time after time he fainted to be revived again as the torture was stayed. From the crowd came again and again that animal growl, lustful and cruel. The game was nearly over. A slash of knives and another form of medieval torture had been revived. The fire was now kicked out and the unconscious, but still living Negro was dragged to a

tree at the side of the square. As his limbs jerked and danced at the end of the rope, his body was riddled with bullets. He had found peace at last.

11. Drawing and quartering

This was a very popular form of inflicting death which also provided popular entertainment for the masses. A horse was hitched to each leg and arm of the victim and then the four horses were led in opposite directions thus tearing the victim into pieces in which case a knife was used to cut the muscles and tendons. It is said that in the case of Louis XV, the horses tagged for over one hour and it is reported that observers expressed much pity for the struggling horses but not for the writhing victim.²⁸

12. Beheading

This is one of the most universally used methods of carrying out the death penalty. Unlike the other methods, beheading has always been regarded as a more honourable method of meeting death; for some unknown reason, it does not carry stigma with it among Europeans and kindred peoples. It is believed that beheading or decapitation is painless; but one physician, Dr. Frederic Gaetner, reached the opposite conclusion after witnessing the decapitation exercise.

Immediately after the head was severed and dropped into the basket, I took charge of it. The facial expression was that of great agony, for several minutes after decapitation. He would open his eyes, also his mouth, in the process of gaping, as if he wanted to speak to me, and I am positive he could see me for several seconds after the head was severed from the body. There is no doubt that the brain was still active...His capitated body which was previously fastened by a strap upon a bench, was in continuous spasmodic and clonic convulsions, lasting from five to six minutes, also an indication of great suffering.²⁹

13. Hanging

A very widely used method of inflicting death and most recently and famously on Saddam Hussein, the late president of Iraq.

28 Harry Elma Barnes, *The Story of Punishment: A Record of Man's Inhumanity to Man*, (Boston: The Strafford Company, 1930)

29 *Ibid.* pp. 255 – 236.

Hanging was very common in England; during the reign of the famous Henry VIII, it is reported that over 70,000 hangings were carried out. The common form involves the throwing of a slip noose around a man's neck and pulling him off the ground and leaving him to die of slow strangulation; just like in most suicide case. In Europe hanging did not end with the death of the victim. His body remained hanging at the site for years. The skeleton remained after the muscles had rotten and been eaten by birds. The sight and the stench were regarded as having valuable deterrent influence on viewers. This practice did not end in England till 1834.

14. Pressing

This is like strangulation; death being brought to the victim by pressing him with weights. It used to be a fashion in Europe to lay a man on the floor and put heavy iron weights on his chest and limbs. He would be left in this position, being fed on water and bread till he died.

15. Suffocation

There are various methods; the common ones being to throw the victim in a great pile of soft ashes, or into a room full of smoke which is mixed with sulphur fumes.

16. Burying alive

Burying people alive as a form of penalty is common and has recently been done in Uganda.³⁰ Burying alive causes death by pressing and suffocation.

17. Boiling

This method is reported to have been common in England and France. The boiling was done either in water, milk or oil.

18. Firing Squad

This is the favourite method for African military rulers. It has been employed in Nigeria, Uganda, Ghana and other military ruled states. It is believed to be a deterrent. But when thieves were being executed in Lagos, other thieves were busy stealing tyres and headlamps from cars of the spectators.

30 It is reported that on 31 March 1973 army officers buried several people alive at Toroma in Teso district in Uganda. See Voice of Uganda Thursday, 15 November 1973.

19. *Electrocution*

This is a commonly used method of causing death in the United States of America; it was first used at Auburn State Prison in the State of New York on 6 August 1890.³¹ It consists of passing very strong electronic currents in the body of the victim. It is said to bring death almost instantly, and, therefore, is more humane.

Lewis E. Lawes, for a long time the warden of Sing Sing Prison in Washington State in the United States, explained the procedure:

It takes but a matter of a minute for the executioner to apply one electrode to the calf of the right leg and another to the crown of the head; while three prison keepers fasten the straps pinioning the arms, legs and torso. The final strap adjusted, the executioner – who has now taken his place in the alcove – throws the switch which sends a killing current of man-made lightning through the prisoner's body.

As the switch is thrown into its socket there is a sputtering drone, and the body leaps as if to break the strong leather straps that hold it. Sometimes a thin grey wisp of smoke pushes itself out from under the helmet that holds the head electrode, followed by the faint odour of burning flesh. The hands turn red, then white and the cords of the neck stand out like steel bands. After what seems an age but is, in fact, only two minutes, during which time the initial voltage of 2,000 to 2,200 and amperage of 7 to 12 are lowered and reapplied at various intervals, the switch is pulled and the body sags back and relaxes, somewhat as a very tired man would do. As a rule, the switch is thrown only once, but sometimes a second shock is given if the attending doctors consider it advisable.³²

ALTERNATIVE TO CAPITAL PUNISHMENT

“Alternative to capital punishment?” Sellin wrote to the author in May 1977: “The only one used or proposed in countries of Western Culture is life imprisonment, or for a long term of years. When Canada abolished the death penalty last year (that is 1976) it substituted a mandatory prison sentence of 25 years. Opponents denounced this as cruel and unusual punishment. If life imprisonment is substituted,

31 Robert G. Caldwell, *Criminology*, second edition, (New York: The Ronald Press Company, 1965) p. 400.

32 *Ibid.*

the law must provide some device allowing for parole so that the prisoner does not lose hope for ultimate freedom.”³³

Another alternative sanction to the death penalty is compensation or restitution in addition to or substitution for the death penalty. This used to be a widely applied sanction among the lacustrine Bantu such as the Baganda.

A conference on the Abolition of the Death Penalty, which was organized by Amnesty International and held at Stockholm, Sweden, in December 1977, heard a number of eminent public figures expressing views on the death penalty; a selection of which are appended below.

Following are some views about the death penalty expressed at the Stockholm conference, 1977:

1. *Mr. Thorbjorn Falldin – Prime Minister of Sweden*

“Personally, I would summarize the grounds for abolishing the death penalty in the ethical and humanitarian principle that no human being should be intentionally deprived of his life on account of his actions, no matter how terrible they may be. In addition, there is the danger of mistakes being made, a risk which is impossible to avoid even in a very highly developed judicial system.”

2. *Dr. Christian Broda – Austrian Federal Minister of Justice*

“We will advocate the old demand with new arguments. It is in accordance with our understanding of the spirit of the European Human Rights Convention and the other international documents on human rights, what else is the execution of the death sentence, if not an inhuman and degrading treatment?..... What else is the pronouncement and the execution of the death sentence, if not a subjection to cruel treatment or punishment? What else if not the worst torture? He who rejects torture and any inhuman or degrading treatment of persons has as well to reject the death penalty.”

33 Thorsten Sellin in a personal letter to the author, dated 23 May 1977 posted at Gilmanton, New Hampshire U.S.A.

3. *The Honourable Mr. Justice Krishna Iyer of The Supreme Court of India*

“My philosophical conviction against the retentionist doctrine springs from the spiritual secular reflection that lacking a human life, even with the subtle rites and sanction of the law, is retributive barbarity and violent futility, travesty of dignity and violation of divinity, bankrupt of deterrent dividends... Do remember that the blow of capital sentence often falls on the socially and economically backward, on the brave revolutionaries and patriotic dissenters, on the derelicts and desperates, on the lowliest and the lost and on those who have turned delinquent because society, by its continued maltreatment and environmental pollution, has made them so...”

4. *The Honourable Warren Allmand, a former Canadian Solicitor-General and present Minister of Consumer and Corporate Affairs*

“The conclusion I would draw for you ... is that capital punishment is not a useful weapon in the arsenal society must keep for protection of its citizens against violent crime – nor is it a just sanction against the morally despicable crime of murder. The lesson I would draw for you mixes optimism with realism. Optimism, in that effective action can be taken to rid society of that useless, unjust sanction. And realism, in that the emotional history of the debate is likely to haunt us for some years yet, and will likely make its presence felt in cries for the return of capital punishment whenever we are confronted with criminal justice problems in our countries. And, finally, the message I would leave you with is one of hope and mission.

“Capital punishment, simply because it is immoral and useless, must be fought and defeated if we are to become a world society in which our descendants can live in peace and justice.”

5. *Cannon Burgess-Carr, General Secretary of the all African Conference of Churches*

“During colonial times punishment became individualized, reflecting the social structure of society in which individualism was paramount. Death sentences became frequent and were used as an instrument of intimidation and repression in a number of countries, particularly for political offences and increasingly for social crimes such as robbery.”

6. *Exiled Senator Hipolito Solari Yrigoyen of Argentina*

“Any totalitarian regime appeals to disproportionate threats that in the penal context is reflected in the creation and imposition of heavier sentences. Warnings and punishments constitute the elements of a system in which all the citizens must act under a reign of terror...”

“But collective fear has a limit and the threat of the death penalty finally becomes insufficient ... There are much more expedient ways in a system without control that consists in killing without prior judicial sentencing ...”

7. *Academician Andrei Sakharov – Nobel Peace Laureate 1976*

“I regard the death penalty as a savage and immoral institution which undermines the moral and legal foundations of a society. A state, in the person of its functionaries, who like all people are inclined to making superficial conclusions, who like all people are subject to influence, connections, prejudices and egocentric motivations for their behaviour, takes upon itself the right to the most terrible and irreversible act – the deprivation of life. Such a state cannot expect an improvement of the moral atmosphere in its country. I reject the notion that the death penalty has any essential deterrent effect on potential offenders. I am convinced that the contrary is true – that savagery begets only savagery.” (Dr. Sakharov was unable to attend, because the Soviet Union would not allow him to).

8. *Harry Elmar Barnes – Criminologist writing almost 50 years before the Stockholm Conference*

“History reveals the most varied and numerous proofs that there is no close correlation between the severity of the criminal code and the infrequency of crime. Likewise, as Warden L. E. Lawes and others have definitely proved, the statistics in regard to the frequency of murders where it does not exist fail to support the thesis that the death penalty actually exerts a deterrent influence.

The statistics which we have show that there is no ground whatever for holding that murder rate increases when the death penalty is abolished ... In no single instance is there evidence of a permanent

increase in homicidal crime as a result of abolition, in many, there has been a decided decrease.”³⁴

9. Sir Leon Radzinowicz – Criminologist, Cambridge University

“It is no use deluding ourselves that hanging a dozen or so offenders a year would have any impact on the pattern of crime. Either the dosage of capital punishment is increased above previous records or we would be best advised to forget the whole thing.”³⁵

The assembled delegates who numbered over 200, from 57 countries and who included academicians, judges, scholars, professors of every discipline from medicine to science, political leaders and journalists, drew up what has come to be known as *The Stockholm Declaration* which is an appeal to the international community to abolish the death penalty. The full text of the Declaration is reproduced here:

DECLARATION OF STOCKHOLM AGAINST THE DEATH PENALTY

11 December, 1977

The Stockholm Conference on the Abolition of the Death Penalty composed of more than 200 delegates and participants from Africa, Asia, Europe, and the Middle East, North and South America and the Caribbean region.

RECALLS THAT:

- The death penalty is the ultimate cruel, inhuman and degrading punishment and violates the right to life.

CONSIDERS THAT:

- The death penalty is frequently used as an instrument of repression against opposition, racial, ethnic, religious and underprivileged groups,

34 Harry Elma Barnes, *The Story of Punishment: A Record of Man's Inhumanity to Man*, (Boston: The Strafford Company, 1930)

35 Leon Radzinowicz, *The Sunday Times*, 21 September 1969.

- Execution is an act of violence and violence tends to provoke violence,
- The imposition and infliction of the death penalty is brutalizing to all who are involved in the process,
- The death penalty has never been shown to have a special deterrent effect,
- The death penalty is increasingly taking the form of unexplained disappearances, extra-judicial executions and political murders,
- Execution is irrevocable and can be inflicted on the innocent.

AFFIRMS THAT:

- It is the duty of the state to protect the life of all persons within its jurisdiction without exception,
- Execution for the purposes of political coercion, whether by government agencies or others, are equally unacceptable,
- Abolition of the death penalty is imperative for the achievement of the declared international standards.

DECLARES:

- Its total and unconditional opposition to the death penalty,
- Its condemnation of all executions, in whatever form, committed or condoned by governments,
- Its commitment to work for the universal abolition of the death penalty,

CALLS UPON:

- Non-governmental organizations, both national and international, to work collectively and individually to provide public information materials directed towards the abolition of the death penalty,
- All governments to bring about the immediate and total abolition of the death penalty,
- The United Nations unambiguously to declare that the death penalty is contrary to International Law.³⁶

36 Full text of The Stockholm Declaration. This text may be found in the Report on

CORPORAL PUNISHMENT

Corporal punishment is the intentional infliction of physical pain to achieve suffering upon an offender for retribution, retaliation, deterrence, expiation or correction by caning or flogging as it is variously called.

In the majority of cases, at least in Africa, the infliction of physical pain by caning is done in an extra judicial manner by police, soldiers and chiefs during the arrest and interrogation stage. In many cases, some types of corporal punishment are extremely cruel, brutal, some stop just short of death. The punishment may be administered by flogging with a cane or by mutilation. In many cases corporal punishment is hardly distinguishable from dismemberment where arms may be cut off or eyes plucked out, as is decreed under the Islamic law in the treatment for various offences.

Many cases have been reported from the Republic of the Sudan in which thieves have had their hands cut off at the wrist.³⁷ Branding was, in history, a very common penalty, for a number of crimes, the victim being marked on the face or cheek with the first letter of his offence. Thus a robber would have a large 'R' marked on his face with a very hot metal and a prostitute with a large 'P', and so on.

Corporal punishment has been abolished in many countries, but is still used very extensively in many parts of Africa; in a few countries the law prohibits this kind of penalty to be administered to people who are above a certain age.

Beating with a cane is widely used as a form of punishment as well as a method of preserving family, domestic, military and educational discipline.

Thus husbands beat their wives, (but Suzanne Stainmetz has written about battered husbands),³⁸ parents chastise their children; officers cane their deviant recruits and teachers flog naughty children.

the Amnesty International Conference on The Death Penalty. Stockholm Sweden. AI Index: CDP 02/01/78 of 9 August 1978.

37 Amnesty International newsletter.

38 Suzanne Steinmetz, "The Battered Husband Syndrome," in *Victimology: An International Journal*, Vol. 2, 1977 – 78, No. 3-4, pp. 499-509

The beating of children is a very common practice in Africa as a method of socialization, and appears to have had wide application in ancient Middle East, for it is stated in the book of Proverbs that “He that spareth his rod hateth his son, but he that loveth him chasteneth him betimes.”³⁹

Corporal punishments for enforcing discipline in prison are extremely common. Inside the prison walls, this penalty may take the form of brutal attack on unarmed inmates by warders whether on their own or on the orders of the warden. Very often, ‘trustees’ or what are called ‘Chagi’ or ‘RP’ (Room Prefect) in Uganda, that is, prisoners who are put in charge of other prisoners inflict bodily punishment on their victims.

Corporal punishment may be inflicted by placing the victim in a room containing water, two or more feet high so that the inmate has no choice but to stand in this water day and night and urinate in this filthy mess. Corporal punishment or torture has become very common in police and military cells. Here officers descend on their unfortunate victims with terrible violence and mercilessness.

In many cases, suspects are beaten and tortured by policemen in order to make them confess and sign statements incriminating themselves. There are many ways in which torture may be inflicted on suspects. But these are acts of violence and not legally sanctioned, they are what Odera Oruka has called terrorism.⁴⁰

One ardent supporter of corporal punishment, Warden Elam Lynds, is reported to have said:

“I considered the chastisement by the whip the most efficient and, at the same time, the most humane which exists; it never injures health, and obliges the prisoners to lead a life essentially healthy. Solitary confinement, on the contrary, is often insufficient and always dangerous.

I have seen many prisoners in my life, whom it is impossible to subdue in this manner and who only left the solitary cell to go to hospital. I consider it impossible to govern a large prison without a whip; those who know human nature from books only may say the contrary.”⁴¹

39 Barnes, *op. cit.* 56-57.

40 H. Odera Oruka, *op. cit.*

41 Elmer Hubert Johnson, *Crime, Correction and Society*, Revised edition, (New York:

Some supporters believe that corporal punishment has the same effect on the criminal as a parent's caning of his son. But this is not true; corporal punishment is devoid of deterrent value and cannot be equated with parental flogging because it lacks the emotional relationship between the punisher and the person being punished. The flogging of criminals is formal, impersonal and is usually administered by a person who is not remotely involved in any way with the offender thereafter.

FINES

A fine is a sum of money or a certain amount of material goods imposed by the court to be paid to the court as a penalty.

Commonly fines are imposed for non-capital crimes such as embezzlement, fraud, larceny, illicit distillery of liquor, movement of livestock without permit, traffic offences and other numerous misdemeanours. Fines are usually awarded as alternative to short or even long prison sentences.

Fines are believed to have deterrent effect especially in cases involving money and business. Fines can also be imposed on corporations for obvious many and business reasons, while an individual can be sent to prison; a firm or corporation cannot be imprisoned.⁴²

Very often the fine is not equivalent to the alternative prison sentence; for example, section 154 of the Uganda Penal Code provides for twelve months' imprisonment or a fine of UGX 200 for adultery. At the time this was passed UGX 200 was just about one month's wage of a casual labourer.

A fine is not restitution; it is a form of penalty but in a form of financial loss on the side of an offender.

There are advantages for this method of penal sanction. First is that the fine is the most easily and thoroughly remissible of any of the penalties. Secondly, the fine is a most economical penalty; it costs

The Dorsey Press, 1968) p.429.

42 Marshall B. Clinard and Peter C. Yeager with the Collaboration of Ruth Blackburn Clinard, *Corporate Crime*, (New York: The Free Press, 1980) p. 124.

the state practically nothing to impose and collect it. Thirdly, the fine is easily divisible and can be adjusted to his enormity of the offence, the character and income of the offender. Fourthly, the fine does not carry with it the social stigma other penalties such as corporal punishment or imprisonment do; and as such it does not hamper the reformation or rehabilitation of the offender. Fifthly, the fine causes a kind of suffering that may be considered universal because it affects one of the most general interests of mankind. Sixthly, it provides an income to the state.⁴³

Seventhly, fines do not cause the social disruption of family life of the offender, nor do they interfere with his employment of business. Eighthly, the individual offender is not given a chance to undergo further criminal socialization as would be the case if he was sent to prison. Fines can also be paid by instalments and lastly, part of the fine could be used to compensate the victims of the crime.

Fines are being used more frequently in many parts of the world. For example, in Germany in 1882 fines were 22.2 per cent of all penalties imposed; in 1934 the percentage of fines had reached 54.7. In France in 1900 the rate was 35.8 percent, 1934 it was 47.8 per cent: in Belgium in 1905, 48.0 per cent, and in 1933, it was 66.5 per cent. In Sweden in 1953 and in Finland in 1959, fines were 95 per cent of all sentences imposed.⁴⁴ By 1974 in the United States, the imposition of fines was by far the most frequent method of reacting punitively to crime. Almost 75 per cent of all penalties were fines.⁴⁵

Fines can unfortunately, be misused as a form of penal sanction. They can be imposed on those who are able to pay while those who are unable go to prison.

Benedict Alper has argued that fines could be used in the majority of what he calls economic crimes such as theft, fraud, robbery, burglary and embezzlement, and fines could be used as restitution in the sense of *lex talionis*, eye for an eye and tooth for a

43 Edwin E. Sutherland and Donald R. Cressey, *Criminology*, fourth edition, (New York: J. B Lippincott Company, 1974) p. 319 -318.

44 Thorsten Sellin, *The Protective Code: A Swedish Proposal*, (Stockholm: Department of Justice, 1957). p. 17. See also Sutherland and Cressey, *Ibid*.

45 Sutherland and Cressey. Op. cit. p.317.

tooth. Alper further notes, “If a loan, freely made with honest intent to return it, is not repaid, the lender has a legal right to proceed against the borrower. It would seem to make sense to apply that same procedure in economic relationships where the loan is of an involuntary or fraudulent nature.”⁴⁶

A new idea is the Day Fine system that was developed in Scandinavian countries. It was a response to the widely expressed criticism that fines discriminate against the poor and favour the rich. The day fine graduates the severity of the fine in accordance with the earnings which a defendant receives for a day’s work.⁴⁷ For example, a person convicted of a misdemeanour might be fined two days’ wages; a more serious offence might be fined the wages of one month and so on.⁴⁸

IMPRISONMENT

Imprisonment as a mode of punishing wrongdoers is one of the evils that Europeans imported into Africa. Roscoe writing about the Baganda and Banyankore at the beginning of the twentieth century says that there were no prisons before the coming of the colonialists.⁴⁹

Before the eighteenth century, jails were used in England to hold people who were accused of having committed crimes and were to await the arrival of a magistrate. When the magistrate arrived, the jails were emptied, this was known as “goal delivery.”

Before this, the majority of criminals were transported to overseas British colonies in Australia and America.

An early prison of which we have a record is that of San Michele which was erected in Rome By Pope Clement XI about 1704; another one is that at Ghent in Belgium which was established by

46 Bendict S. Alper, *Prison Inside-Out: Alternative in Correctional Reform*, (Cambridge, Masa: Ballinger Publishing Company, 1974) p. 101. See also Gerhard O. W. Mueller, “Imprisonment and its Alternatives” in *A Program for Prison Reform*, (Cambridge: Roscoe Pound American Trial Lawyers Foundation. 1973).

47 Alper op. cit p. 102.

48 *Ibid.*

49 John Roscoe, *The Baganda*. op.cit p. 264.

Happolyte Vilain XIII in 1773.⁵⁰ In 1735 Pope Clement added a women's wing to his prison. The Pope used this prison for various purposes; for detaining religious deviants and others.⁵¹ The main objective of these early prisons was reformation of the criminal. Inmates were classified and kept in separate cells. Physical labour was the rule.

The idea of imprisonment as punishment was imported to England by John Howard (1726 - 1790). Howard visited Rome to see the papa! prisons and then went to Belgium, and on his return he introduced the idea in England. From England the idea crossed the Atlantic to America where it underwent further refinement. Howard visited Rome and the prisons several times and wrote extensively about these prisons. His writings found their way to Philadelphia in the state of Pennsylvania where an association known as "The Society for Alleviating the Miseries of Public Prisons" was formed mostly by Quackers most of whom, such as Dr. Benjamin Rush were advocating the total abolition of the death penalty. During this time the Philadelphia's Walnut Street Jail was transformed into America's first penitentiary. Soon after 1800, the same Quackers who were campaigning for the improvement of jail conditions began to advocate for solitary confinement without labour. They argued that this would bring solitary reflection as a means of achieving more regeneration, would prevent criminal contagion, and avoid identification of the ex-prisoner by his associates after his release and return to society.⁵²

With improvement in the prisons, imprisonment became the chief mode of punishment aimed at the reform of the criminal. The Walnut Penitentiary failed because of political disagreements, inefficiency, overcrowding, lack of funds and so the great success which its founders had hoped for was now a miserable failure.

While the Philadelphia Society for Alleviation of the Miseries of Public Prisoners (P.S.A.M.P.P.) advocated solitary confinement and prayer without labour, another system which had started at

50 Barnes, op. cit. p. 122.

51 Johnson, op. cit. p. 481.

52 *Ibid.* p. 483.

Auburn in New York State advocated separation at night but permitted prisoners to perform labour together in enforced silence during the day.⁵³ The two systems were quickly copied by other states and nations with modifications; and from there, prisons sprung up all over the world; there is practically no country in the world which has no prisons. In 1978 there were 200 longer-term prisons in the United States and over 1,000 minimum and medium security facilities.⁵⁴ Some are really large; the most famous include San Quentin in California, Walla Walla in Washington State, Sing Sing and Attica in New York.

AIMS OF IMPRISONMENT

One annual report of the administration of Prison in Kenya stated that the “Kenya Prisons Services is devoted to transforming self-willed outcasts into useful citizens, to protecting society and to deterring the strong and the weak from the world of crime, with fairness and firmness aimed at *rehabilitation and deterrence*.”⁵⁵

The above statement sums up all that prisons are about. Prisons are said to protect society; to reform offenders and deter criminality.

1. Protection of society

The argument is that there are criminals who are too dangerous to be left at large. By imprisonment the violent criminal or the rapist is incapacitated.

It is true that there are people who are dangerous to society, some of these have been identified as having extra chromosome, that people with an extra “Y” chromosome or the XYY types are prone to deviant behaviour; but this view has been rejected because we know neither the true percentage of XYY in criminally violent population; the manner in which XYY is related to violent criminal behaviour is not known nor is it known why XYY is associated

53 Tibamanya mwene Mushanga, “A Glimpse at Prisons in America,” An unpublished paper, Makerere University, 1972.

54 New York Times, 2 July 1978.

55 See Annual Report Treatment of Offenders, Ministry of Home Affairs, and Republic of Kenya, 1970.

with criminally violent behaviour in some cases, but apparently not in the great majority of such cases.⁵⁶

In a study in the United States of America, Drs. Hary Kozol, Richard Boucher and Ralph Garofalo made effort to define and predict dangerousness and found that the prisoners that were diagnosed as dangerous committed assaults four times more than the rest.⁵⁷

The prison therefore serves that function of segregating violent persons from circulation and thereby rendering them less dangerous.

2. *Punishment*

Punishment is another aim of imprisonment; an offender is sent to prison as a punishment but not to be punished.

Punishment is the intentional infliction of pain and suffering on a convicted offender. Imprisonment is the act of being sent to prison and the confinement within the prison that constitutes punishment. In many cases, imprisonment is coupled with hard labour; this is to emphasize the punitive aspect of imprisonment.

Imprisonment causes suffering both physically and psychologically because the prisoner is stripped of all or nearly all of his Human Rights. The prisoner's freedom and liberty to do what he wants is restricted, he cannot, for example, choose what to eat, what to drink or what to wear; or what to read.

The inmate is denied heterosexual relationship till he or she is forced psychologically to resort to homosexuality and masturbation in order to relieve sexual tension. The inmate is subjected to all kinds of pressures which are intended to obliterate his or her individuality and personality; for example, in many parts of Africa prisoners are not allowed to wear a beard, shoes or wrist watches. All these restrictions are part of the punishment. As Frantz

56 Donald J. Mulvihill and Melvin M. Tumin, *Crimes of Violence*, Vol. 12. p. 421.

57 Norval Morris, *The Future of Imprisonment*, (Chicago: The University of Chicago Press 1974) pp. 70-71.

Von Liszt said: "It is not the crime but the criminal that is to be punished".⁵⁸

3. *Reformation*

In 1965, the Tanzanian annual prison report stated that:

This service, as mentioned in previous reports, is in process of evolving policy which would make the prison administration service not only for a punitive but essentially reformatory one, capable of converting prisoners into good citizens after release from custody.⁵⁹

In order to bring about reformation prisoners are given all sorts of courses during their time of incarceration. Training in agricultural or industrial skills is believed to bring about the reformation of criminals and for this reason, prisoners are taught carpentry, shoe-making, tailoring, hairdressing, painting, cattle raising, and pig-keeping, cotton and millet growing. Prisoners grow food for their own consumption and for sale.

Prisoners make furniture and other household things which the government sells for earning revenue. Today, prisoners at Luzira and other prisons in Uganda and indeed East Africa now have access to formal education and can even pursue tertiary education and computer literacy.

4. *Deterrence*

Imprisonment is assumed to deter against crime, first the individual offender, and secondly in the general public. These two aspects of deterrence have been referred to as specific prevention and general prevention by Professor Johannas Andenaes; specific prevention is directed at the individual while general prevention is defined as the ability of criminal law and its enforcement to make citizens law-abiding.⁶⁰

58 Andenaes. Op. cit. p.3.

59 Tanzania's Annual Prison Report, 1965.

60 Andenaes. Op. cit. p.7.

CURRENT VIEWS OF IMPRISONMENT

There is no study we know of which indicated that imprisonment or punishment in general helps to “reform” offenders. One writer has stated that one of the basic principles learned by every student of criminology is that “punishment does not deter.”⁶¹

Many outstanding scholars and judges have condemned imprisonment. Manuel Lopez-Rey, former judge and penologist has stated that; “the penal system of our time does not correspond to present and future evolution of a contributing factor to the increase of crime.”⁶²

Commenting specifically on prisons. Professor Clinard told a U.S. House of Representatives Judiciary sub-committee that:

“Prisons are largely failures, Recidivism runs between 60 to 80 percent. In prisons men are trained in more sophisticated crimes, at the state expense, homosexuality is rampant in these one-sex communities, the prison environment itself has a degrading effect on human beings, initiative is crushed, men become embittered and filled with a hatred of society, and prison inmates are denied their civil rights. Most of all, a prisoner becomes labelled of being an “ex-con” which interferes with jobs, marriage and his own self respect.”⁶³

Way back in 1890, a writer in *Law Quarterly Review* described the English Prison system as, “a manufactory of lunatics and criminals.”⁶⁴

Eighty years after the above statement was made, Ramsey Clark, former Attorney-General of the United States described prisons in his country as factories of crime⁶⁵. A Russian writer Dostoevsky writing about his experience in prison in Siberia, termed the prison

61 C.R. Jeffery, “Criminal Behaviour and Learning Theory”, *Journal of Criminal Law, Criminology and Police Science*. 56:294-300 (1965) see also Andenaes, *op. cit.*, p.1.

62 Manuel Lopez-Rey, “Crime and the Penal System”, *Australian and New Zealand Journal of Criminology*, March 1971.

63 Marshall B. Clinard, “Testimony before the U.S. House of Representatives Judiciary Subcommittee on Prisons”, Madison, University of Wisconsin, 23 November 1971.

64 Cross, *op. cit.* p.2.

65 Ramsey Clark, *Crime in America*, (New York: Pocket Books, 1971) p. 192-193.

The House of the Dead”. He said that living there was like death; that if he died and awoke in hell he would expect it to be no worse⁶⁶.

In 1973, James E. Doyle, a judge of the federal court of Western District of Wisconsin in *Morales, V. Schmidt* said, “I am persuaded that the institution of prison probably must end. In many respects it is as intolerable within the United States as was the institution of slavery, equally brutalizing to all involved, equally toxic to the social system, equally subversive of the brotherhood of man, even more costly by some standard, and probably less rational.”⁶⁷

Criminological literature, for the last 100 years is scattered with factual information, very often based on scientific analysis, to show that imprisonment does not reform, deter or in any way help to make society a better place to live in. Very often the men and women who are held there are the least or at least not more dangerous than those in freedom.

Great thieves are not those in prison but those in big positions in government, business and churches. In prisons, men are made to suffer for trivial offences, their lives wasted, their families disrupted with no hope of repairing them, and the more widespread this practice is continued, the more it assumes a sub-cultural trait in society; and for this and other reasons, prisons must be denounced as criminogenic. Prisons are also extremely expensive; for example, in 1973, the Kenya Government was spending more money to keep one prisoner in prison at Kamiti than it spent on one undergraduate at the University of Nairobi.⁶⁸

It is suggested that prisons should be closed; offenders can be dealt with in a number of ways that are outlined here; and these include fines, compensation, probation, and reprimanding, and only a very small percentage of offenders need institutional care and an even smaller percentage need to remain in prison for a long period of time. But since prisons will not be closed as we have suggested, it

66 Ibid.

67 Andenaes, op. cit. p.6.

68 Tibamanya mwene Mushanga, Prison Reform, an Address to Officers’ Conference, 6 March 1964. (University of Nairobi)]

is suggested that they be reformed and it is to this topic that we will turn our attention.

PRISON REFORM

What follows is a catalogue of suggestions for the reform of penal institutions, while we ponder on the idea of closing them up completely.

Yitzhak Bakal has noted that “ideas for change always meet opposition”, that, “any institution creates a bureaucracy that will fight to maintain its own existence.” He goes on to show that “Administrators and professionals associated with large training facilities reveal a peculiar blend of realism and rationalization in their rationale of ‘yes, that is a good idea but...’” There is a whole system of ‘but’ also to why it is not feasible to close the large institutions.”⁶⁹

Writing about correctional reform in Massachusetts, Jerome G. Miller has advised that “to insure fundamental and lasting reform, therefore, our institutions must be closed. There must be a move to greater integration of correctional programmes with the local community.”⁷⁰

Miller suggested three steps which must be followed in order to reform corrections.

The first step is to win public support for reorganization. The second is that the administrators of correctional institutions must try to do as much as possible within the law to change the system, and the third, legislatively, that attempts must be made to enact and codify some of the changes being made. What this is all about is that you need public awareness of the evils of prisons and imprisonment, and that the prison administrators must also be concerned about what is happening and the law-makers must be willing to make laws regarding the desired changes; and in a situation where these three remain unconcerned or even hostile to new ideas, the necessary changes are most unlikely to take place.

69 Itzhak Bakal, (ed.) *Closing Correctional Institutions* (Lexington, Mass, Lexington Book, 1973). p. XIV.

70 Jerome G. Miller, “The Politics of Change: Correctional Reform”, in Bakal, *op. cit* pp.6-7

The suggestions for prison reform are:

1. *Prisons must be small:* 100 men in one place are too many, or at least the largest prison should not exceed 200–250 persons. The smaller the population, the easier to supervise and to train in various skills. The larger the population the more difficult to supervise and to give practical guidance in social and economic spheres.
2. *Proximity to town:* As far as it is practicable, new prisons or juvenile homes must be built as near towns as possible. This is to minimize costs of transportation and to be able to render other services to the inmates.
3. Convicts must serve their prison sentences as near home as possible. This is for obvious reason, that the wives, parents and children of prisoners can visit them regularly with the minimum of costs and trouble.
4. *Short sentences:* Sentences should be as short as possible; no sentence should exceed five years unless it is a life-sentence which also should not exceed ten to fifteen years. There is what is now called “The short, sharp shock” system in penology. The convicted person is sent to prison and being sent there especially for the first time is a great shock, and the prisoner is released before this shock wears off and institutionalisation or what has been called prisonisation begins to set in.
5. Inmates must be treated as human beings, that is, they should be made to feel that society cares for their well-being, that they are not social outcasts.
6. Inmates must be given beddings and privacy that befits human beings.
7. As far as it is practical, individuality should be preserved. For example, a prisoner should not be required to produce a medical letter to confirm that he needs to wear shoes.
8. The dietary needs of prisoners must be given priority; regular and wholesome meals with nutritional ingredients must be provided, and not the rotting *posho* and beans that are a routine in African prisons.
9. Brutality and terrorism that are frequently meted out by guards on prisoners must be prohibited completely by law.

10. Sick inmates must be taken to hospitals to be treated by competent physicians. Prison doctors tend to behave not like doctors but like prison guards.
11. The Juveniles should not be imprisoned, even the so-called approved schools should be abolished; probation and on job training are better alternatives.
12. Prisoners must be allowed, assisted and even encouraged to keep in touch with their families by frequent visits, letters and even telephones. Prisoners serving long periods of a year or two must be allowed to pay weekend visits to their families.
13. Convicts who have jobs must be allowed to continue to work. They can work during the day and return to serve their sentences in the night or at weekends. In this way, they will continue to support their families.
14. Tribalism: As far as possible, officers and guards of a prison should be of the same ethnic group for linguistic and cultural communication; and for minimizing animosity and cultural conflicts.
15. There should be a channel through which prisoners can express their complaints to higher authorities without persecution or retribution.
16. Conjugal visits should be arranged for inmates. This has been found to be very beneficial in Sweden and in nearly all Latin American countries.
17. Inmates should be paid for the work they do in prison minus their upkeep. If the cost of upkeep is greater than the money earned in a month, then the prisoner must be released to probation or to some other alternatives as he becomes a liability to the taxpayer.
18. Prison guards must be better educated even than judges, for, while a judge may be involved in determining whether or not the suspect violated the law, work that may take hours or days or even weeks, it is the prison guard who is charged with the task of reforming the convicts.

In most cases, the guards and their chiefs are poorly educated and have no basic ideas about human behaviour, motivation and psychological processes. Generally, prison personnel, (due to low

education, poor training) are described as “unthinking, unfeeling functionaries within institutions.”⁷¹ The authors of the above statement condemned imprisonment because:

It denies autonomy, degrades dignity, impairs or destroys self-reliance, inculcates authoritarian values, minimizes the likelihood of beneficial interaction with one’s peers, fractures family ties, destroys the family’s economic stability, and prejudices the prisoners’ future prospects for any improvement in his economic and social status.⁷²

ALTERNATIVES TO IMPRISONMENT

1. Fines:

The use of fines as legal sanction has been discussed and it is for emphasis that we return to it. There are obvious advantages in the use of fines. For example, the offenders are not given the optimum opportunity to undergo further training in crime commission. He remains in the family; he keeps his job and generally interacts with the public as before conviction.

Fines also have the advantage, in that a convict can be permitted to pay as he earns. They can be imposed practically for any crime, such as robbery, embezzlement, fraud, corrupt practices and since the majority of offenders commit crimes of an economic nature, it is fitting that they be penalized in economic terms, thus putting into practical use, the theory of *lex talionis*, an eye for an eye; economic crime to be penalized by an economic legal sanction.

2. Restitution:

Thieves of all description would appreciate the gravity of their offences if they were made to pay back to the victim a sum of money equivalent to what they stole. Stealing has been likened to taking a loan but without the consent of the owner of the money or

71 Struggle for Justice: A report on Crime and Punishment in America. Prepared for the American Friends Service Committee (1971) p. 120 cited by Gordon Hawkins, “The Ideology of Imprisonment,” in Blom-Cooper, (ed.) Progress in Penal Reform, Oxford: Clarendon Press, 1974) p. 106.

72 American Friends Service Committee, 1971, p. 33.

the stolen article, and by restitution, the offender is doing no more than paying it back, plus costs. Even in such non-economic offences as rape or grievous assault or even homicide for that matter, the offender can be made to pay damages to the raped, the assaulted and to the dependants or relatives of a victim of homicide; and again, plus costs and fine for the involvement of the law-enforcement agencies.

It is obvious that some of the offenders will not be able to pay restitution or the fine; but those who have jobs can be allowed to pay by instalments and others can compulsorily be made to work on public projects while their wages are divided, one part going for reparation and the other remaining for the upkeep of the offender's family. This is sometimes called Creative Restitution; the objectives are to direct the offender towards social responsibility and acquisition of constructive attitudes towards and making amends to those he wronged, by his crime.

3. Probation:

Clinard had defined probation as "a suspension of sentence after conviction in which the offender is allowed, with some restrictions, to remain in free society rather than being imprisoned."⁷³

Many countries especially those of Latin America, Scandinavia, Holland and Japan are increasingly adopting probation as a better alternative to incarceration in prisons.

Probation is not suspended sentence; for probation includes some restrictions and it includes supervision, guidance and the assistance of the offender.⁷⁴ The restrictions or conditions that generally go with probation include the observance of all laws, good habits, keeping company, regular reports to officials as required, regular work or school attendance, payment of fines or reparation; abstinence from the use of alcohol and drugs, avoidance of unnecessary debts. The probationer also is not allowed to marry or to divorce, or to migrate from one area to another without authorization from the probation office or court. He may be required to live at home, or

73 Marshall B. Clinard, *Sociology of Deviant Behaviour*. Third Edition, (New York: Holt, Rinehart and Winston, 1968.

74 Sutherland and Cressey, *op. cit.* p. 462.

to live elsewhere but not at home or any other specified place. He may be required to undergo medical or psychiatric examination or treatment.⁷⁵

Probation may also be recommended on subsequent convictions and for conviction of any offence. In many parts of the world, probationers are placed under the supervision of non-professional personnel and reports indicate that they operate better than professionals who are bothered by routine, paper work and bureaucracy. Probation costs less, and even more so if the supervision is left in the hands of non-professionals. It has been estimated that one probation officer with a case load of 40 probationers to supervise can adequately do so at about the cost of maintaining four or five men in prison for a single year.

Probation is widely used in those countries where citizens take keen interest in the welfare of others but may remain largely unused because it is not considered punishment or legal sanction in most of Africa. As a method of handling convicts it is of recent origin; the earliest recorded case is that of a woman in Massachusetts in 1830 who pleaded guilty to stealing from a house. Her friends made application to the court to allow her to go at large on her recognisance or her appearance when called by the court. A year later she was acquitted of another charge of larceny, but was sentenced for the first larceny.⁷⁶ Ten years later, a spectator at a Boston police court asked the judge to allow him to be a sponsor for an offender who was about to be sent to prison. John Augustus, a bootmaker by profession was allowed to be a sponsor and the offender was freed. Augustus thus became the first probation officer in the world. In 1878, the Massachusetts Legislature authorized the mayor of the city of Boston to appoint a probation officer annually as part of the police force of the city. From there, probation spread to many parts of the United States from where it was exported to the rest of the world.

Perhaps one of the major functions of probation system is that it helps society to adjust itself vis-à-vis its offenders, and in so doing develops new forms of the social control through new methods of

75 Ibid p. 470.

76 Johnson, op. cit. p. 667.

socialization. Because when offenders are removed every time they are identified, society may never make necessary regulatory measures to deal with deviants and criminals of various categories.

4. *Halfway houses*

These are generally termed community-based correctional facilities. The Halfway House System is an alternative to traditional imprisonment. The idea was first put in use in Japan in 1880; and as more and more people in many countries became disenchanted with prison conditions, they began to look for an alternative to imprisonment as imprisonment itself was an alternative to transportation or capital punishment.

Halfway homes are of various types and for various reasons but all are community-based, located within the neighbourhoods which provide the residents with the opportunity to continue in social participation and social interaction with all kinds of people. This helps the individual to be integrated into the community.

Halfway Houses may serve adults, young offenders, as well as alcoholics and drug addicts; and in some cases, they may be used to care for those who are mentally disturbed.⁷⁷ The Halfway Houses must be under the charge of very competent and dedicated persons who are capable of exercising power and influence and able to exact discipline on all the residents. Everybody in the Halfway House must be involved in the integrative programme of the convicts which is made all the more possible because of the small number of people involved. The individual convict should spend more than one to three months in such hostels. The Halfway House is not a temporary prison; for it has no fences, no guards, no locks and only the house-keeper who assists his charges with job allocation and other integrative measures.

77 Alper, op. cit. pp. 103 – 105.

5. *Parole*

For all intents and purposes, parole and probation are the same except that in parole the offender serves part of the sentence in prison while in probation, the convict leaves court to go home.

In many countries probation is determined by court while parole is decided upon on the recommendation of the prison authorities made to and before the parole board. In European countries parole is recommended after a prisoner has spent part of his sentence in prison but not for long, the reason being that imprisonment works as a shock to the new convict, but when he stays too long in prison, the offender begins to adjust to prison conditions and to harden.

6. *Work Release*

This is a system whereby a convicted person, continues to work on his job as he serves his prison sentence; he becomes “part-time” prisoner. The prisoner is to go out to work at whatever job he works on, every morning but must return in the evening to serve his prison sentence.

In Scandinavia, many prisons are called open institutions because they are without walls or fences around them; every inmate has a key to his own room, in the morning he locks the door and deposits the key with the prison keeper to whom he reports on his return in the evening. In many institutes the inmate is required either to arrange for his own meals or to obtain meals at the prison for which he has to pay in addition for his lodging; and he is required to maintain his family too.

In other cases prisoners are allowed to stay on their jobs and to report for imprisonment at the weekends and during their annual leave.

7. *Community Service Order*

A recent trend in Uganda’s criminal justice system is the introduction of a community service order also known as Police Form 103 [pf 103]. A community service order is a non-custodial sentence which court will grant if the circumstances require that a non-custodial

sentence will be appropriate. The order is granted only in minor cases or misdemeanours such as assault and vagrancy and will generally only be granted to a first offender. The age of the offender may also be taken into account all with a view of avoiding having to mix seasoned criminals with a first offender and with the overall objective of decongesting the prison system.

There are various reasons for granting a community service order. As the population of the inmates in government prisons soars, so too does the pressure on the courts to send as few offenders as possible. Another argument is that a first offender should not be introduced to hard core and seasoned or habitual criminals who are to be found in government prisons. The end result from the order is that the offender is punished but the state is not burdened with the duty of feeding, housing and footing the medical costs of the offender. The Order will be followed or satisfied in a manner that will not disrupt the offender's normal working hours where this applies. It is intended to make the offender's contribution to society beneficial rather than burden the status of the offender's normal routine life.

The order is made after an offender has been convicted. At this point, the prosecutor or a probation officer will inform court that the convict is willing to abide by the order and court will use its discretion in imposing a term of the order. The order usually requires the convict to spend a specified amount of time per week, carrying on a public service such as sweeping the streets or cleaning a school's compound in a community under the jurisdiction of the court. A probation officer will assign some duties to the convict until the order is satisfied or complied with. Should the convict offend the order or fail to meet the requirements set out in the order, then the order is set aside or cancelled and the convict may then be arrested and sentenced to the original term to be served in prison.

Finally, we must note that other nations around the world have made giant strides in alleviating the misery of their public offenders by using these non-custodial alternatives especially probation, fines, warning and work-release and community service. In Massachusetts, probation is used extensively since juvenile institutes of correction

such as the reform or approval schools, juvenile correctional centres have been closed.

I would, in the words of Rupert Cross, suggest that the idea of penal reform should be extended so as to allow the inclusion of measures the primary aim of which is humanitarian, and reverence for life, i.e. the provision of whatever control of crime the penal system can achieve with the minimum of suffering to the offender and those connected with him.⁷⁸

78 Cross, op. Cit. p 45.

CHAPTER IX

PREVENTION OF CRIME

On a number of occasions, Norval Morris, who was at one time director of the Crime Institute for Asia was asked what could be done to prevent the rise in the rate of crime in Asia, and his reply was:

He urged them to ensure that their people remained ignorant, bigoted, and ill-educated; that on no account should they develop substantial industries; that their communication systems should be primitive; and that their transportation systems should be such as to ensure that most of the citizens lived within their own small, isolated villages for their entire lives. He stressed the importance of making sure their educational systems did not promise a potential level of achievement for a child beyond that which his father had already achieved. If it were once suggested that a child should be able to grow to the limit of his capacity rather than to the ceiling of his father's achievement, he pointed out, the seeds of the gravest disorder would be laid. He stressed the universal human experience that village societies are entirely capable of maintaining any discordance or human nonconformity within their own social frameworks and never need to call on centralized authority to solve their problems. He would take time to sketch, with a wealth of detail, the horrors of increased delinquency and crime that would flow from any serious attempt to industrialize, urbanize, or educate their communities. He would conclude with a peroration against the establishment of an international airline.¹

This excerpt gives us an inventory of what we should do and what we must not introduce into society in order to contain crime. What Norval Morris tried to tell his Asian friends were the kind of things that frequently accompany criminality. They may not themselves cause crime, but their presence is highly conducive to its commission, for example, communication and urbanization.

1 Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control* (Chicago: The University of Chicago Press, 1969) p.49. See also Marshall B. Clinard and Daniel J. Abbott, *Crime in Developing Countries: A Comparative perspective*, (New York: John Wiley & Sons, 1973) p.263.

But whether there has been urbanization, industrialization or modernization or not, there is crime and it is increasing in nearly all poor countries of the world; and as the English say, "Prevention is better than cure."

What Morris has given us as we will see from others, are the things that can be done to prevent the increase in crime.

The major question that needs to be answered is: "What is to be prevented?" Nearly all preventive programmes everywhere have had very limited success because the question of what is to be prevented is not adequately answered. When we know the "cause" of crime, then it may be possible to devise a preventive programme and to come up with a curative remedy.

The answer to what causes crime, in the majority of cases, determines the curative as well as the preventive policies. In many countries criminals are seen as people who are sick and criminality is said to be inherited, passing from parents to children.

In such countries, male offenders have, up to very recent time, been castrated and females sterilized so that criminality is not propagated through generations. Where criminals are viewed as people who are mentally sick, they have been subjected to psychiatric examination and treatment. In other communities, crime is attributed to the work of Satan and the fall of Man from the Grace of God. Here meditation, Bible reading and prayer are considered all that is needed.

When poverty, unemployment, poor education and slum conditions are considered the root causes of crime, national governments start spending large sums of money on improvement of social amenities, and when leaders in some other societies believe that criminals are self-willed, men and women who have made up their minds to be antisocial, then harsh penalties such as the death penalty, beating, long prison sentences, maiming and all cruel and unusual penalties are recommended.

But in a society where an offender is seen as being no more different from the rest of the citizens; where the "cause" of crime is

sought in the social conditions from which the offender comes, the treatment and measures of prevention change accordingly.

Present-day criminology focuses on the social, economic, educational and political systems operating at any one particular time in a given society as the agents of crime causation, the so-called ecological factors. No psychiatrist will be convincing who explains higher rates of homicide in Ethiopia as being attributable to generalized mental abnormality; or the extremely low rates of homicide in Norway and Switzerland as being due to better mental health. And if a jurist says that Zaire, Ethiopia, Uganda and Pakistan have relatively higher homicide rates than Norway, Sweden, Denmark and Switzerland, he must be prepared to explain why this is so, for it will not suffice to say that the people in the latter countries are more law abiding than those in the former, the question "Why" will still have to be answered.

The Bagisu of Eastern Uganda and Bagusii of south Western Kenya have higher rates of violent crimes such as homicide, assault and 'forcible rape' than their neighbours. The explanation for this cannot be in terms of their mental make up; one would be better advised to consider the social milieu, or the social conditions of the people, their social structure, their interpersonal relationships and above all their socialization processes to gain meaningful insight into this phenomenon.

This is why nearly all legal sanctions are failing to reduce the rate of increase of crime, because they "treat" or try to "correct" something of which the cause is not known. Frequently, the offender is convicted, punished or treated when the conditions that led to his criminality are left intact.

Today, as it was thirty years ago, there is nothing in Africa that can be called crime prevention programme. If prisons are hospitals for criminals and judges are laboratory technicians, and wardens are the doctors, and warders are dressers and nurses, who then are health inspectors and public health educators? In the area of public health there are field staffs that carry out vaccinations against various diseases, educating the public on how to keep well and healthy, but there are no such programmes in crime prevention. That is why

there is strong objection to the medical analogy; it can be very misleading, because crime is not a disease; in many cases it is a label given to a particular person.

There are two broad methods of reducing the frequency of crime that have been in use for generations now. One aims at reducing the amount of repeated crime; and the other at forestalling commission of first crimes; both of these methods are called crime prevention; but more specifically efforts to prevent recidivism is referred to as reformation while efforts to forestall the commission of first crime is termed prevention.² Other criminologists have referred to these methods as primary and secondary prevention or forestalling crime commission and secondary prevention being a programme for the prevention of recidivism.

PRIMARY PREVENTION

In its numerous reports on social defence, the United Nations has persistently advised that attention should be paid to such criminogenic situations as slums which accommodate the unemployed, the underemployed, the underfed, the uneducated and generally those who are disadvantaged in one way or other. Therefore primary prevention must be directed at the social conditions that are known to lead to the increase in the frequency of crime such as poverty, substandard housing, overcrowding, alcoholism, sexual promiscuity, broken homes due to death, divorce or separation, lack of recreational facilities, lack or total absence of good education, unemployment, congestion, stench, ill-health, poor diet, neglect, cultural contagion, nepotism, political persecution, terrorism, and intolerance, cultural conflict all of which working together in a social context, lead to alienation, anomie and criminality. These negative social conditions must be eradicated so that the individual person is reared in a homogeneous atmosphere that favours the internalization of positive social values, of love, liberty, freedom, mutual assistance, reverence for life, and general optimism and the worth of human life.

2 Edwin H. Sutherland and Donald R. Cressey. *Criminology*, ninth edition, (New York: J.B Lippincott Company, 1974) p.607.

We are what we are largely because of the social milieu. In a predominantly Catholic community, the new born member stands a greater chance of being a catholic, not because of his free will but largely because of group process through socialization and group identification. This is the same with crime and deviance. The more criminality and deviance there is in society, the greater the chances that the new born member will be influenced to be a criminal.

This is what Sutherland called differential association. All our beliefs, values, sentiments (not instincts), hatred or liking or certain ways of doing things, racism, tribalism, racial or tribal harmony, honesty and dishonesty, attitudes towards work and duty, relationships between male and female or husband and wife, the view we hold about politics, democracy, economics, interpersonal relationships; our attitudes towards foreigners, our food habits, our interpretation of what is good and proper and in short, our *Weltanschauung* are determined not by biological inheritance but through socialization, a process where the new born members or the community, or new immigrants, acquire the dominant culture of the community. Individual stubbornness based on rational determination can be exercised, but only to a limit. One cannot be born among the Chagga and decide to behave as an Indian. Manners are contagious and that is how it works.

If a certain culture is characterized by criminal and deviant behaviour, it will be expected that the majority of people who are participants in that culture are going to exhibit those behavioural patterns.

The time to argue about nature and nurture in the development of personality is past; and only in mentally abnormal persons do we consider psychosomatic factors; and we can repeat Rosseau's dictum that Man is born free and thereafter lives in chains; chains imposed on him through the rearing practices of his community.

There are three target areas of great concern in the programmes of primary prevention; and we will briefly look at each.

The first area is the family. The family being the first human institution and the first social unit into which a child is reared has

a very important role to play in determining whether or not the child becomes a criminal. The child internalizes what he hears, sees, made to feel and absorbs all that goes on within the family. If there is always tension, quarrels, fights, desertions, insults, curses and general unhappiness and unfriendliness all of these will be internalized by the child. In addition, the child will also be exposed to happiness, laughter and friendliness however intermittent.

In addition again, the child himself may be the object of focus for abuse, beatings, ridicule, harassment and violent attacks by parents especially when they are under the influence of alcohol. When these opposed positions are presented to the child in equal measure, the child is faced with dissonance of considerable magnitude; for at this juncture he is neither for nor against crime; but that balance will be tilted by the other social situations in which he finds himself as he continues to grow.

The next area of concern is the peer group which is composed of children and young adults from the same village or the neighbourhood, the playground and his schoolmates, if he is fortunate enough to go to school. The role of the peer group is considered crucial because it functions in a reinforcement capacity.

Again, within the peer group, there are positive and negative interaction processes; that is, the child will be exposed to both anticriminal as well as criminal patterns of behaviour. This again will depend on the composition of the group. If the majority and influential peer group members are deviant-oriented, our subject is most likely to be affected, especially if the home environment is equally oriented.

Thirdly, we have to consider the wider community in which the peer group and the family are units. If the community is socially organized for criminality, only social deviants in such a community will afford to refrain from criminality.

But first, let us see how the primary prevention can be implemented, first within the family of orientation, then in the neighbourhood, the school and finally in the community.

The family

1. If the family is located in the slum, either slum conditions should be improved or better still, the family as a unit should be removed from the slum.
2. Implement measures that can reduce the level of poverty within the family; for example finding employment for adult members of the family; or allocating a cultivatable piece of land to the family.
3. Education should be made available both for adults and children of the family for without education, the vicious circle of poverty is difficult to break.
4. If the family is disorganized, efforts should not be spared to re-organize it whenever this is possible, for example, separated spouses could be persuaded to come together again.
5. If alcohol plays a role in the family, measures to reduce and control it could be deployed. For example, the alcoholic could be advised to seek professional guidance in this matter.
6. Parents should be taught how to bring up children so as to internalize more of the normative values. For example, abusing children, beating them for minor offences, in other words punishing them for the little wrongs they do without rewarding them for the good things they do.
7. Parents should be taught that their children learn from them; that if they use violence on each other, or bad language, or in any way demonstrate hostility, hatred, unhappiness the children will emulate their antisocial behaviour.
8. Parents should guard their children against mixing with children whose behaviour is not acceptable.
9. If the family lives in substandard housing, and are overcrowded, efforts should be made to get them in better housing with recreational facilities.
10. All family members must seek medical care whenever this is desirable; because illness causes unhappiness and deaths in a family cause a lot of misery.

The neighbourhood and the school

1. If the neighbourhood is located in the slum, it is much simpler to deal with slum conditions than to remove families for relocation elsewhere because, very often people move with their social values. Housing within the slums could be improved; water, sewerage and power, even telephones and street lighting could be installed. Garbage collection and disposal of waste and excreta could be enforced; schools that are properly equipped could be built, clinics with properly trained doctors and nurses could be built; drinking of alcohol could be regulated, recreational grounds could be zoned off and the formation of social clubs such as for dancing, singing or debating could be encouraged. In other words efforts must be made to transform the slum into a decent residential area.
2. All conditions that are associated with poverty should be eliminated. These may include, among others, unemployment, underemployment, lack of industrial skills and of sound education.
3. Planning: all development projects within such areas must not be allowed to just emerge without planning. The housing, the school location and clinics, playgrounds all must be planned.
4. Discipline within the schools must be observed, but it must not be authoritarian, otherwise, the aims of education would be missed.
5. Punishment of pupils must be restricted to a minimum. Physical punishment should be prohibited by law.
6. These schools should be staffed with well trained and well educated teachers who can set a good example to the children. Drunkard teachers or female teachers who practice part-time prostitution are more of a liability than an asset.
7. Children must be taught “good” behaviour, and that does not mean blind obedience to school rules, but being calm, not noisy, not quarrelling and fighting or stealing each other’s pencils and clothing but generally keeping good relationships and being happy.

8. The neighbourhood should have a council of which all adults, male as well as female, should be encouraged to be members. The council would be responsible for law and order, and the settlement of disputes even in family matters.

The Community

By “Community” here, we mean a large number of people who for economic, social, political and cultural reasons find themselves under one administrative agency such as a government. Here, in order to implement primary prevention of crime and deviance, the government may have to consider the following, among others, as possible policy guides.

1. The leadership must first and foremost determine what kind of society they want to establish for themselves and for their children.
2. These leaders should be enlightened enough to be able to plan for social change. The problem here is that in the “Country of the Blind”³ the blind do not only lead the blind but also lead those who have sight.⁴ Planning for social change is important in that unplanned social change causes chaos in interpersonal relations, in economic undertakings and in political handling of national affairs.
3. The sizes of cities and towns must be controlled; for it is now common knowledge that the frequency of crime increases with the size (population) of the city. The smaller the city, the lower the crime rate.
4. In the interest of stability, unity and progress, poverty must be fought with all available means at the disposal of those in positions of responsibility. These would include, creation of new jobs, cutting down on taxes, erecting new housing units and improvement of slums, provision of social service and carrying out research on poverty as a social problem.
5. The law enforcement officials, such as guards, police, securicor, judges and all those who have to do with

3 Country of the Blind is a title of a book on the Soviet Union by George S. Counts and Nucia Lodge, (Boston: 1949).

4 Chiu-Sam Tsang, Society, Schools and Progress in China, (London: Pergamon Press, 1968) p.294.

offenders must be well educated and adequately trained to understand human behaviour, human motivation, human worth and human destiny.

6. Emphasis on material goods must be discouraged.
7. The gaps between low and high income groups must be narrowed considerably.
8. There should be no residential areas designed for “low income” and others for “high income” groups of people. There is no rational explanation why a cabinet minister cannot live in the same estate as factory labourers.
9. Eradicate corruption, first among the leaders. There should be a steady but continuous effort in schools, churches, colleges and news/media to develop negative attitudes towards corruption. A committee on corruption in India suggested that ministers and legislators must remain above suspicion; it also proposed codes of conduct for certain categories of leaders. Abram Kiapi has suggested that “To keep the public service pure and free from corruption it is also essential that leaders and particularly ministers do not make undue show of their economic opulence. He went on, “If these leaders live in luxurious mansions, have expensive limousines, send their children to expensive schools and indulge in extravagant living, it will tend to corrupt the civil service who will say, “Why not me?” And be tempted to try to get rich by any means, including corruption.”⁵
10. There should be no segregation in schools. There should be no schools for the rich, for the medium rich and for the poor and no schooling at all for the very poor. Schooling should be free and equal and therefore be made compulsory for all without distinction of tribe, religion, region or political alignment.
11. Discouragement of tribalism and the promotion of human relations is important. People should not be discriminated against in employment, promotion, award of scholarships, transfers on tribal, political or religious grounds. Such policies are very easy to identify. Merit and nothing more

5 Abram Kiapi “Legal Control of Official Corruption in East Africa,” University Social Science Council Conference, Makerere University, Kampala, 31 December 1968, cited by Marshall B. Clinard and Daniel J. Abbott, *Crime in Developing Countries*, p. 275.

should be the guiding principle in all matters of appointment and promotion. In Uganda, headmasters of senior secondary schools, district education, medical, veterinary, agricultural officers appear to be appointed on a tribal basis as far as this is practical. Even bishops are being appointed not on merit and competency but on tribal lines. This is deplorable.

12. All prisons and youth correctional centres should be closed because there is evidence to show that they are factories of crime. The majority of all offenders can be dealt with by fines, probation, and in what the Kenya government prison department calls Extra Mural Penal Employment, where first offenders are allowed to remain living at home but work under supervision by non-prison staff.⁶
13. The Penal Code should be reviewed periodically so as not only to bring it up to date but also decriminalize certain crimes and criminalize new behaviour patterns.
14. Research into the causes and prevention; the nature and extent of certain crimes must be encouraged and funded, for without criminological research, planning for social defence is like groping in the dark.
15. Modernization must be embarked upon in earnest. Care must be exercised because initially the process of modernization creates criminogenic situations but since the main objective is economic development it is hoped that when slums are done away with, unemployment will be reduced as will the effects of mass poverty; crime rates will fall. For we have examples to indicate that the more affluent a nation is, the lower the rates of crime. For example, the richest nations on earth, not just in terms of per capital income but of the Physical Quality of life index (PQLI) which is defined as a composite index of infant mortality, life expectancy at age one, and literacy (each indexed on a scale from 0 to 100), calculated by averaging the three indexes, giving equal weight to each, tend to have low rates of crime. The United States, Norway, Sweden, Switzerland, The Federal German Republic and Japan have high PQLI and also very low rates of crime.⁷

6 Republic of Kenya, Ministry of Home Affairs, Annual Report on the Administration of Prisons in Kenya, 1975, p.8.

7 Martin M. McLanghlin, *The United States and World Development Agenda*, 1980.

That is why poverty not as a cause of crime but as a contributing factor cannot just be dismissed because of these correlations.

The process of modernization would include:

- (a) The expansion of education and continuing education facilities.
 - (b) Industrialization, beginning with secondary industries; and not just cottage industries.
 - (c) Improved health and child care facilities.
 - (d) Improved communication systems.
 - (e) Improvement or total transformation of slums.
 - (f) Industrial training to equip employees with relevant industrial skills.
 - (g) Organized and democratic trade unions.
 - (h) The expansion of international trade and participation in international forums.
 - (i) The democratization of political and other agencies, for modernization and advancement in the quality of life cannot take place under authoritarian rule.
16. Strict observance, and not lip service, of the Rule of Law; that is, all without exception, rich or poor, politically important or not, should be subjected to one law. Because just as there is nobody above the law, similarly, there should be nobody below the law. Frequently this important democratic requirement is not observed.

The laws if made for the masses while the political leaders remain outside of it, they tamper with the Constitution, they change administrative laws and adjust them to suit their whims. This kind of running national affairs as if it were a private holding is conducive to delinquency and social deviance.

Finally, we have to restate the obvious for emphasis that it is completely futile to take an individual after individual out of the situations which produce criminals and permit the situations to remain as they were; because crime and deviance involve a whole

(New York, Praeger Publishers 1980), cited by The World Almanac and Book of Facts, 1982. p 514.

network of social relations and it is by dealing with these social relations that produce criminality that the real work of crime prevention starts.⁸

SECONDARY PREVENTION

The first aim of crime prevention was what Johnson called obviation of crime; that is the forestalling of crime among those who have not committed criminal offences. The second attempt at crime control is to be directed at people who have been convicted of crime; what we have preferred to call secondary prevention, that is, prevention of recidivism or repetition of crime.

There are apparently three explanations of why people who committed crime and have been adjudicated and treated return to commit crime again.

The first is that the treatment they received within the institutions for this purpose was not adequate as when a patient suffering from an attack of malarial fever may relapse when he is given an inadequate dose of antimalarial medication. Worse still is the patient's condition if he repeatedly gets infected with malaria and repeatedly receives insufficient treatment; for eventually the malarial parasites will develop resistance to all antimalarial drugs. Alternatively, the malarial patient may have been given medicine which has no effect on malarial parasites; multivitamin tablets, for example.

Even if he is given these tablets in large doses, the patient's life is still in great danger since the medication he is receiving has nothing to do with his disease.

This is what we suspect is happening in penal institutions around the world, either the dosage of the medication is not adequate or the wrong treatment is being given. We suspect this to be the case because everywhere the rate of recidivism is very high. In the United States it is reported to be up to 80 percent.⁹ In a study carried out

8 Marshall B. Clinard, "Prevention of Crime", *Journal of Correctional Work* (India) 7 (1960): 1 – 12. See also Sutherland and Cressey, p.622.

9 Marshall B. Clinard and Daniel J. Abbot. *Crime in Developing Countries: A Comparative Perspective*, (New York: John Wiley & Sons, Inc., (1973) p. 244.

by the FBI, of the 87,000 persons arrested in 1966 and 1967 at least 82 percent had been arrested on a previous charge, 70 percent had actually been convicted on a previous charge, and 46 percent had served prison sentence of three months and above. Seventy five percent of those arrested for murder, rape, felonious assault and robbery had been convicted of some crime before. In 1971, about 35 percent of offenders admitted to prisons and reformatories in Massachusetts and about 85 percent of male felons admitted to California prisons in 1969, had been in prison before.¹⁰

It is very important that the rate of repeat offenders be examined carefully because it is what is causing the crime problem. This indicates that in order to reduce the frequency of crime, people who commit crime for the first time must be diverted from institutions of penal reform such as prison, boastal houses, reform or approved schools.

The second is that the criminal, after being treated, returns to the same social, economic and political situation which led him to commit crime in the first place.¹¹ To go back to our medical analogy, the patient is treated and cured of malarial infection and on his return to his village, he is re-infected and once again he falls down with malarial fever.

This is what many criminologists have been advising; that it is futile to remove an offender one after another and treat him of his criminality while leaving the situations that led him to the commission of crime the same. To our medical example, as the patient is being treated for malaria, another team of officials must fight to eradicate mosquitoes from areas where they breed, and to clear the bush around the patient's village; lest he be re-infected the moment he returns from the hospital.

The third is that criminality is a permanent habit that cannot be removed by the available penal methods. There are areas in many parts of the world where malaria is an endemic disease, and in such areas, the natives will normally be found to have malarial parasites in their blood, and it is when the percentage of malarial parasite

10 Sutherland and Cressey, op. cit. p. 608.

11 Sutherland and Cressey, op. cit. p. 608.

exceeds the usual level that an individual will either seek treatment or will be discovered by a malarial researcher.

What we can conclude from the above is that recidivism is largely due to all three postulates, each operating singly or in combination; meaning that in the majority of cases, the treatment is either inadequate or irrelevant or both and in all cases, the ex-offender usually returns to the same criminogenic social, economic and political conditions that had led him to commit crime in the first place.

The implication of this conclusion is that all reformatory or treatment or correctional programmes are not only a great failure but are contributing overwhelmingly to the crime problem, especially in countries that are poor and are still in the experimental stages of social organisation.

Therefore, the best crime preventive policy is the abandonment of the majority of penal sanctions such as capital punishment, corporal punishment, imprisonment – all sanctions that cause pain and suffering on offenders and that degrade, humiliate and frustrate them or lead to degeneration.

Edwin Sutherland, the founding father of The Chicago Criminological School of Thought, observed that when mores in a community are adequate, the law is unnecessary, but when the mores are weak, the law is ineffective. The obvious course of action is the reinforcement of the mores and the internalization of normative values of society, because no amount of coercion is likely to lead to the reduction of crime to any appreciable degree.

APPENDIX A

COMMON LEGAL CONCEPTS

ABANDONMENT

In law, abandonment means the giving up of a thing completely, without reference to any particular person or purpose. It refers to leaving a thing to itself with no intention of coming back for it, so that whoever comes next can appropriate it. It is the voluntary termination of ownership without vesting it in any other person. Things that can be abandoned include buildings, children, contracts, copyrights, crops, employment, families, husbands, property, ships, wives and anything that a person may have as property or in which he may have rights.

ABATEMENT

Abatement refers to a reduction, a decrease or a diminution; in criminal law, to abate means that action is impossible and therefore no more proceedings; alternative being to initiate new measures or new action.

ABROGATION

Abrogation refers to the removal or annulling of a previous law by an act of legislative power, or by constitutional power or by usage.

ACCESSORY BEFORE AND AFTER THE FACT

An accessory before the fact is a person who aids or assists another person in the performance of a criminal act. He is also known as an “accomplice”. In most countries, the accessory before the fact is subject to the same penalty as the individual who performs the criminal act. An example is that of the twins at Ishaka Hospital in Ankole. A betrothed girl became pregnant by another man. She pretended to be ill and said she was going to hospital for treatment. Her mother accompanied her. At the hospital she delivered premature

twins. She, with the support of her own mother, removed the premature babies from the hospital against all medical and nursing advice. On their way home, they conspired to abandon the twins in the bush in order to conceal the birth of the babies. They hid the infants in grasses. The next day workmen found one infant alive. The mother of the twins was arrested together with her mother; and the High Court found both women guilty of the crime of murder. Many legal systems make concealment of birth of newly born babies a crime; for instance, section 218 of Tanzania Penal Code states that:

A person, who, when a woman is delivered of a child, endeavours by any secret disposition of the dead body of the child, to conceal the birth, whether, the child died before, or after its birth, is guilty of misdemeanours.

In the case cited above, the grandmother of the twins was an accomplice or an accessory, in both ways, before and after the fact. The fact in this case being the destruction of the babies.

The Tanzanian laws state that:

A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence. A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting, in her husband's presence and by his authority, another person present, in order to enable that person to escape punishment; nor does a husband become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

In most legal systems, punishment for "accessory after the fact" is usually less than that of the principal offender and in some, it is also less than that of being an accessory before the fact.

ACCOMPLICE

An accomplice is a person who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime. An accomplice is one who is guilty of complicity in a crime either by being present and aiding or abetting in it, or having

advised and encouraged it, though mere presence, acquiescence or silence in the absence of a duty to act, is not enough, no matter how reprehensible it may be, to constitute one an accomplice.

Robbery of banks or factories or any type of organized crime is made up of two elements; first there is the principal or what we hear being referred to as “the mastermind” behind the crime, and then the accomplices. But organized crime may differ from other kinds of crime in which persons other than the actual perpetrator may be charged with a criminal offence. In some of the cases a person becomes an accomplice because he wants to help the offender, as when a man kills another one, and asks his neighbour to help him bury the deceased before he is discovered.

ACCUSATIONAL PROCESS

The principle that a person is presumed innocent until proved guilty beyond a reasonable doubt is founded in British Legal Tradition, upon the first principle of justice and is intended not to protect the guilty person but to prevent, in so far as human behaviour is concerned, the conviction of an innocent person. The apprehended person or suspect is presumed innocent until the prosecution proves beyond a reasonable doubt the guilt of the suspect. Thus the onus of proof of guilt lies with the state through its prosecution attorneys.

The alternative to this principle is to assume that a suspect is guilty until he can prove to the state that he is innocent. The contradiction is that the person is presumed to be innocent until the state arrests and keeps him in prison.

In some jurisdictions, the person who is so presumed to be innocent may remain in prison waiting to be proved otherwise for months. This is especially common in cases of criminal homicide, where some suspects remain as many as six or more months in jail before the case can be decided. This is absolutely unnecessary especially in cases of homicide where it is known that the offender is most unlikely to repeat his crime.

The alternative would be to release the suspect on bail or on his own recognizance or surety or merely on affirmation before the

magistrate that he will come when called for. But in grave cases such as robbery, (not homicides; homicides are not the worst criminal cases) and embezzlement of huge sums of money the bond value should be large enough to make it clear that the suspect stands to lose if he does not appear; but where he cannot raise such a sum, and it is necessary to retain him, the trials should be as speedy as possible for even in those countries where persons held for weeks or months and then later found not guilty are compensated, it is not possible to compensate time and suffering. For those whom money has become life itself, may say that the person is paid, but for some who value liberty, the damage that even a few weeks or imprisonment can cause is incalculable in terms of money.

Another common practice that clearly contradicts the doctrine of “innocent until proved otherwise” is the beating, the torture and general mistreatment of persons awaiting trial. First, it is a common practice for the C.I.D. to beat, and torture suspects in order to get information from them. Studies in some countries have shown that over 50% of the people held in prisons eventually get discharged as having no cases against them. Edward Galway has noted that: “The completely heterogeneous nature of remand population – all in idleness – can, and often does, intensify criminal attitudes, associations and “know-how.” Approximately half the population is eventually acquitted.” The most terrible thing is the hiding up of people suspected of having committed petty misdemeanours and those suspected of petty thefts. These people should never be exposed to prison life.

AFFIRMATION AND AFFIDAVIT

This is an alternative to an oath; usually administered to people who are not Christians or Moslems, but who practice traditional African religion. It is a solemn and formal declaration that an affidavit is true and that the witness will tell the truth.

Certain Christian denominations such as the Quakers prohibit their members from taking oaths and are therefore made to make an affirmation.

An affidavit itself is merely a declaration or statement of facts which is usually made voluntarily and confirmed by oath or affirmation by the person making it. It must be made before a judge, magistrate or any other person authorized to administer oaths.

The use of oaths, swearing, and affirmations is common practice in courts. It is believed that when a person takes an oath, he is likely to tell the truth and not distort evidence.

ADJUDICATION

It refers to the giving or the pronouncement of a judgment or decree in a case. It also means the judgment that is given.

ALIBI

Alibi comes from Latin and simply means *elsewhere* or *in another place*. In criminal law, it means that at the time of commission of crime as charged in indictment, the defendant was in a different place so far away or under such circumstances that he could not possibly have committed the offence. It is plea of not guilty.

Example:

Juma is charged with the murder of Asumani, during the night of 25 January 1971; at Kampala Night Club. Juma pleads that on that very day he was not in Kampala but in Dar es Salaam where he had gone to attend a wedding of his uncle. It is up to the defence to convince the court, that the accused was in fact in Dar es Salaam and if proved to be so, the charge against the accused is dropped and the accused is discharged.

ALIMONY

Alimony comes from Latin *Alimonia* which means sustenance; the sustenance or support of the wife by her former husband after divorce.

According to English Common-law, a divorced wife has a right to be supported by her former husband; as long as she remains unmarried.

APPEAL

After sentence has been pronounced by judge or magistrate, the defendant may appeal his conviction to higher or superior court which reviews and examines all or parts of the written record of what happened at the trial and considers both written and oral arguments of both the decency attorney and the prosecutor. The court then gives a written decision which either affirms or reverses the conviction of the trial court.

ARBITRATION

This is voluntary and mutual agreement by the parties involved in a dispute to submit their disputes to the determination and decision of a referee, an arbitrator, out of court. The system works as a method of dispute settlement on mutual agreement that the decision of the chosen arbitrator will be acceptable to both parties. In cases where one party to a dispute disagrees, arbitration fails as a method of dispute settlement.

ARRAIGNMENT AND PLEA

When a person is indicted, the next step is to appear before the judge who has the power to try felony cases. The indictment is read to the defendant or accused; in some states he may be given a copy of his charge.

If he accepts the charge by pleading “guilty” the judge may sentence him straightaway. If he pleads “not guilty” a date is then set for his trial. In some judicial systems, the defendant may enter a Plea of “*Nolo Contendere*” which has the same effect as a plea of utility except that that admission cannot be used as evidence in any other action brought against the same person. To arraign is therefore to bring a prisoner before the court and to read to him the charge(s) against him and to ask him whether he pleads guilty.

ARRESTS

To arrest is to deprive a person of his liberty by legal authority and by retaining him in custody for the purpose of requiring him to

answer a criminal charge or a civil demand. In many jurisdictions police may arrest citizens with or without warrant; and in others even civilians, under certain conditions, may be permitted to arrest a person if they have reasonable belief that a serious felony has been or is about to be committed by that person.

AUTHORITY

This is power that is legitimate and institutionalized in any given society in a social system. This form of power is related and attached to a status and is accepted as proper and legitimate by at least the majority of the people in the social system. Political power is legitimate if it is institutionalized by routine and just, free elections and peaceful change of governments. When authority is not legitimate, then fear, intimidation, corruption, nepotism and vice gain the upper hand; and the whole system passes through stages and becomes a police state and tyrannical.

BAD FAITH

Opposite of “Good faith.” It refers to fraud or design to mislead or deceive another person; or refusal to fulfil some duty or some contractual obligation.

BAIL

Bail means to procure the release of a person from legal or lawful custody, by undertaking that he shall appear at the time and place designated by authority for the purpose of determination of his arrest and detention. In some cases bail is granted on payment of a sum of money which the defendant forfeits if he fails to turn up as ordered; in some cases, bail may be granted on the recognizance of the defendant without payment of money.

THE “BARGAIN THEORY” OF JUSTICE

This is also known as “plea bargaining” as “copping a plea” by American prisoners. The bargaining takes place between the prosecutor for the state and defence counsel of the defendant. The

bargaining seeks acceptance of the charge under which the accused pleads “guilty” in exchange or a reduce charge or the prosecutor’s recommendation of a shorter sentence. In this legal system, a charge of murder if accepted by the accused is reduced to manslaughter; a charge of grand theft is reduced to petty larceny, theft of a motor vehicle is reduced to something like stealing from a vehicle, rape to attempted rape, and so on. The main function of this system is not clearly explained except that (1) it mitigates against severe penalties, (2) it is expedient on the part of the court personnel, (3) a plea of guilty satisfies the prosecution by relieving it of the burden of court and office work; for without the willingness of suspects to accept the charge, the police and courts would find it impossible to handle the bulk of the cases before them, (4) the defence counsel goes home satisfied as does the offender for securing a lesser charge and hence a lesser penalty. The practice of “Plea bargain” is widely used in the United States of America. A study carried out in 1956 of felons convicted in one district court, showed that 93.8% had entered a plea of guilty; recidivists were found to be more ready to plead guilty than non-recidivists.

In some cases offenders benefit from the plea bargain, especially if the prosecution is likely to open up several cases as is common in criminal cases such as (a) going in public armed, (b) resisting arrest, (c) possession of firearms without a permit, (d) being in possession of a loaded firearm, etc.; under this system all these charges are ignored and only one is recorded and then the penalty is usually lenient or probation.

BREAKING AND ENTERING

A person who commits a crime or breaks any part, whether external or internal of a building, or opens by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window shutter, cellar flap or other things, intended to close or cover an opening in a building, or an opening giving passage from one part of building to another.

A person is legally deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within

the building. Punishment for “housebreaking” in East Africa is seven years.

CERTIORARI

A Latin word referring to the act of being informed of, or to be made certain in regard to something.

Certiorari is an appellate proceeding for re-examination of the action of inferior tribunal.

CONTEMPT OF COURT

“Contempt of court” is the wilful disobedience of the court ruling or regulations; or the wilful performance of an act that is deemed to be disrespectful by the court. Direct contempt of court occurs in the presence of the judge; while indirect contempt occurs while the judge is not present.

Contempt of court, in some societies, is either criminal or civil depending upon the nature of the penalty. Civil contempt occurs when a person disobeys a court order. The crime of “contempt of court” has a very wide range of application. Section 114(1) of the Penal Code of Tanzania states that:

Any person who:

- (a) Within the premises in which any judicial proceedings is being held or taken, or within the precincts of the same, shows disrespect in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or
- (b) Having been called upon to give evidence in a judicial proceeding, fails to attend or, having attended, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse to answer questions or to produce a document or other thing, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or
- (c) Causes an obstruction or disturbance in the course of a judicial proceeding; or

- (d) While judicial proceeding is pending, publishes, prints or makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or
- (e) Publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or
- (f) Attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or
- (g) Dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or
- (h) Wrongfully takes possession of any and or other property from a person who has recently obtained judgment from a court for the recovery of possession of such land or property; or
- (i) Wrongfully retakes possession of any child from any person who has obtained the custody of such child under an order of the court; or
- (j) Having the means to pay any sum by way of compensation or costs or otherwise in civil or criminal proceedings awarded against him by a primary court, wrongfully refuses or neglects after due notice to make such payment in accordance with any order for payment whether by instalment or otherwise; or
- (k) Commits any other act of intentional disrespect, to any judicial proceeding, or to any person before whom such proceeding is being had or taken, is guilty of misdemeanours, and is liable to imprisonment for six months or to a fine not exceeding five hundred shillings.

CIVIL LAW

This refers to a whole body of law which is concerned with civil as opposed to criminal proceedings in the English/or British legal dichotomy. In most of African legal systems this distinction is not usually made, all wrongs are wrongs against not only the individual but the family lineage, clan or the entire community. Under the

British system, some offences may first be dealt with as crimes, and then as civil as in cases of assault with aggravation. The offender may first be charged with a criminal offence by the state and when this is over the assaulted person may bring fresh charges against the offender for damages, and this is a civil case.

CRIMINAL LAW

Criminal law, like any other law among men, is intended to guide and regulate the conduct of the individual in his relation with the society of which he is a part. The primary objective is the preservation and maintenance of law and order in society.

Punishment, although usually common in criminal law, is not the objective of criminal law; it is only one of the methods employed to enforce criminal law. The criminal law stipulates what is intolerable in society the commission of which is deemed to be a revolt against society and the body politic or the sovereign and therefore is thought to justify punishment. Criminal law is, in most jurisdictions, promulgated by the political organs or the state; such as parliament, or legislature, etc. the criminal law of a country in general reflects its social values through its enactment relative to the treatment of its offenders.

For full account see *Introduction to Criminal Law*, Rupert Cross and Phillip Asterley Jones, the seventh edition. Criminal Law is also known as “The Penal Code.”

DEFENCE OF PERSON OR PROPERTY

The general conditions and rules governing the use of force for defence of person or property are that:

- (a) In defence of his own person, a person may use such measures to defend himself as are reasonable, having regard to the nature of the assault.
- (b) A person is entitled to use all reasonable force to prevent the commission of a violent act upon another.
- (c) In defence of his personal property, a person may use all such means and force as are reasonable in all the circumstances;
- (d) In defence of person or property, a person is criminally

responsible for any excess of force according to the nature and quality of the act which constitutes the excess.

SELF-DEFENCE

In law, a plea of self-defence or what is commonly termed defence of self is permissible only when the defence can show beyond any reasonable doubt that the accused acted in self-defence and that the attack on his own person was felonious. A felonious attack is where the attacker intends to kill or inflict grievous harm or to commit robbery with violence. A person is legally permitted to defend his person when a felonious attack is made on his person. He has a legal right to stand firm and resist, and if he kills his attacker during the encounter, the homicide will be justifiable, provided that the measures of resistance which he takes are reasonable in the circumstances.

But when the attack is not felonious, and then the person attacked must, if safely possible, retreat, and must not use force against a person unless he is placed in such a position that he cannot otherwise evade the attack. He must flee until he is driven to the wall and has nowhere to go.

In *Selemani S/o Ussi v Republic*, the Court of Appeal for Eastern Africa stated the case as follows:

If a person against whom a forcible and violent felony is being attempted repels force by force and in so doing kills the attacker the killing is justifiable, provided there was a reasonable necessity for the killing or an honest belief based on reasonable grounds that it was necessary and the violence attempted by or reasonably apprehended from the attacker is really serious. It would appear that in such a case there is no duty to retreat, though no doubt questions of opportunity of avoidance or disengagement would be relevant to the question reasonable necessity or the killing. In other cases of self-defence where no violence felony is attempted, a person is entitled to use reasonable force against an assault, and if he is reasonably in apprehension of serious injury, provided that he does all that he is able in the circumstance, by retreat or otherwise to break off the fight or avoid the assault, he may use such force, including deadly force, as is reasonable in all the circumstances. In either case if the force used is excessive but if the

other elements of self-defence are present, there may be a conviction of manslaughter.

The defence of another person is lawful in so far as the person acting uses all reasonable force to prevent the commission of a felony on another person. A criminal homicide is justifiable if the perpetrator acts without a guilty mind and believes, on reasonable grounds, that another person's life is in imminent danger and that if he had to save the other person he must act at once.

It must be noted here that the defence of another person is not restricted to close relatives of the actor such as wife, child, parent or close friend; but that even a stranger can be defended as much as he can legally intervene in a fight with the hope of preventing a worse felony being committed, provided always, that he does so using reasonable force. Thus a cyclist who comes down a hill and finds a man attacking a woman and believes that the attacker intends to commit a felony a forcible rape, he can run to the rescue of the woman and fight the attacker provided that he uses reasonable force. Almost the same rules apply in cases of defence of property as in the defence of property of another person. The criterion of legality is reasonableness. In the defence of property (even the property of others) only reasonable force is legally permitted. It is lawful to use reasonable force to resist the attempts to seize property or to recover stolen property. In all cases, the defender of property is criminally responsible for any use of excessive force.

THE ELEMENTS OF AN OFFENCE

A person is not criminally responsible for an act unless it is proved that he did commit the act voluntarily and with malice.

The law requires that it be proved that:

- (a) He did contribute directly towards the commission of a criminal offence or what is commonly called *actus reus* and in so doing he acted,
- (b) of his free will, that is voluntarily, and
- (c) with a guilty mind, or *mens rea*.

The concept of *actus reus* and *mens rea* have their origins in the statement by Sir Edward Coke, then Attorney-General of England,

at the beginning of seventeenth century when he stated in Latin: *actus non facit reum nisi mens sit rea* (an act does not make a man guilty unless his mind is blameworthy). (See J.C smith and Brian Hogan, *Criminal Law*, second edition, 1972.)

EXTORTION

Extortion is a crime committed by an officer of the law, who, under the cover of his office, unlawfully takes, any money or thing of value that is not due to him, or more than it is due, or before it is due.

FALSE PRETENCE

Joni shows Jane an earring and says it is all gold. He sells her the ring at £100. The girl buys it and later discovers that the alleged “gold” earring is nothing but a piece of ordinary metal. At the time of negotiation, Joni fully knew that his statement or representation was false. In this case, Joni is guilty of false pretence.

HABEAS CORPUS WRIT

When a person is arrested and is detained but is not formally charged with a specific offence and he is not brought before a judge or magistrate “without unnecessary delay,” he or someone on his behalf, may petition a judge for a writ or “habeas corpus” and thereby attempt at obtaining a release or at least compel the police to bring a charge against him in which case he may be released on bail. Habeas Corpus originated from England. In 1679 the Habeas Corpus was introduced purposely to provide the accused a speedy remedy unobstructed by procedural devices (see M. Cherif Basiouni; *Criminal Law and its Process*, 1967, p.443).

IGNORANCE OF LAW

Ignorance of law, according to many jurisdictions, is never accepted, as a defence; it is therefore not an excuse for any act or omission which could otherwise constitute an offence.

Example:

Kinene and others are found hunting in a Game Reserve and are arrested by Game Guards for violation of Game Reserve Regulations.

Kinene and others cannot plead that they did not know that hunting in a Game reserve is actually prohibited by the law of the land.

In East Africa the Penal Codes state that:

Ignorance of the law does not afford any excuse or any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence. (Kenya Penal Code section 7, Tanzania's section 8, and Uganda section 6)

IMMATURE AGE

A person under the apparent age of seven years is not criminally responsible for any act or omission under most criminal codes. A person under the apparent age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission. In Tanzania the Penal Code provides that "A male person under the age of twelve years is presumed to be incapable of having carnal knowledge". (Tanzania Penal Code section 15, see also Kenya Penal Code section 13)

INQUEST, THE CORONER'S

This is a post-mortem examination of a dead person conducted soon after a killing or when unexplained death occurs the purpose of which is to determine the cause of death. The coroner's report is not binding on the prosecution but serves in an advisory capacity which the court may uphold, ignore or reject. The coroner may give the cause of death as "accidental death" but death resulted from someone's criminal act, and may go on and convict the charged person with the crime.

MENS REA

The concept of *mens rea* is very often used in a broad sense to mean evil intent or knowledge of the wrongfulness of behaviour, but the accused's ignorance of the law or the moral wrongness of the behaviour is generally no defence, although his reasonable belief in the existence of facts which would render his conduct innocent usually is a defence. Very often the expression *mens rea* is used in the Latin maxim *actus non facit reum, sit rea*; that is, an act does not make a person guilty unless his mind is guilty. Other concepts used instead of *mens rea* are: malice aforethought, evil intent, recklessness, guilty conscience, and guilty knowledge. The concept of *mens rea* should not be confused with motive. Motive is understood to mean the moral nature or quality of intent; it is the moving force. Motive is the ulterior intent, the ulterior design, the personal end sought to be accomplished by the act other than the immediate consequences of the act. For example; two men, may be competing for the love of one girl; one of the men may plan to kill the other; and if he succeeds, the planning to kill is the *mens rea*, *while the desire to be the only lover of the woman is the motive*.

NOLLE PROSEQUE

This is a refusal by the state prosecutors to prosecute an accused person by a declaration of *Nolle prosequere*, which is in the nature of forbearance to proceed against the accused on a count in the accusation. *Nolle prosequere* is commonly entered when the prosecution has failed to get the relevant information or witnesses.

PERJURY

Perjury is not every false statement. Perjury is false statement made under oath or affirmation in a judicial or non-judicial proceeding with knowledge of its falsity. It is, in short, giving false testimony in a case after oath or affirmation.

POLICE

Police is a governmental department (of state, city or town) for keeping law and order and for detecting offenders and has its main objective of preventing and controlling crime.

Police as an occupation is heavily tainted. The origin of this stigma is unknown but has its roots in history. In medieval times watchmen, who later became policemen, were recruited from the ranks of the destitute, and the uneducated.

Later, these watchmen were used by kings and dictators in underground aspects of tyranny and political repression and were despised and feared. Present-day police is regarded by the majority with distrust and fear, especially in East Africa. They are despised by others because of the low requirements for entry and feared by many because of the force the police use (sometime) in dealing with law-violators. It is generally held that one of the primary roles of the police is to prevent crime. But close examination of the routine duties of policemen reveals very little if any that may be related to the prevention of crime. Generally, their role is to detect, arrest and prosecute offenders; and none of these is preventive in the sense of obviating criminality, it may be that police holding arresting and general harassment of civilians may actually be contributing to lawlessness and refusal by the public to report crimes.

PROCEDURE OF A TRIAL

Criminal cases in East Africa are heard by judicial officers, that is the magistrates (both lay lawyers) and the judges. The more serious crimes such as murder, treason, rape are usually tried by high court judges, but the Preliminary Inquiries are normally conducted by magistrates.

The following is the schedule of the sequence of a trial:

1. After the arrest (soon or later) the suspect is brought before the court for formal charge. After the charge has been read to the defendant or suspect, he may elect to reply by either (a) denying the charge or not guilty; or (b) accepting the charge, the plea of guilty.

2. The opening statement of the case by the prosecution.
3. The statement of defence.
4. Presentation of the evidence by the prosecution and proof of the crime charged.
5. Direct examination by the prosecution of its witnesses.
6. Cross-examination by the defence of the prosecution witnesses.
7. The defence then may present its evidence presented by the prosecution.
8. The defence may follow by direct examination of its witnesses.
9. The court may allow the prosecution to re-open its case.
10. The prosecution then may cross-examine the defence witnesses.
11. The defence may make a closing argument followed by the prosecution's argument unless the case ends without counteracting arguments.
12. In a jury system (where there are assessors) the court may instruct the assessors to their duty and as to the law relating to the subject matter and how it is to be applied in regard to facts and evidence presented.
13. In court where there is a jury or assessors, they return their verdict.
14. Finally, the judge reads his judgment in the language which both parties understand.

RULE OF LAW

The concept of "Rule of Law" is very central in British (and most of the nations that inherited the British Constitutional system) constitutional history. Its basic elements can be traced back to the thirteenth century when King John put his great seal to the Magna Carta, in the meadow which is called Runnymede. The central element of the Magna Carta is "Individual Freedom."

The Magna Carta doctrine states that:

No free man shall be taken, imprisoned, banished or in any way destroyed, nor will we proceed against him or prosecute him except

by the law of the land. To no one will we sell, to no one will we delay or deny right or justice.

The Rule of Law as a legal ideal in ordering the relations of men owes its popularity to the works of A.V. Dicey. Dicey, in *Introduction to the Study of the Law of the Constitution* outlined three major elements as being basic to the doctrine of the Rule of Law: First: *Absence of arbitrary power*. On this Dicey states “that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the Rule of Law is contrasted with every system of Government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint.

Second: *The subjection of officials to ordinary courts to be judged disputes between officials and citizens*: He wrote: “...the rule of law” as a characteristic of our country, not only that with us no man is above the law but (what is a different thing) that here every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. This element of the doctrine of the rule is to be contrasted with the system in France, where Government officials can only be judged under the *Droit Administratif*, even when the dispute is between them and private citizens.

Third: *The Constitution: the result of the ordinary law of the land*. That the rule of law pervades the Constitution. He wrote: “...That the general principles of the Constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the courts.” The rule of law here requires that people be subjected to the law of the land (laws made by men) and not of men, for when men rule despotism, corruption, tyranny and brutality rein, laws become means of oppressing the ruled.

Equality before the law up to now remains more of an ideal than a fact. The recent criminal charges brought against Mr. Spiro Agnew formerly Vice President of United States of America, and

Mr. Richard Nixon, then President of U.S.A. show that equality before the law can be adjusted. Agnew, instead of a prison sentence, got a fine and an unsupervised probationary period of three months. The Attorney-General urged that Agnew be not sent to jail “out of compassion for the man, out of respect for the office he has held and out of appreciation for the fact that by his resignation he has spared the nation the prolonged agony that would have attended upon his trial.”

(*Time*, 22 October 1973) Nixon was exempted from trial by President Ford in the exercise of his powers of office.

CLASSIFICATION OF CRIMES

In East Africa, the classification of crimes was inherited from the English legal system.

First, there is the broad classification of all cases that might be tried or adjudicated by a given Jurisdiction into a civil and criminal case. Both of these groups of cases are determined under two branches of law. Civil cases are handled under the civil law. Civil law deals with property disputes between individuals or groups. Disputes about boundaries, debts, bridewealth, inheritance, purchase and matters relating to barter and exchange are all to be handled under the broad category of civil law. Very often it is referred to as Roman law’ in contrast to English common law. According to the English usages, a crime is an offence against the state, while a violation of the civil law is commonly known as a ‘tort’. Assault occasioning actual bodily harm or aggravated assault may be considered as an offence against an individual (the person whose ears are cut) and also against the state, and therefore is either a tort or a crime or (very often) both; depending on the way the case is charged. Usually such a case is handled as a crime and is tried under the criminal law procedure, and when fully adjudicated, for instance the accused is found guilty; the assaulted person (who appears as a state witness) may proceed to bring a civil case against his assailant for damages.

Thus, a crime is a public offence i.e. an offence against the criminal law, while a tort is a wrong against a private individual. In some countries, two systems of courts are established to handle

these cases; a criminal court for crimes, and a civil court for civil cases; and nowadays, there are traffic courts, to handle and process all traffic offences such as driving a D.M.C. (a vehicle in Dangerous Mechanical Condition), juvenile courts, to hear and deal with all cases committed by juveniles, that is, persons below the legal age as stated by respective Penal Codes.

Secondly, there is a felony type of offence in contrast to misdemeanours. The Penal Code defines a felony as “an offence which is declared by law to be a felony or if not declared to be misdemeanours, is punishable, without proof of previous conviction, with death or with imprisonment with hard labour for three years or more. A misdemeanour is defined as “any offence which is not a felony.” Both felonies and misdemeanours may be described as offences, for both types are crimes, the differences between two being one of degree or seriousness of the offence. Thus, while the cutting and severing of a person’s arm is a felony, the cutting of the same arm by making a minor incision in the skin is a misdemeanour.

It must be noted, however, that different legal systems define these about the seriousness or the gravity of the offence calls for; the punishment for a felony is usually made specific in the Penal Code; for instance, section 131 of the Penal Code of Tanzania stipulates that “Any person who commits the offence of rape is liable to be punished with imprisonment for life with or without corporal punishment.

Punishment for misdemeanour may or may not be made specific.

SOLICITATION

A person commits the crime if he solicits or incites another person to commit an offence; the solicitor is guilty of a misdemeanour whether his solicitation or incitement is effective or not. Thus to offer money to a medical orderly in order to be given an injection of penicillin is an offence whether the injection is given or not. This has been a common practice by police detectives to go with money and offer it to suspects in order to arrest them red-handed not knowing that by offering such money, they themselves (police detectives) are committing a crime.

STATUTE

A statute is any Act of a Parliament that defines and regulates the majority of crime and offences. The statutes, in majority of democratic states are passed by elected bodies of law-makers. Thus passing an Act of Parliament to regulate behaviour is a process of crime definition. The behaviour becomes criminal as soon as the parliament or any other law-making organ or a state determines so. A state may create an entirely new crime; for instance, incest was not a crime in Britain for a long time; a man could have sexual intercourse with an adult female whom he knew to be his sister, daughter, granddaughter or mother; but this practice was illegalized by an Act of Parliament when the incest law was passed in 1900. Adultery is a crime in Uganda but not in Britain, Kenya and Tanzania just because these states have never thought it fit to make such intercourse a crime, although it is allowed as sufficient cause for divorce.

TRESPASS

A person who enters upon the land of another, when he fully knows (as from a signboard) from the owner or occupant that entry is prohibited, commits the offence of trespass. It is also trespass to remain on the land of another after receiving notice to depart. Notice to depart may be oral or in writing. The notice prohibiting entry must be clearly displayed at the main entrance of the premises.

UNIFORM CRIME REPORT

This is an annual report on crime in the United State of America issued by the director of the Federal Bureau of Investigation, U.S. Department of Justice; Washington, D.C. 20535. The report covers what are called Index Crimes. These are murder and non-negligent manslaughter, aggravated assault, forcible rape, robbery, burglary, larceny of USD 50 and over and auto theft (theft of motor-vehicle). In the following table is listed the number and rate of these offences according to the Uniform Crime Report of 1971.

Crime Index Offences	Number	Rate per 100,000 inhabitants
Total	5,995,200	2,906.7
Violent Crimes	810,020	392.7
Property Crimes	5,185,200	2,514.0
Murder (Criminal homicide)	17,630	8.5
Forcible rape	41,890	20.3
Robbery	385,910	187.1
Aggravated assault	364,600	176.8
Burglary	2,368,400	1,148.3
Larceny USD 50 and over	1,875,200	909.2
Auto theft	941,600	450.5

APPENDIX B

COMMON SOCIOLOGICAL CONCEPTS

ACCULTURATION

The concept is much more currently used in social anthropology than in sociology. It denotes a process of culture change in which more or less contagious contact between two or more culturally distinct groups results in one group taking over the elements of the alien culture. Thus, it can be said as an example that the acquiring of European names by Africans, the use of English, the adoption of Christianity, and the general trend to change from African behaviour systems to European ways of life is a process of acculturation.

Acculturation must not be confused with enculturation, which is a process through which an individual acquires the cultural values of a society. Very often the term is used almost interchangeably with socialization; but sometimes it is reserved to refer to the acquisition of a society's cultural tradition, by adult immigrants, while socialization is applied to the acquisition of the same cultural values and tradition by young children.

The process of acculturation is closely related to the theory of culture conflict and crime as advanced by Thorsten Sellin.

AGGRESSION

This is commonly a political science term used especially in international politics. In criminology the term refers to overt behaviour that is directed towards another person with intention to annoy him. Aggressive behaviour is behaviour that engenders conflict between two or more people. The aggressor is one who initiates offensive action. Aggression is to the same thing as violence; aggression can be expressed in a number of behaviours, violence being one of them. There are arguments that aggression may be an innate trait in individuals, but even if this were so, its expression

is culturally defined; some societies socialize their young to use aggression in a positive manner, while others encourage violence.

ALIENATION

In sociology, alienation refers to a feeling of non-involvement in and estrangement from one's society and culture. The values and social norms shared by others seem meaningless to the alienated individual. Thus he feels isolated and frustrated. Alienation also refers to a feeling of powerlessness. The individual gives up when he feels unable to control his own destiny or to have any significant effect on the important events of the world through his actions. Meaninglessness and powerlessness are both important aspects of alienation but some sociologists stress one more than the other. These, in ordinary social situations, tend to reinforce each other. Meaninglessness refers to alienation from cultural values and conduct norms; while the feeling of being powerless involves alienation from social roles, but the meaninglessness or norms leads to lack of concern for the proper performance of roles, and conversely alienation from roles necessarily results in the rejection of the norms and values that support house roles.

Alienation is used in varied forms in philosophy, theology, law and economics. The leading scholars on alienation have been George Hegel, Karl Marx, Ludwig Feurebach and Sigmund Freud.

ANTHROPOLOGY

Anthropology is the study of Man. It is a very broad discipline comprising of such branches as:

- (a) Cultural anthropology, which deals with the biological and cultural development of man.
- (b) Physical anthropology, which concentrates on the anatomical and physiological aspect of man.
- (c) Social anthropology, which deals with patterns and principles which govern human relations.
- (d) Archaeology, which is a study of antiquities or of prehistoric remains, of Man, and of Man-made artefacts.

Anthropology in Africa is regarded as the study of what are called the Primitive Societies, while sociology is regarded as a study of Industrialized (sometimes called advanced, developed, western, etc.) Societies. Some define anthropology as the study of simple societies while sociology is the study of complex societies. This is, in one respect very erroneous as anyone who has come to be acquainted with such societies as of the Maasai, Turkana, Baganda or Zulu will have noted that these are in fact more complex than the Germans, the English, and the French societies. Among the former, social relations are extremely complicated and elaborately observed, while among the latter relations are contractual and relatively simple and in some cases temporary. Technology is simple among the former and complex among the latter.

Social anthropology and sociology cover a large part of the social, economic, and political aspect of study of human groups.

ANOMIE

The term was first used by the French sociologist, Emile Durkheim, to refer to several aspects of social participation where the conditions necessary for man to fulfil himself and to attain happiness were not present. These conditions are that conduct or behaviours should be governed by norms, that these norms should form an integrated and non-conflicting system, and that the individual should be morally involved with the affairs of other people; and that the limits of pleasure to be experienced in life and achievements should be clearly defined for the individual. Any state where these are unclear, conflicting or unintegrated norms, a state in which the individual has no morally binding relations with others or in which there are no known limits set to the attainment of pleasure is a state of *anomie*, Robert K. Merton used the term to refer to a state of affairs in which socially prescribed goals and norms governing their attainment are incompatible. Then a given society may place a very high premium on higher education and yet provide no easy means through which this goal can be achieved; the end result is frustration and anomie for those who aspired to achieve this society's valued goal and yet could not make it. Anomie is used as a theory to explain some types of criminal and deviant behaviour; with its central point

being the blockage of the channels of success. Material goods, such as houses, cars etc. are socially valued, many people cannot acquire them because the legitimate channels of acquiring them are limited; and as a result, some people turn to illegitimate or criminal ways in order to acquire what is socially valued. This is what Merton meant by *anomie*.

ANTISOCIAL BEHAVIOUR

Antisocial behaviour is any behaviour deemed to be against the interests of the group. Any behaviour that is disruptive or potentially disruptive of the smooth functioning or survival of a group, regardless of whether or not group members recognize that the group's welfare is threatened. In this sense antisocial behaviour may be determined by outside observers and may include behaviour which is accepted by group members.

BORSTAL SYSTEM AND REFORM SCHOOL

The Borstal system as it functions here in East Africa was imported as the institution of imprisonment from England. The British also had imported it from United States of America. In 1897, Sir Evelyn Ruggles-Brise (1857-1935), then director of prisons in England visited the reformatory institutions in the United States. He particularly visited the one at Elmira in New York and the Massachusetts one at Concord. On his return to England, he opened a special institution at the small town of Borstal for male offenders of 16 to 21 years of age. This was the beginning of the Borstal system which has spread all over the world. From the town the institution took its name. The system, ideally, aims at individualized treatment of the young delinquent and individualized aftercare when the youths leave the institution. In some countries, the age of those who are admitted to Borstal institutions has been reduced to below eighteen. Reform schools and approved schools all aim at the same thing; separation of young offender from adult and hardened criminals. In East Africa, the reform schools are run just like any other primary school. The difference being that the pupils are admitted from courts and must have committed a crime or a serious offence or delinquent and deviant act. The system should be discouraged because it puts

the young delinquent in a delinquent sub-culture which works to reinforce delinquent behaviour. The young delinquent gets labelled as having been to a reform school. And this may help him develop delinquent self-concepts. The fact that the youth is removed from the natural social surrounding to a school where every child has had problems with the law makes it most unlikely that he will reform. Individualized treatment is only possible with medical diseases but not with social maladjustment. A patient who is suffering from malaria can receive his anti-malaria medicine, but it should be remembered that even if this treatment is very individual, the same patient should not be mixed with parties suffering from tuberculosis, smallpox, measles, whooping cough and typhoid; he stands a great risk of contracting one or several of these diseases.

No experiments have been carried out in East Africa. It would be important to put 100 young offenders in these institutions and let another 100 offenders attend the school in the usual way and then see what happens to the two sets in 5, 10 or 15 years; and unless such studies are carried out the efficacy of these approved schools will remain doubtful. They may, in fact, be breeding places for future criminals; they are "nest" of young delinquents and need to be examined very carefully.

CANNIBALISM

Cannibalism is eating of the human flesh. The practice is not uncommon among certain peoples all over the world. In East Africa, the practice is virtually unknown outside the world of magic and witchcraft.

In other parts of Africa where it occurs it is usually related to ritual prescription for sacrifices. In 1959, Sierra Leone Police Force reported that:

On 9 January, 1959, at Maria Village. Bonthe District, an 18-month-old child named Tommy was abducted by BEAH CHALLEY at the instigation of FONIE SESAY. The child was taken into the bush where it was murdered and parts of it eaten. As a result six men including the two named above were charged with murder. One accused died in the

Remand Prison and another accused was acquitted and discharged on the grounds that he did not take part in the cannibalism.

The other four accused were sentenced to death and hanged in November, 1959

The above case could have been one of ritual murders rather than cannibalism.

Although outright cannibalism has disappeared, there is widespread fear and talk about necrophilia, the act of eating dead bodies.

CONJUGAL, VISITATION OR HOME FURLOUGHS

Various prison or correctional departments have evolved different systems under which prisoners can meet their wives or reunion. Some states allow the inmate to pay visits to his home for a few days either accompanied or not; while others allow the wives to pay visit to their husbands in prison. In the latter case, prison authorities make arrangements for accommodation of the visitors.

Successful experimentation has been carried out at Perchman Penitentiary, Mississippi State, where results indicate a general decrease of homosexuality and a rise in inmate morale. Conjugal visits also contribute positively to the rehabilitation process. Imprisonment imposes celibacy on inmates and this in turn leads to homosexuality. The solution to homosexuality in prisons lies in the abolition of the conditions that foster this behaviour. One-sex communities are abnormal and re-capable of engendering different and varied social or psychological problems.

COUNSELLING

Counselling is a process of using interviews, psychological tests, guidance, and other techniques to help an individual solve his personal problems and plan his future realistically.

COUNSELLING, NON-DIRECTIVE

A technique used in helping an individual with a personal problem in which the counsellor does not make positive suggestions, direct

the interview, or criticize the client. The client is left alone, to talk out his problems and thereby clarify his problem, see himself objectively and finally solve his own problem with little assistance from his counsellor. Any guidance given being restricted to repeat and summarizing major ideas and statement raised and made by the client.

DETERRENCE

From Latin words *de*-from, and *terror*, frighten. To deter is to keep or discourage (a person) from doing something through fear, doubt, etc.; deterrence in legal terms though, is a theory, which the main objective of punishment is to prevent crime. According to the theory, one is thought to avoid committing a crime if he knows that severe punishment will follow if he is convicted. That severe punishment deters the criminal and those who come to learn of his punishment. A British judge in the 19th Century is reported to have sentenced a thief of a sheep to death. "... Not for stealing sheep, but that others may not steal sheep." Sociologists, psychologists and legal thinkers have argued that deterrence may work in those individuals who deliberately engage in criminal activities but that deterrence cannot work in those individuals who commit crimes of passion such as rape, homicide, assault, etc.

It has also been explained that human beings are of two major types; one large group is made up of those individuals who are 'present'-oriented and therefore do not bother about what is to happen to them tomorrow or next year. For this group deterrence for future behaviour is meaningless because their concern is with the present and not with immediate or distant future. The other group is composed of those who are more concerned about their future. Among the group is found those who even go beyond the earthly life and begin to prepare further metaphysical bliss. These are the religious people we are all familiar with. For the future-oriented persons punishment is a deterrent; such a people are also likely to be religious so that it is not only the punishment as such that may deter them but also fear of divine wrath. This group includes high social status persons, highly learned people, religious, moralists,

humanitarians, and those who are guided by rationality in their day-to-day behaviour.

There are judges who mete out long prison sentences to offenders and in a wishful thinking manner, implore that such a sentence will deter would-be similar offenders.

There is no empirical research that can be cited to show that the longer the sentence the more deterrent it is for individual or for the group from which he came. Heavy fines may deter embezzlement and forgery in banks, and for some of the traffic offences, but some punishment such as capital punishment, corporal punishment and long prison sentences do not, in general deter the would-be offenders. What we know is that the longer the prison sentence, the harder the criminal gets and the more his family is given an opportunity to disintegrate and thereby increase the number of delinquents in society. (see Franklin E. Zimring's *Perspectives on Deterrence*, 1971, and *Deterrence* by Franklin E. Zimring and Gordon J. Hawkins, 1975)

FEUD

Generally, the term refers to a situation of enduring enmity, hostility or ill-will between two groups of people. Blood-feud is a long-lasting state of mutual hostility which usually results from homicide; in which the aggrieved party seeks retaliation by reciprocal murder. Blood-feud is violent social relationships for which different societies have evolved different procedures of resolving the feud.

(See Max Gluckman, *Custom and Conflict in Africa*)

FRUSTRATION

Frustration results from the prevention or obstruction of an individual's attempts to satisfy his needs or desires. The term is applied to a resulting emotional state which is characterized chiefly by anger and anxiety.

FRUSTRATION-AGGRESSION HYPOTHESIS

The hypothesis is that when a person is frustrated in the attainment of a desire he becomes aggressive, and if he cannot retaliate against

the source desire he becomes aggressive, of his frustration (because he does not know the source, out of fear of consequences, or the like), he will direct his aggression towards a less threatening substitute person or object. Thus, a school teacher who is frustrated by husband at home, either sexually, economically or socially, may direct her aggression (which is due to frustration) towards her pupils; a senior executive who is frustrated because he has not been promoted may direct his aggression towards his subordinates. All do this in order to relieve themselves of emotional and psychological tensions.

INTELLIGENCE

General intelligence is the innate potentiality of the individual which determines how educable he is in any direction. Intelligence determines the maximum level that he can attain, all things being equal. In this connection it is important to distinguish ability from capability; the former refers to potential or talent while the latter refers to mental power.

Intelligence quotient (I.Q.) is the ratio formed by dividing mental age by chronological age and multiplying the result by one hundred; in this way:

$$\text{I.Q.} = \frac{\text{Mental age}}{\text{Chronological age}} \times 100$$

The mental age of a person is determined by a standardized intelligence test.

Social psychologists have shown that the intelligence of a person is dependent on his personality, willpower, social milieu and that it is possible to relate intelligence to vocational categories as follows:

Highest professional and academicians of Adults	I.Q	150 +	0.1%
Lower professional and higher technical	I.Q	130-150	3%
Executive, General professional highly skilled	I.Q	115-130	12%
Skilled, clerical and ordinary commercial	I.Q	110-115	26%
Semi-skilled, poorest commercial	I.Q	85-110	33%
Unskilled and coarse manual labour	I.Q	70-85	19%
Casual labour	I.Q	50-70	7%
Mentally abnormal persons	I.Q	50 & less	0.2%

It must be noted that the bulk of the people have an I.Q of 90-110. These include teachers, chiefs, politicians, senior civil servants and the like.

MACHISMO

Machismo is the desire of an average male to prove his manliness. It is common among certain groups and prevalent among the working class males. In some societies it takes the form of knife-fighting, in others, it is achieved through self-praise, as is common among certain tribes in East Africa such as the Jalu, the Abakiga, etc. It has been shown that feelings of Machismo are aroused by music, films, the presence of women and alcohol. It tends to be characteristic of males in the lower social economic status to whom manhood is the most identifying mark; while the senior executive and professionals have their positions and property to be proud of, the average worker has nothing to be proud of, to be known for, so his manhood stands out as the greatest criterion of his identity; and to call this into question is to invite trouble.

MARGINAL MAN

This is a man in dilemma, or state of mental conflict, by reason or his participation in two but distinct cultural groups. Such a person is not fully loyal and committed to the values and standards of either, nor fully accepted by the other group. All this is due to inadequate socialization and failure on the part of other individuals concerned to internalize one or both cultures adequately. The nearest concept

is detribalization, common in urban settings where such marginal persons are found.

RETREATISM

A form of deviant behaviour in which the individual rejects the culturally defined goals of success and the institutionalized means of attaining them. Retreatism is a mode of adaptation of the frustration of being unable to attain culturally valued goals. Drug addiction, alcoholism and some kinds of hobbies are some of the common retreatist traits.

SANCTION

A sanction may be positive or negative. It is a social reaction to a mode of individual or group behaviour. In the positive sense, a sanction is a reward while it becomes a penalty when it is negative. Negative sanction is intended to discourage the disapproved behaviour while the positive sanction, such as a promotion, is intended to encourage the approved behaviour. Positive sanctions include promotions, applause, praise, gifts, medals and certificates. The negative sanctions include ridicule, disapproval, demotion, imprisonment, fines; the death penalty by firing squad is an extreme example.

Social sanction functions in cultural milieu where they may be incorporated as aspects of social control. A look of disapproval may restrain an individual from a certain mode of behaviour if he is a member of the cultural group and has come to understand the meaning attached to such a look.

SCAPEGOATING

This is placing the blame for one's troubles, failures, frustrations or sense of guilt on some other innocent person or group. The term is derived from the Hebrew ancient practice, when, once a year, they symbolically placed all their sins on a goat and then drove the goat into the wilderness. In some political systems scapegoating is used as propaganda to explain national problems; blaming enemies of progress, imperialists, colonialists, the members of the opposition for policies which fail.

SYNANON

Synanon is an organisation which was started in California in 1958 by a man who was an alcoholism addict. Its objective is to reclaim addicts of every vice back to normal life. Thus alcoholics, prostitutes, drug addicts, delinquents and all other persons who determine to do something about their problems come to Synanon. The main office of this organisation, which the author visited in January 1972, is located in a sizeable city called Santa Monica, just outside the city of Los Angeles in California. There are now Synanon establishments at San Francisco, San Diego, and Reno and in several other places in U.S.A.

WORK RELEASE

Work release is a system under which the prisoner is allowed to take employment outside the prison while serving his sentence. The system permits an inmate to continue supporting his family and offers him a means of keeping his ties with fellow men in the community. He is in fact, a part-time prisoner. One of the important functions of the work release is that the inmate is not isolated from the society in which he is eventually to enter and live. The system also helps to test the convict and to help him re-adjust before complete release is granted. The system works in those countries where there is wide use of parole. The inmate goes out to work outside the prison but must return after work to prison and remain there on those days he is not on duty such as public holidays and Sundays.

Work release has many advantages; one is that it makes it possible for the prisoner to earn a living and support his wife and children.

Secondly, it helps him to develop a positive self-image. The fact that he can be trusted to go out on his own is an important factor in the positive readjustment of the offender. Work release is possible where the legal system has developed a humane and positive attitude towards the people it deals with; where the main objective of the penal institution is rehabilitation rather than punishment.

URBANISATION

This is the movement of population from rural to urban areas. When more people live permanently in towns rather than in villages, the country is said to be urbanized. The rate of urbanization in East Africa is estimated to be about 5% for Kenya, and 4% and 3% for Tanzania and Uganda respectively.

Urbanization almost goes hand in hand with industrialization although the former can and has occurred without the latter. Urbanization has its own advantages, and disadvantages and it is because of its disadvantages such as overcrowding, prostitution, alcoholism, crime, malnutrition, delinquency and vice that government leaders in most of Africa have been calling upon the people to “go back to the land.” In the field of crime and deviance, it is now generally accepted that the larger the city or town, the higher the rate of crime and deviance. It is for this reason that business entrepreneurs should be advised to open up their new business in areas other than large towns; decentralization is one of the efforts to control and prevent crime rates rising even higher.

APPENDIX C

COMMON PSYCHIATRIC CONCEPTS

ANXIETY STATES

Anxiety is a normal emotional state which in a moderate degree can be a helpful force by increasing effort and alertness; but when in excess, anxiety may impair effectiveness and is a handicap.

The term anxiety state refers to a disorder in which anxiety is the primary and dominant part in the patient. The mood changes and is more or less fixed and persistent and may affect the general social interactional process of the patient.

APHASIA

This is a disorder, usually resulting from brain damage, which involves some type of loss or impairment of the ability to use or comprehend language. The disability may vary from minor to majority impairment of the ability to speak, to read, to write, or to understand the spoken word. Aphasia must not be confused with either dysphasia (pain on swallowing) or disphonia (loss of voice). Dysphasia in most cases is due to any inflammation or ulceration of the food passage. The commonest cause is tonsillitis. Disphonia is commonly associated with acute laryngitis and hysteria.

DEMENTIA

The term dementia denotes a loss of mental capacity due to organic damage to the brain. It is identified by a failure of memory mainly for recent events at first, and later for past events too; the individual experiences difficulty in comprehension and gets emotionally unstable with outbursts of anger even in minor provocation.

EPILEPSY

Epilepsy is defined as a disorder of the brain; characterized by:

- (a) Loss or derangement of consciousness or memory,

- (b) Excess or loss of muscle movement,
- (c) Alteration of sensation including hallucinations,
- (d) Other psychic traits including abnormal thought processes and moods.

There are two major types:

Petit and Grand mal: occurring before age of 5, but very often at puberty and, extremely rare, after the age of 30. Males predominate, and it is estimated that 1 in 10 has genes of epilepsy. Epilepsy is not contagious as generally feared. It may be genetically acquired, and can be controlled with medication.

Epilepsy can be diagnosed clinically and also by the use E.E.G. (electroencephalography). The E.E.G. can also identify potential epileptics even when there are no symptoms.

The aetiology of epilepsy, as noted above, may be genetic in some patient, but in others it may be due to brain damage, biochemical and psychogenic factors or a combination of some or all, and all having a potential role in the genesis of epilepsy.

Epilepsy attacks may be precipitated by hydration, overbreathing, and music. In some patients alcohol may increase the tendency and the frequency for epileptic attacks to occur.

Recent studies have tended to show that epilepsy and schizophrenia are closely linked; especially in those patients with temporal lobe epileptiform disorders; and that the psychotic onset occurs more often with a decrease in fit frequency rather than with a rising fit frequency.

The onset of an epileptic fit is, in most cases, automatic; the patient appears confused; he may walk, talk undress or dress aimlessly but often may resist help or interference. He may be restless and aggressive. These symptoms may appear before or after the fit. The fit itself is spontaneous, and may be short-lived. It consists of frequent muscular spasms and the jerking of limbs, the lifting of the head and hitting it on the ground; this is followed by frothing at the mouth, micturation and sleep.

Because of these fits which are spontaneous it should be remembered that people who are subject to epileptic fits should not be employed in certain work situations such as those associated with fire, water, heights, machines, driving motor vehicles, building and sharp instruments.

The treatment of epilepsy is a medical problem. Some cases remain under control by regular administration of barbiturate drugs. But in case of fits, it is important to see that the patient is protected from injuring himself while the fits are continuing. The patient should be removed from fire or anything that is likely to cause injury or death. A pillow or a folded coat should be put under the head, and a spoon or piece of wood should be carefully put between his teeth to prevent him biting his tongue. No effort should be made to restrain him from kicking about as long as he does not kick sharp objects which may hurt him.

Epileptics can be employed and in fact unemployment may aggravate their situation which may make them depressed, morose, dependent and more aggressive. People who live or work with epileptics should learn their behaviour patterns and try to identify primordial signs and symptoms of impending onset of attacks.

MANIA

Two types are medically recognized; one being a subtype of the other and are known as Hypomania and Mania.

Hypomania is characterized by a fixed change in the mood of the patient; the patient being in excitement and elation. Confidence and optimism and a general feeling of well-being are common. Hypomania is extremely difficult to determine unless one already knows the general demeanour of the patient. In most cases, the patient may be mistaken, by the inexperienced, to be intoxicated. The exhibited behaviour must be seen to differ from the usual behaviour relative to the patient.

Talking becomes excessive and the patient becomes hyperactive in behaviour patterns. While he may be very active in speech and activity, the patient is easily distractible; and can change from one activity to

another without finishing the task already started. Repetitions and self-elevation are common. In some cases, the excitement and elation may resemble those found in the schizophrenics, but the difference is that the hypomaniac can easily establish rapport with his observers who very often join in the activity and change as the hypomaniac changes, while in schizophrenia, the elation and excitement of the patient do not attract his observer. The hypomaniac is foolhardy; they often over-drink, they spend money easily; they are productive in ideas but very often unable to follow them systematically. They often feel that there is no obstacle too great for them to overcome. They tend to be alert, and capable of noticing many things, and it is often due to this factor that they are so distractible both in speech and action. They tend to be extremely childish but very friendly; always attempting to manage the affairs of others and in this way they are very often a nuisance to others. They have no idea of their condition, since they feel elated and very fit. Any efforts that may appear to thwart or frustrate a maniac or a hypomaniac may generate not only anger and resentment but violence. Linford Rees gives very interesting illustrations of this condition; one of which is as follows:

A male patient is about 56 with an attack of hypomania. He gets up early in the morning with a great deal of energy, is very active, singing in the bath, talking, a great deal of slapping people on the back, making jokes and puns. He may start decorating his house, e.g. he may start painting the front door and before finishing he will start dismantling his car and then start digging the garden, at the same time talking with rapidity, to anyone nearby, giving advice and often interfering with their affairs. He feels very fit, wants to be doing everything at once and is readily distracted by external stimulus. He will tend to go off buying things, things that he does not need or cannot afford; he may change his car unnecessarily or buy new outfits of clothes. He is excessively generous, giving away money by cheques that cannot be met. If anybody thwarts him he will get angry, even violent. He may go off to the local pub and drink excessively, start buying everyone drinks, incessantly talking and making puns. He makes rash promises to do things for people and feels that nothing is impossible for him to achieve. Such a state

of over-activity and drive continues through the day and until the early morning, as he regards going to sleep as a waste of time.

PSYCHIATRY

Psychiatry is the branch of medicine which deals with the diagnosis, treatment and prevention of mental abnormalities and disorders. It deals with illnesses which affect a person's mental behaviour, i.e. his feelings, thinking, and his social relationships.

There are four main branches of psychiatry.

1. Child psychiatry deals with psychiatric problems of children.
2. Psycho geriatrics is psychiatry of old age.
3. Forensic psychiatry deals with medico-legal aspects.
4. Social psychiatry deals with all problems of human ecology and epidemiology.

Psychiatry has been defined as the only medical specialty which focuses on no single part of the human body.

PSYCHIATRIST

A psychiatrist is a physician who is specially trained in the diagnosis and treatment of psychiatric illness. Preferably he should have a post graduate degree in medicine, such as an M.D., before he specializes in this branch of learning.

PSYCHOPATH OR SOCIOPATH

In most of legal systems, psychopathy is not classified as an illness; it merely implies diminished responsibility rather than full exculpation. Psychopaths include people exhibiting temporary mental disturbance, feeble-mindedness and other pathological mental condition. The psychiatrist's definition of a psychopath is that he lacks social responsibility, and general consideration for others. The psychopath is characterized by antisocial mode of conduct which may range from inefficiency, lack of interest in any form of occupation to pathological lying, swindling, alcoholism, drug addiction, sexual offences and violence with little or no self-control.

Strictly speaking, the term does not refer to intellectual defects psychosis, neurosis, or even schizophrenics, but only the antisocial and delinquent.

The psychopath can be identified by his immaturity, self-centeredness, little or no regard for rights or convenience of others, the desire for immediate almost spontaneous gratification of his frequent and uninhibited desires, and quick resort to use of violence when frustrated, and lack of conscience or sense of guilt. Psychopathic disorders are disorders of personality whether there is subnormal intelligence or not. The sociological definition is that a psychopath is a person who from an early age shows abnormality of behaviour of antisocial nature with a tendency to act on impulse to satisfy the immediate desires without reference to the consequences of his actions.

Studies have tended to show that personality traits are, to some extent, determined by heredity but that the environment may largely control the expression of the personality disposition.

Psychopaths can be extremely dangerous because of their greater disregard for other people's welfare; and these behaviour lead to violence and forcible rapes.

PSYCHOSOMATIC

This term refers to the influence of psychological factors in the production and manifestation of physical disorders.

SOMATOPSYCHIC

This term is used to refer to the effects of a physical disease or disorders on a person's state and behaviour.

SCHIZOPHRENIA

Schizophrenia refers to all conditions or illnesses, in all age groups, which are characterized from the onset by fundamental disturbance in personality, thinking, emotional life, behaviour, interests and social relationships.

The person tends to withdraw from his social environment and to show a general degeneration of personality system. The clinical traits include:

1. Withdrawal
2. Splitting
 - (a) Thought disorder
 - (b) Emotional disconnections
 - (c) Behaviour disconnections
3. Paranoid disposition.
4. Abnormalities of perception

People who suffer from these are what are commonly recognized as lunatics or insane persons.

(W. L. Linford Rees, *A short Textbook of Psychiatry*; The English University Press, Ltd. 1967)

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