

**ALCOHOL, CRIME**

**AND**

**JUDGEMENTS OF RESPONSIBILITY:**

**SENTENCING PRACTICE**

**IN**

**A MAGISTRATES' COURT**

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## ABSTRACT

Debate about the status of the intoxication excuse as a legal defence is rooted in lay theories, or common sense assumptions, about the effects of alcohol on rationality and intentionality. There has been less concern to clarify the controversial use of information about defendants' intoxication or alcoholism as a mitigating factor in sentencing.

A literature review leads to the conclusion that academic theories of alcohol-related crime are deterministic to an extent unsupported by the empirical research. Alcohol expectancy theory is identified as a perspective which may illuminate the alcohol-crime relationship without denying intentionality in offending behaviour. It is suggested that the alcohol expectancies comprise a set of lay theories about the effects of alcohol on mood and behaviour; that these may provide the bases for techniques of neutralisation and rationalisation which facilitate offending; and that such techniques may be adapted in courtroom mitigation.

An empirical study of a magistrates' court examines the use of information about defendants' intoxication or alcoholism in sentencing decision making. Such information is found to facilitate rapid information processing and provide rationales for sentencing decisions by appealing to lay theories about alcohol's effects on mood and behaviour, and its role in crime causation. However, mitigation invoking intoxication or alcoholism are constrained by factors concerning types of offence and offender, and the availability of alternative explanations of crime.

The study compares theories of crime and criminal justice held by magistrates and probation officers. Discrepancies are identified between these lay and professional perspectives which obstruct the sentencing decision making process.

It is concluded that mitigations invoking intoxication or alcoholism are uniquely flexible in constructing judgements of criminal responsibility. The general applicability of the analysis of sentencing decision making may be constrained by factors specific to the court studied.

TABLE OF CONTENTS

	Page
List of Tables.....	8
List of Abbreviations.....	9
Acknowledgements.....	10
 <b>CHAPTER ONE:</b>	
<b>THE INTOXICATION EXCUSE: THE PROBLEM &amp; THE PURSUIT OF UNDERSTANDING.....</b>	
<b>13</b>	
 The Problem.....	
13	
The legal dilemma.....	13
The intoxication excuse in mitigation.....	20
The Pursuit of Understanding.....	23
 <b>CHAPTER TWO:</b>	
<b>ACADEMIC, LAY AND PROFESSIONAL THEORIES OF DEVIANCE AND RESPONSIBILITY.....</b>	
<b>26</b>	
 Academic Theories of Intoxication and Alcoholism.....	
26	
Characteristics of academic theories.....	26
Academic theories and decision making.....	37
A return to common sense?.....	43
Lay Theories of Deviance and Justice.....	45
Characteristics of lay theories.....	45
Lay theories and decision making.....	56
Lay and academic theories: a comparison.....	60
Professional Theories.....	64
Characteristics of professional theories.....	64
Professional theories and decision making.....	70
Professional and academic theories: a comparison.....	72
Professional and lay theories: a comparison.....	77
Conclusions.....	81
 <b>CHAPTER THREE:</b>	
<b>RESPONSIBILITY, CHOICE AND ACADEMIC THEORIES OF ALCOHOL-RELATED CRIME.....</b>	
<b>83</b>	
 The Alcohol-Crime Association.....	
83	
Offenders' Theories.....	87
Overview.....	87
The Appeal to Common Sense.....	96
Summary.....	99
Dispositional Theories.....	99
Overview.....	99
Undersocialisation.....	104
Summary.....	108
Situational Theories.....	109
Overview.....	109
Symbolic Interactionism.....	111
Summary.....	116
Substance Focused Theories.....	116
Overview.....	116
1. Chronic inebriation: alcoholism.....	118

2. Acute intoxication: disinhibition.....	123
Summary.....	127
Conclusions.....	128

**CHAPTER FOUR:**

**LAY THEORIES AND JUDGEMENTS OF RESPONSIBILITY:**

**NEUTRALISATION AND RATIONALISATION..... 130**

Alcohol Expectancies and Lay Theories: A Comparison.....	130
Definitions.....	130
Characteristics.....	131
Alcohol expectancies and decision making.....	138
Summary.....	139
Neutralisation.....	140
Pharmacological effects.....	141
Culture and moral judgements.....	147
Drinking situations and moral decisions.....	150
Techniques of neutralisation.....	154
Summary.....	160
Rationalisation.....	160
Availability.....	162
Acceptability.....	165
Alternatives.....	167
Behaviour and self-image.....	169
Summary.....	172
Conclusions.....	173

**CHAPTER FIVE:**

**LAY THEORIES AND JUDGEMENTS OF RESPONSIBILITY:**

**MITIGATION..... 174**

Mitigation: The Appeal to Lay Theories.....	174
Types of accounts.....	176
Characteristics of accounts.....	178
Summary.....	188
Mitigation: Special Aspects.....	189
Summary.....	193
Conclusions.....	193

**CHAPTER SIX:**

**THE EMPIRICAL STUDY: RESEARCH METHODOLOGY..... 195**

Studying Theory in Practice.....	195
The Study.....	200
Courtroom observation.....	201
Court file survey.....	208
Interviews with magistrates and probation officers..	209
Post-sentence interviews.....	214

**CHAPTER SEVEN:**

**IN THE COURTROOM: SITUATIONAL INFLUENCES ON SENTENCING... 217**

Sentencing in City Court.....	217
The Courthouse.....	224
Role Relationships.....	230
Relationships between court personnel.....	233

Relationships between court personnel and the public.....	240
Custodial sentencing.....	247
Composition of the bench of the day.....	248
Mitigation.....	248
Social Enquiry Reports.....	249
"Outsider" status.....	249
Conclusions.....	258

**CHAPTER EIGHT:**

**SENTENCING DECISION MAKING: GOAL STRUCTURE AND PROCESS... 260**

Goal Structure.....	260
The prescriptive level.....	260
The local level.....	263
The individual level.....	272
Summary.....	280
Process.....	282
Structured decision making.....	282
The pursuit of the fullest information.....	284
The expression of opinion.....	289
Sentencing rationales.....	293
Summary.....	297
Conclusions.....	298

**CHAPTER NINE:**

**SENTENCING DECISION MAKING: SIMPLE SCHEMATA, OFFENDER CHARACTERISATIONS AND THE INTOXICATION EXCUSE..... 300**

The Resort to Simplification.....	300
Simple Schemata.....	303
Offender Characterisations.....	308
Young adult offenders:	
the vulnerable and the undisciplined.....	309
21-25 year olds: the independent and the needy.....	319
"Tragic" cases.....	324
"Sick" offenders.....	327
Summary.....	332
Conclusions.....	334

**CHAPTER TEN:**

**MITIGATION: MAKING THE MOST OF THE INTOXICATION EXCUSE... 336**

Impression Management.....	336
Enhancement of identity.....	336
Conflict of identity.....	341
Variation by Type of Offence.....	344
Excess alcohol.....	345
Violence.....	348
Dishonesty.....	351
Variation by Type of Offender.....	354
The character reference.....	354
Persuasive problems.....	357
Summary.....	364
Conclusions.....	366



**CHAPTER ELEVEN:**

**LAY AND PROFESSIONAL THEORIES:**

**MEETING OF MINDS OR MARRIAGE OF INCOMPATIBLES?.....367**

Theories of Intoxicated Crime and Responsibility.....367  
    Principles of intoxicated responsibility.....367  
    Theories of alcohol-related crime.....377  
Social Enquiry Reports.....391  
Probation.....397  
Summary.....407  
Conclusions.....414

**CHAPTER TWELVE:**

**CONCLUSIONS.....416**

Intoxication: Our Favourite Excuse.....416  
Sentencing: Process and Paralysis.....417  
Calling in the Professionals.....422

Appendix A: Interview schedule: magistrates.....427  
Appendix B: Interview schedule: probation officers.....429  
Appendix C: Interview schedule: post-sentence interviews.431  
Bibliography.....433

LIST OF TABLES

Page

**Table 1:**

Sentences to immediate custody for  
indictable offences as a proportion  
of total for sentence in City magistrates'  
court, compared with all magistrates' courts  
in England and Wales.....218

**Table 2:**

Sentences other than immediate custody for  
indictable offences in respect of offenders  
aged 17 and over in City magistrates' court.....222

### LIST OF ABBREVIATIONS

<b>ABH</b>	-	assault occasioning actual bodily harm
<b>CPS</b>	-	Crown prosecution solicitor
<b>Def</b>	-	Defendant
<b>DS</b>	-	Defence solicitor
<b>GBH</b>	-	Assault occasioning grievous bodily harm
<b>JR</b>	-	Judith Rungay
<b>M</b>	-	Magistrate
<b>PO</b>	-	Probation officer
<b>SER</b>	-	Social enquiry report

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"Your trouble, Judith, is that you look at all this information about an offence and think: 'The truth must be in there somewhere'. Whereas the rest of us, we just look at it and think: 'Oh, well, that'll do to be getting along with'."

(Probation officer, City magistrates' court)

**CHAPTER ONE**  
**THE INTOXICATION EXCUSE:**  
**THE PROBLEM AND THE PURSUIT OF UNDERSTANDING**

This chapter examines the legal dilemma over the intoxication excuse, suggesting that it is based on unquestioned, but questionable, common sense assumptions about the effects of alcohol on the human mind and will. It considers a theoretical and empirical approach to clarification of, arguably, the most common motive for invoking the intoxication excuse: to achieve mitigation of punishment for a deviant act.

**THE PROBLEM**

**The legal dilemma**

The legal attribution of criminal responsibility serves a vital social function in securing and maintaining order (Schafer 1968). The law sets standards of behaviour to which most citizens manage to conform for most of the time because they are minimum, and not maximum standards (Shiner 1990). Judgements of legal responsibility assume the freedom of will (Fitzmaurice and Pease 1986). While there may be limits to the freedom of the will, the law requires that such freedom as the individual has in any situation will be exercised in accordance with its standards (Schafer 1968).

The law is concerned primarily with the regulation of external behaviour, and not of internal states of moral integrity (Shaver 1985). Nor does the law seek to punish those who break the law involuntarily.

"If order requires that conduct be regulated, justice requires that sanctions be applied only to those who truly deserve them."

(Shaver 1985, p.68)

The just application of sanctions, therefore, requires that deliberate law breakers are distinguished from those whose offences are caused by some interference with the freedom of

will. To achieve this, however, the law must address itself to internal states after all, and consider individual intentions and capacities for exercising free will. This is the basic legal question of *mens rea*: the intention to commit a prohibited act, or recklessness as to the likelihood of a prohibited outcome of an act (Smith and Hogan 1982; Williams 1978).

"The fundamental substantive question that the criminal law properly faces here is whether, in a particular case, the defendant's capacity to act rationally in regard to the criminal significance of the act has been so impaired as to have rendered him nonresponsible at the time of the act."

(Fingarette and Hasse 1979, p.193)

There are two aspects to the judgement of criminal responsibility: the legal and the moral. The legal aspect concerns whether the individual can be said to have acted with sufficient rationality and intentionality that he may justifiably be held responsible for his act. The moral aspect concerns the quality of the response to the act.

Judgements of legal responsibility are intrinsically connected with their practical implications for further judgements about punishment, recompense and rehabilitation. The anticipation of these consequences shape the initial judgements of legal responsibility themselves (Feinberg 1970; Lloyd-Bostock 1983). Decisions about the practical consequences of the judgement rest on considerations, not of legal, but of moral responsibility (Feinberg 1970). Thus, the moral judgement of the offender mediates the response to the legal judgement, by implying censure and retribution if the offence is seen to be committed by choice, but mercy or treatment if the cause of the offence itself is seen to be beyond the person's control (Freidson 1966).

The intoxication excuse affects both aspects of judgement. Firstly, it requires judges to be satisfied that the capacity for rational and intentional behaviour has not been destroyed



by intoxication. Secondly, it requires a decision about the appropriate response to the crime. Should the moral degeneracy of the intoxicated state attract greater punishment? Should the impairment to powers of moral reasoning wrought by intoxication mitigate punishment? Should rehabilitative treatment inculcate greater responsibility in the use of intoxicants?

The criminal law has primarily been preoccupied with the first aspect: the legal grounds for holding individuals responsible for their intoxicated crimes. The extent of its preoccupation with this question is surprising, given that it is a basic rule of criminal law that intoxication does not excuse criminal behaviour (Mosher 1981). The reason for this rule is essentially pragmatic. It is feared that acceptance of the claims of defendants to have been incapable of intentional action through intoxication would bring about wholesale acquittals on these grounds because of the difficulty of disproving such assertions. This would conflict with the public's need for the protection of the law against the depredations of intoxicated law breakers (Mitchell 1988; Mosher 1981; Shiner 1990). In the public interest, therefore, the intoxication excuse is prohibited. Thus, the judgement of legal responsibility for intoxicated crime is shaped by the anticipated disastrous consequences of allowing defendants unrestricted access to the intoxication excuse.

"Voluntary or self-induced intoxication not amounting to insanity is not generally a defence even where it negatives the mental element. The reason why the courts have been fearful of giving the defence too wide a scope is the possibility that those who inflict serious injury to the person or damage to property, or who bring about dangerous situations, would escape the sanctions of the criminal law by relying on a defence of intoxication."

(Criminal Law Revision Committee 1980, p.111)

Nevertheless, courts have repeatedly given serious consideration to defendants' claims to have been prevented

from rational and intentional action at the time of their offence through intoxication. Academic legal argument and judicial decisions have accepted that intoxication can cause automatism (Mitchell 1988), insanity (Howard and Clark 1985; Mitchell 1988), violence (Mackay 1990; Mitchell 1988) and can negate murderous intention (Kittrie 1971). Contrary to the expectation of the basic rule asserting the invalidity of the intoxication excuse,

"[c]ourt decisions and review articles assert the legal relevance of intoxication with little critical comment and even less hard evidence."

(Mitchell 1990, p.79)

The cause of this sometimes blatant disregard of the basic rule lies in the apparent injustice of denying defendants' rights to have their state of mind at the time of the offence taken into account.

"[T]he present law requires an intoxicated person to be convicted of an offence which as it is defined by statute he has not been proved to have committed, because there was no proof that he had the necessary mental element."

(Criminal Law Revision Committee 1980, p.111)

Shiner (1990) observes that the continuing tension between the public interest and defendants' rights has produced no less than seven different legal strategies for dealing with the problem. It is unnecessary here to examine these different solutions in detail, but only to remark on the lengths to which the law has gone in the attempt to deal with the problem. However, it is ironic that all of the strategies, save one, involve further rationalisations for the denial of defendants' rights in order to pursue the public interest (Shiner 1990). Two examples show how this is achieved:-

a) The Butler Committee on Mentally Abnormal Offenders (1975) recommended the creation of a new offence, proposing that a defendant achieving an acquittal on a main charge through the

intoxication excuse would automatically be convicted of "dangerous intoxication". The Committee reasoned:

"There would be no injustice to the defendant in providing for the possibility of conviction of dangerous intoxication as an alternative charge, because the evidence of intoxication would have been produced by him at the trial in answer to the main charge."

(Committee on Mentally Abnormal Offenders 1975, p.237)

There is a curious optimism in the assumption that defendants would see no injustice in securing their own conviction for an offence by proffering the evidence for acquittal on another. Furthermore, it is assumed that courts would be able to distinguish between behaviour caused by the will of the defendant and behaviour caused by intoxication even when the observable action is essentially the same. It is also apparently assumed that evidence of intoxication, whilst negating the criminal intent of the defendant, establishes the cause of the offending behaviour.

b) The Criminal Law Revision Committee (1980) recommended that self-induced intoxication be defined as a form of recklessness. This Committee appears to have found it an attraction of their proposal that conviction for some offence on grounds of intoxication would follow even in cases which would lead to outright acquittal in cases where intoxication was not an issue.

"For example, a householder who mistakenly believes that a police officer, who has entered his house to look around on finding the front door open, is a burglar about to attack him and strikes him down in self-defence would probably be acquitted on the indictment [for murder]. But if his mistaken belief was due to voluntary intoxication the effect of our proposals would be that he would be acquitted of murder but convicted of manslaughter."

(Criminal Law Revision Committee 1980, p.117)

This proposal has large implications for the freedom of individuals to become intoxicated in their own homes, and, in such a condition, to defend themselves against intruders, who may subsequently turn out to be zealous policemen. Of particular interest here, however, is the apparent assumption that intoxication can induce a mistaken belief which in a sober individual appears to be an unfortunate but understandable misinterpretation of the visible evidence. Why should such a mistaken belief be attributed to the effects of alcohol?

The reasoning of these two committees demonstrates the real power of the intoxication excuse to impede legal judgements of responsibility. The intoxication excuse appeals to a common sense presumption that alcohol diminishes the capacity for rational, responsible behaviour. This underlying presumption has bedevilled legal arguments over the intoxication excuse, and yet has been so much a part of "common knowledge" about alcohol that its veracity has largely been unchallenged. Mitchell complains of legal argument about intoxication:

"The legal logic of the doctrine is frequently attacked but its factual premises are seldom questioned...As a consequence, both judicial pronouncements and learned commentaries are populated by imaginary creatures - 'blind drunks' who can see, 'dead drunks' who move openly among the living, intoxicated 'automatons' who perform complex, purposeful tasks and 'mad drunks' who knowingly focus their aggression on specific targets."

(Mitchell 1988, p.77)

Common sense presumptions about alcohol's effects on the human will have not only underpinned lawyers' unease about the refusal to consider intoxicated offenders' mental states, but have also provided the basis of rationalisations for this refusal. For example, the treatment of intoxication as a special form of recklessness has been justified by the argument that a defendant's knowledge of the risks incurred by intoxication is demonstrated by the fact that it is "common

knowledge" that alcohol precipitates aggressive behaviour (Mackay 1990). The Criminal Law Revision Committee made the following observation about intoxicated aggression:

"The drunken man who kicks and punches a publican who tries to eject him from his establishment may not know what he is doing; and even if he has enough understanding to appreciate that he is punching and kicking out, he may not be able to appreciate that he is exposing the publican to risk of injury."

(Criminal Law Revision Committee 1980, p.112)

No evidence is cited to substantiate this claim, which is expressed as a statement of the obvious. Nevertheless, from this unquestioned assertion about the effects of alcohol on self-awareness and appreciation of consequences, the Committee was forced to generate complex legal arguments in order to justify the conviction of intoxicated offenders.

Legal thinking reflects the prevalent social and moral attitudes of its time.

"Legal doctrine on intoxication cannot be understood without reference to the political, social and ideological context in which judges render their decisions, despite the fact that the decisions themselves are almost totally devoid of background information."

(Mitchell 1990, p.4)

Part of this context concerns societal disapproval of drunken behaviour. Notwithstanding the common belief in alcohol's power to deprive the drinker of rational and moral faculties, the unrestrained behaviour of the intoxicated individual offends societal values of self-discipline and decorum. Thus, the Criminal Law Revision Committee was unperturbed by the prospect of convicting intoxicated offenders in cases in which their sober counterparts would be acquitted, taking the view:

"What calls for punishment is getting intoxicated and when in that condition behaving in a way which

society cannot, and should not, tolerate."

(Criminal Law Revision Committee 1980, p.112)

Mackay (1990) observes that such moral outrage has "tainted" judicial decision making in cases in which the excuse proffered is one of general validity, but in which evidence of intoxication is produced. Despite acceptance of the intoxication excuse by courts in some cases, in others defences have failed when evidence of intoxication is produced. Defences of provocation, mistake, duress, insanity and automatism have been rejected, despite their foundations on evidence of these conditions which would generally satisfy the courts in cases of sober crime. Mackay argues that "the courts have over-zealously allowed their attitude towards self-induced incapacity to taint and infect alternative methods of exculpation which might be otherwise open to the accused" (1990, p.37). Thus, moral judgements are not suspended until legal responsibility is established, but themselves inform the determination of legal responsibility.

Legal thinking on the intoxication excuse, therefore, has been based upon assumptions about the effects of alcohol on the human mind and will, drawn from the stockpile of "common knowledge". The law's interpretation has also been influenced by societal disapproval and censure of intoxication, and the perceived need for the full armoury of the law to be weighed against the depravity of the intoxicated offender.

#### **The intoxication excuse in mitigation**

The legal status of the intoxication excuse has dominated debate, to the neglect of two further issues.

Firstly, the basic rule of denying the intoxication excuse as a defence does not illuminate fully its proper treatment. The application of that basic rule, and the sheer weight of numbers of defendants convicted of, or admitting to their intoxicated crimes suggests that it is in the realm of

sentencing that the intoxication excuse is most commonly invoked. The judgements of culpability which inform decisions about consequent punishment have less to do with the strictly legal attribution of responsibility than with the moral appraisal of offenders and their actions.

Thomas informs us:

"The overwhelming majority of offences which come before criminal courts arise from factual situations which conform to a recurring pattern and which can be categorized by reference to particular elements. This recurring pattern of common factual situations provides a basis for a corresponding pattern of sentences, which can be adjusted to accord with the detailed variations of particular cases. The conventional relationships between frequently encountered factual situations and corresponding levels of sentence constitute the foundations of the tariff."

(Thomas 1979, p.30)

Circumstances involving alcohol are possibly the most "frequently encountered factual situations" in which offenders claim to commit their offences. Indeed, we sometimes appear to become inured to the constant repetition of this information. So, for example, Shapland (1981) presents without comment the finding that intoxication was the most frequently mentioned item of information proffered in mitigation speeches. Yet the law is somewhat reticent as to the implications of this information for sentencing decisions. Thomas merely observes that "[d]runkenness, while having little or no independent mitigating effect, may add some marginal weight to other more substantial mitigating factors" (1979, p.209). But the reasons why this may be so are not clear. Nor is the extraordinary persistence of the intoxication excuse in mitigation explained by this directive. Thomas further observes that "[t]he victim of alcoholism will normally be considered a candidate for individualized treatment, if there are any reasonable prospects of success" (1979, p.210). Thomas cites cases in which probation orders have been substituted for substantial

terms of imprisonment on these grounds. However, Thomas also identifies alcoholism as a basis upon which "the sentencer may impose imprisonment rather than an individualized measure in order to provide an opportunity for treatment, and he may ignore mitigating factors in determining the length of the sentence so as to ensure that the period of confinement is sufficiently long for treatment to take place" (1979, p.44). Thomas does not remark on these paradoxical sentencing paradigms, nor explain how sentencers are to distinguish between an alcoholic ripe for probation and one requiring unmitigated imprisonment for the purpose of treatment.

This brings us to the second neglected issue: that sentencing decisions in cases involving intoxication may be as vulnerable to the vagaries of common sense reasoning about alcohol's effects on the human will as judgements of strict legal responsibility. Perhaps, given the relative lack of guidance, such decisions may be even more vulnerable. In an effort to develop rational guidelines for sentencing intoxicated offenders, Felker instead graphically demonstrates the curious assumptions that may underpin judgements of culpability for intoxicated deviance.

"[I]ntoxication should be available as a mitigating factor to the extent that intoxication impaired the offenders *[sic]* capacity to appreciate the wrongfulness of his conduct at the time of the crime. However, if the offender's intoxication has repeatedly resulted in criminal conduct to the extent that defendant's *[sic]* decision to become drunk is equivalent to a decision to commit crime, then the offender's intoxication can be an aggravating factor unless the offender is otherwise a good candidate for rehabilitation."

(Felker 1990, p.3)

How are we to identify, or distinguish between these different consequences of drinking? How might we recognise "a good candidate for rehabilitation" from an untreatable miscreant? Such qualitative considerations are not necessarily self-evident from the observable offender or his behaviour.



Moreover, how can we be sure that the changes in the offender's will which Felker postulates are truly caused by intoxication?

#### **THE PURSUIT OF UNDERSTANDING**

This thesis is based upon a particular premise. Since it would appear that the power of common sense wisdom confounds legal direction on the intoxication excuse, then it is necessary to understand that very common sense wisdom itself if we hope to influence the judgements of responsibility which spring from it. This thesis, therefore, is a theoretical and empirical exploration of the foundations of the intoxication excuse in mitigation and the mechanisms by which an appeal to intoxication or alcoholism may influence the judgement of an offender's culpability, and thereby, the sentencing decision.

In the theoretical exploration, 3 types of theory which may be brought to bear on the judgement of intoxicated responsibility are identified and examined: academic, lay and professional theories of deviance and responsibility. Answers are sought to the question why neither the plethora of academic research and theory on the subject of alcohol, nor the accumulation of experience by professionals involved in the treatment of drinking problems, have resolved the legal dilemma over intoxicated responsibility. The relationships between lay theory, or common sense wisdom, and judgements of responsibility are also explored. Lay theories about alcohol's effects on rationality, intentionality and behaviour are identified as powerful tools in the explanation of crime: both by offenders themselves in the construction of neutralisations and rationalisations for their deviance; and by those who pass moral and legal judgement upon their behaviour. Finally, the process by which mitigation achieves its purpose of reducing punishment through the appeal to these very lay theories is explored.

The empirical study involves observations of sentencing hearings in a magistrates' court, supported by interviews with magistrates, those lay theorists upon whose judgements of culpability rests the punishment of many offenders, and with probation officers, who bring their professional theories to bear on the attempt to influence sentencing decisions. The study exposes the richness of the intoxication excuse in mitigation and considers its variety, complexity and nuances in the context of the total sentencing exercise.

Certain points of detail should be made clear from the outset. Firstly, the thesis concerns itself only with male offenders. This limitation follows from several theoretical and practical observations: there is mounting evidence of gender differences in drinking attitudes and behaviour (e.g. Bardo and Risner 1985; Blane 1979; Cappell and Greeley 1989; Greeley, McCready and Theisen 1980; Harford 1983; Marsh, Dobbs and White 1986; Wechsler 1979; Wilsnack and Wilsnack 1979; Wilson 1987); there is controversial evidence of gender differences in crime (e.g. Heidensohn 1985; Morris 1987); there is evidence of gender differences in the courtroom constructions of crime and sentencing decisions (e.g. Allen 1987; Eaton 1984; Edwards 1984); and there were very few female defendants relevant to the nature of the empirical enquiry. Since the interests of particular groups are not served by implying that conclusions based on data from which they are excluded may be extended to them, offenders are explicitly masculine in both the theoretical and empirical discussion. In the latter, however, care has been taken to refer to other participants in the courtroom process in terms which are neutral as to gender or, indeed, to any characteristic which might result in personal identification. In particular, the term "magistrate" is used not only to refer to any member of the bench, but also to the particular magistrate chairing it on any occasion, thus avoiding both the gender specific "chairman" or "chairwoman" and the unfortunately inanimate "chair".

Secondly, the theoretical discussion was initially hampered by the lack of a formal term for the academic study of alcohol. Surprisingly, given the plethora of multi-disciplinary research and theory in the topic, the study of alcohol is not embraced by a generic title, as, for example, are the disciplines of criminology and gerontology. The variable use of phrases such as "alcoholism research" and "theories of intoxication" incurred the possibility of semantic and conceptual confusion. The issue has been resolved for the purposes of this thesis by the adoption of the title "academic alcohol theory" to denote the total enterprise of academic study of alcohol. "Alcohol-crime theory" has also been invoked to denote the study of the particular relationship between alcohol and crime, on occasions when alternative phraseology would be cumbersome. Contributory disciplines, such as medicine and psychology, are specified as appropriate.

Thirdly, considerable convolutions of phraseology have been avoided by the ungrammatical expedient of referring to "intoxicated crime". It has been pointed out to me that crime does not drink. However, the prospect of constantly repeating phrases such as "crimes committed after the offender had been drinking alcohol" throughout this thesis overcame my scruples. Furthermore, common phrases such as "crimes committed under the influence of alcohol", often imply precisely those effects of intoxication on behaviour which are at issue in this thesis. Finally, adoption of the phrase "intoxicated crime" suggested the equally ungrammatical, but graphic, "sober crime", which appeared to me to be infinitely preferable to "crimes committed when the offender had not been drinking alcohol". In short, while it is acknowledged that crime is neither intoxicated nor sober, on this occasion I have embraced a common sense approach to grammar.

**CHAPTER TWO**  
**ACADEMIC, LAY AND PROFESSIONAL THEORIES**  
**OF**  
**DEVIANCE AND RESPONSIBILITY**

This chapter compares academic, lay and professional theories of deviance and responsibility. The links between these theories and judgements of responsibility are explored. It is suggested that relationships between these different types of theory influence the forms that each ultimately take. In particular, the pervasiveness of lay assumptions and styles of reasoning is demonstrated.

**ACADEMIC THEORIES OF INTOXICATION AND ALCOHOLISM**

**Characteristics of academic theories**

Could the legal dilemma over intoxicated responsibility be resolved by an appeal to the "true facts" of the matter, established through academic research into the nature of intoxication and addiction? Academic theories seek to establish formal principles about the nature of, and relationships between, objects and events in the world, abstracted from knowledge derived from the application of scientific research methods. However, four characteristics of academic theories have a critical bearing on this attempt to abstract and synthesise from concrete knowledge: the function of academic theories; their relationship to cultural beliefs and values; academic values; and the influence of academic conceptualisations themselves.

**1. Function**

The academic acquisition of knowledge about social phenomena rarely, if ever, reflects the academic pursuit of knowledge as an end in itself. Academic theories about social phenomena are often purposefully constructed and expressed in order to achieve desired goals. Thus, academic theories about intoxication and alcoholism seek to influence social policy to reflect more closely their wisdoms. Academic alcohol theory,

in this sense, is not simply an abstraction from factual observations, but a purposeful attempt to influence public opinion and policy. This does not imply that the sole purpose of academic theorising is the self-aggrandisement of the theoreticians - an accusation which has frequently been levelled at the medical profession in particular (Fingarette and Hasse 1979; Heather and Robinson 1985; Kittrie 1971; Peele 1990; Pfuhl 1980). This accusation implies that academic theorists may have cynical regard for their own theories, subverting the search for "truth" into the advancement of self-interest. Gusfield cautions against such a view.

"It is not that Science is 'reduced' to Rhetoric and thus rendered corrupt and useless. It is rather that the rhetorical component is unavoidable if the work is to have a theoretical or a policy relevance."

(Gusfield 1981, p.107)

Academic theoreticians can influence a lay audience by persuasive communication. Five examples of such persuasive techniques may be given:-

**a) Appeal to curiosity**

Moscovici and Hewstone (1983) point out that lay people are avid consumers of academic output, albeit in forms adapted for that audience.

"This public is a consumer of discovered scientific notions, an assiduous reader of popular magazines or books and a passionate follower of scientific news. Such knowledge is gained from contacts with physicians, psychologists and technologists, or information is gleaned from politicians' speeches about economic and social problems."

(Moscovici and Hewstone 1983, p.108)

**b) Appeal to certainty**

The authority of scientific explanation lies in its confident public expression. The fruits of academic study are presented confidently to a lay audience, often stripped of the

uncertainties recognised by academics themselves. Gusfield advises:

"In the effort to persuade skeptical, recalcitrant, and indifferent people to a way of action involving cost, inconvenience, and displeasure, the appearance of certainty is an essential rhetorical device."

(Gusfield 1981, p.79)

Thus, Gusfield explains:

"[A]s the raw data of knowledge about drinking-driving are processed through fictions of scientific research, a step is taken to convert ambiguity into certainty"

(Gusfield 1981, p.78)

Such a device may convert public ambivalence into harder attitudes, favouring a particular view. Moscovici and Hewstone remark that "lay people tend to overestimate the certainty and consistency of science" (1983, p.113).

**c) Appeal to self-interest.**

Academic theory may provide perspectives which serve individual interests. In particular, theories which have a bearing on the attribution of responsibility and blame may offer useful defences against harsh judgements. Academic theories which explain intoxication as "time out" from conventional moral standards of behaviour (Macandrew and Edgerton 1969), or alcoholism as "disease" (Jellinek 1960) exemplify the potential appeal of academic theories to self-interest.

However, it is too simplistic to "blame" academic theories entirely for generating the intoxication excuse. Academic research does not engage only in transforming common sense wisdom, but also in ordering its established stockpile of assumptions (Moscovici and Hewstone 1983). The intoxication excuse itself springs from the well of lay wisdom about the effects of alcohol. Thus, for example, Macandrew and Edgerton

(1969) developed their "time out" theory of intoxication from the accumulation of ethnographic observations of drinking behaviour in natural settings. Their academic theory, however, developed and legitimised the language for the expression of the excuse.

#### **d) Appeal to social conscience**

A notable example of this is the success of the disease theory of alcoholism in humanising traditionally harsh social responses to alcoholics. Despite their criticism of "medical imperialism", Heather and Robertson acknowledge, albeit perhaps grudgingly:

"[T]here can be no doubt that the effort to have alcoholism recognised as a disease has succeeded in keeping many alcoholics out of prison and has indisputably added to their welfare compared with the situation before this effort began."

(Heather and Robinson 1985, p.122)

Once the conceptual connection has been made between alcoholism and disease, it is very difficult to sustain entirely punitive attitudes towards alcoholics, even though complete exoneration of their intoxicated misdeeds is unlikely (Critchlow 1985; Orcutt 1976).

#### **e) Appeal to metaphor**

Schneider remarks:

"Because physicians represent the dominant healing profession in most industrialized societies, they have control over the use of the labels 'sickness', 'illness', and 'disease', even if they are sometimes unable to treat those conditions effectively."

(Schneider 1978, p.361)

Similarly, Scully and Marolla (1984) attribute the pervasive assumption in academic literature that rapists are sick to the domination of the field by the psychiatric and medical disciplines. Such allegations overlook the appeal of such conceptualisations to popular figures of speech and metaphors

in which "sickness" is invoked to describe the most unattractive, distasteful and frightening aspects of social life. Wiseman exemplifies the pervasive imagery of sickness.

"[T]o social workers, psychiatrists, psychologists, and many sociologists, Skid Row is seen as a prime manifestation of social pathology. Like a cancer embedded in healthy tissue, Skid Row is viewed as a potential danger to an entire city. The physical deterioration of the buildings and resultant lowering of property values of adjacent areas is but one aspect of this threat. The social and psychological deterioration of its residents, inevitably resulting in added cost to the city for police surveillance and humane care, is the other."

(Wiseman 1970, p.5)

## **2. Cultural beliefs and attitudes**

Academic theories are embedded in the culture in which they are formed. Gusfield remarks that it has been, mistakenly, "typical of much social and political commentary to conceive of scientific work as standing outside the culture and society of its time" (1981, p.52).

Heather and Robinson (1985) trace the emergence of disease theory in the late 18th century to a period of substantive shifts in traditional assumptions about individual free will and moral responsibility, generated by the discoveries in the developing physical sciences of laws governing events in the natural world. Recognition that human behaviour might itself be subject to influences beyond the wilful control of the individual had consequential implications for attitudes towards deviant behaviour such as intoxication and crime. Of parallel Canadian developments, Ajzenstadt and Burtch observe:

"The central function of medical discourse in the process of shaping public and official attitudes towards alcohol consumption is rooted in broad transformations and developments in the notions of responsibility, causes of criminal and deviant behaviors, and relations between the individual and society."

(Ajzenstadt and Burtch 1990, p.127)



Contemporary interest in the application of economic theory to human behaviour has led to the emergence of a "rational choice" perspective which has guided theoretical developments in diverse disciplines such as criminology (Cornish and Clarke 1986), academic alcohol theory (Fingarette 1988), political science (McClellan 1987) and philosophy (Hollis 1987). Economists themselves have extended the range of their discipline into the theoretical examination of crime (Lattimore and Witte 1986; Phillips and Votey 1981). Becker, celebrating the new economic paradigm, asserts that it

"is applicable to all human behaviour, be it behaviour involving money prices or imputed shadow prices, repeated or infrequent decisions, large or minor decisions, emotional or mechanical ends, rich or poor persons, men or women, adults or children, brilliant or stupid persons, businessmen or politicians, teachers or students."

(Becker 1976, p.8)

Academic alcohol theory therefore, derives its conceptual and attitudinal framework from the contemporary perspectives of the society within which it develops. Furthermore, fundamental cultural beliefs and attitudes both shape the interpretation of the "facts", and determine the kinds of facts deemed to be relevant to an understanding of a phenomenon. Scott argues that

"what may appear to be statements of fact from our perspective are in reality expressions of core values that are woven into the basic assumptive world of our culture."

(Scott 1970, p.269)

For example, Moscovici and Hewstone argue that the human tendency to attribute the causes of events to people rather than to situational influences derives from "a dominant cultural representation tainted by individualism" (1983, p.120). Thus, Gusfield (1981) observes that research into driving accidents has been guided by the basic assumption that

driving accidents are caused by incompetent drivers, rather than by unsafe cars or roads. He argues:

"such foci are *not* results of external, objective realities in any direct, compelling fashion but are deeply influenced by the social and cultural organization by which attention is directed down some avenues and away from others."

(Gusfield 1981, p.31)

Gusfield suggests the research emphasis is not simply due to an avaricious transport industry keen to evade responsibility for its costly failings, but reflects prevalent social beliefs about the causes of accidents. So guided, research collects data supportive to the underlying assumptions, whilst failing to perceive the relevance of alternative data to a different conceptual approach.

"Given a cognitive framework, certain data appear relevant while other material is implicitly ignored as irrelevant. Even the 'fact' of choice is not a matter of consciousness since the selectors are not aware of alternatives. The process is experienced as normal, natural, and self-evident. The factual world appears as unproblematic, certain, and devoid of ambiguity."

(Gusfield 1981, p.52)

Pernanen (1982) suggests that the finding of a rate of alcohol-involved homicides in Finland almost twice as high as that in Canada, could reflect more intensive documentation of alcohol involvement in Finland, springing from particular cultural beliefs and attitudes concerning alcohol.

Thus, developments in academic theory may both reflect and stimulate changes in broader belief systems, forging a reciprocal relationship between academic and lay thinking. In this sense, academic theory evolves in a dynamic relationship to shifts in cultural conceptualisations about the nature of social phenomena. Its assertions are not static statements of a fixed, objective "truth". Academic conceptualisations of

criminal responsibility have evolved within the basic conceptual and attitudinal premises of the society in which they are formulated.

"Responsibility will never be perfectly conceptualised or understood. However, its significance in the analysis of crime lies in the very fact that it is a relative matter. It is an ever changing formula. Crime does not change, but responsibility does."

(Schafer 1968, p.139)

Academic theories may themselves be founded on unquestioned common sense assumptions. Two examples may be given:-

**a) The single cause assumption**

This has been described as "the malevolence assumption", or the "tendency to see alcohol as blameworthy whenever it accompanies problematic behavior" (Hamilton and Collins 1982, p.254). The single cause assumption leads to neglect of the variable effects of alcohol itself, and of the multiplicity of situational factors influencing a single event. The discovery of alcohol involvement is assumed to provide a sufficient explanation of phenomena as diverse as traffic accidents (Gusfield 1981; Jacobs 1989) and domestic violence (Hamilton and Collins 1982). This assumption has encouraged theorists to postulate causative mechanisms directly linking alcohol to crime.

Such efforts derive ultimately from the intuitive "obviousness" of alcohol as an explanation for problematic behaviour. Other findings of strong associations between particular situational features and events have not inspired causal theoretical explanations because they do not appeal to common sense as plausible causal reasons for those outcomes. For example, the observation that the majority of homicides occur in the presence of onlookers (Luckenbill 1977) has not precipitated an extensive search in academic criminology for a causal link between audiences and homicide, despite evidence

from psychological experiments that audience presence has a significant effect on individual behaviour (Nisbett and Wilson 1977).

#### **b) The assumption of social rejection**

Academic theories have frequently sought to explain deviant lifestyles in terms of rejection from normal society, rather than of attraction to deviance, apparently on the assumption that no-one would willingly enter existences which to the outsider are characterised by filth, poverty, misery and danger. Thus, Wiseman observes that

"residence on Skid Row is seen as resulting from the 'push' of adverse conditions, whether economic, social or psychological, rather than any great 'pull' of attractiveness to the unattached man."

(Wiseman 1970, p.14)

Wallace similarly argues that the appropriate analysis of recruitment into skid row should concentrate on perception of the life-style as an option, participation in it, and consequent development of conformity to its ways. To the non-participant, such unforced entry into an abhorrent life-style may appear simply inconceivable.

"To the non-skid rower, the process appears to involve ever-increasing isolation from the larger society accompanied by ever-increasing deviance from its norms. From the point of view of the skid rower, on the other hand, the process is one of increasing participation in the life of the skid row community, and is accompanied by increasing conformity to its norms."

(Wallace 1965, p.164)

### **3. Academic values**

Academic theory and research may be directed by fundamental values of the academic discipline. For example, Jacobs (1989) attributes the dearth of scholarly interest in drunk driving to the lack of affinity between the subject matter and traditional criminological interests. Intoxicated drivers do

not conform to psychological notions of criminals as motivated by special personality characteristics. Nor do they appeal to sociological emphasis on class divisions in the production and treatment of crime. Furthermore, politically,

"drunk driving does not make a critical case for liberal or conservative criminologists. It does not further either the liberal explanation of crime as a consequence of maldistribution of wealth, poverty, and unemployment or the neoconservative explanation of crime as rational economic behavior. Even traditional conservatives who believe that the root cause of crime is moral dissoluteness might find drunk driving troubling because of societal ambivalence toward alcohol and alcohol problems."

(Jacobs 1989, p.xxi)

Lack of academic interest in drunk driving has led to failure to integrate research evidence of the extent of alcoholism among drunk drivers (Jacobs 1989; Stephan 1989) with the larger body of theory about the relationship between alcohol and crime. Theorists have neglected this evidence, partly through lack of interest in drunk driving and partly perhaps through recognition that alcoholic drivers evoke little public sympathy, or, therefore, support for the provision of treatment facilities for intoxicated offenders generally. Indeed, such evidence might stimulate demands for punishment, on the lines of Denney's assertion that "[t]here is no doubt that the continual carnage on the roads that is directly attributable to the drinking driver well justifies tougher laws and stronger enforcement" (1986, p.125).

#### **4. Academic conceptualisations**

Academic conceptualisations themselves influence the direction which research takes. For example, Miller and Welte (1986) and Pernanen (1982) criticise the emphasis on violent offences in theoretical explanations of intoxicated crime. In the study of the effects of alcohol on behaviour, this emphasis has encouraged concentration on the measurement of aggression (Pernanen 1982), with relative neglect of nonpharmacological

considerations such as the social context of alcohol use (Miller and Welte 1986).

Academic conceptualisations also influence the interpretation of research. Four examples may be given, of which disease theory provides three:-

a) Disease theory's assertion that loss of control over drinking is a defining characteristic of alcoholism (Jellinek 1960) has occasionally resulted in a search for "true" alcoholics which has excluded many chronic alcohol abusers despite blatant evidence of deterioration in their physical and psychological functioning. Thus, it has been suggested that the phenomenon of group drinking, characterised by the sharing of money and drink, signifies a crucial difference between skid row drinkers and "true" alcoholics, who would find it impossible to exert such self-control in the service of group norms (Rubington 1958; Wallace 1965). Despite Wallace's insight that "heavy drinking is a product of group behavior patterns rather than the result of individual cravings for alcohol" (1965, p.184), the opportunity to generate an alternative conceptualisation of alcoholism is missed. Belief in the loss of control criterion for alcoholism dictates that the majority of skid row drinkers are not "true" alcoholics.

b) The loss of control assumption also appears in Jackson's (1954) analysis of marital relationships involving alcoholic husbands. Observing that periods of sobriety recur over the course of the husband's alcoholic career, often in direct response to the wife's remonstrances, Jackson fails to perceive deliberate regulation of drinking, remarking instead: "The periods of sobriety also keep her family from facing the inability of the husband to control his drinking" (1954, p.61). Thus, loss of control is perceived in the face of evidence of control. The theoretical conceptualisation of alcoholism has diverted attention from the theoretically

irrelevant fact of cessation of drinking towards the theoretically salient fact of resumption.

c) Fajardo (1976) diagnoses wives of alcoholics who tolerate their husband's drinking as having contracted the "twin malady of co-alcoholism". Instead of the cumulative psychological effects of failure to change their husbands' behaviour, Fajardo perceives "a person who shares the attitudinal problems of an alcoholic", apparently influenced by the connotations of disease with infection and contagion.

d) Medical conceptualisations, whilst not necessarily asserting the presence of clinical disease as an explanation for phenomena such as alcoholism, nevertheless tend to focus either on weaknesses within individual sufferers or on the functioning of the health services themselves (Snow, Baker, Anderson and Martin 1986). Thus, the "medicalisation of homelessness" is alleged to have resulted in a neglect of structural socio-economic factors which bear on homelessness, and an exaggeration of the prevalence of mental illness among the homeless (Snow, Baker, Anderson and Martin 1986). Mental illness is perceived in behaviours which might more appropriately be viewed as adaptations to abnormal social circumstances or reactions to physiological deprivation (Snow, Baker and Anderson 1988).

#### **Academic theories and decision making**

Academic theories point to the principles for making judgements about abstract problems, such as how criminal responsibility should be determined. However, academic theory's application to legal judgements of criminal responsibility is problematic for four reasons: its complexity; conflict between alcohol theorists; legal resistance; and non-academic motivations for distortion.

## **1. Complexity of alcohol theory**

There are three basic approaches to academic theorising on intoxication and alcoholism: physiological theories concerning the pharmacological properties of alcohol and their effects on the brain and nervous system; psychological theories emphasising the personality structure and beliefs about alcohol of the individual drinker; and situational theories, emphasising the physical and social environment in which drinking occurs. However, the current academic consensus is that "the truth" lies in complex interrelationships between these different aspects of drinking behaviour (Adesso 1985; Barrett 1985; Blum 1982; Galizio and Maisto 1985; Lang 1981; McCarthy 1985; Sher 1987; Zinberg 1984).

"Alcohol consumption results in a complex physiologic state that interacts with a number of individual difference variables and the social context to create a relatively unique, situationally specific phenomenological experience"

(Sher 1987, p.231)

Such complex theorising about the nature of alcohol's effects makes an appeal to the authority of academic alcohol theory problematic. To suggest that individuals may react variably to the effects of alcohol in different situations, and differently from other individuals in the same situation, implies that general laws predicting alcohol's effects on the human mind and will may not be available to guide the attribution of individual criminal responsibility.

## **2. Conflict between alcohol theorists**

Alcohol theorists dispute "the truth" about alcohol's effects. Two examples may be given:-

### **a) Disease theory**

In a recent special issue of *International Journal of Law and Psychiatry*, devoted to the intoxication excuse, Fingarette (1990a) declares that scientific research has established unequivocally that intoxication cannot excuse criminal



behaviour. Fingarette regards continuing legal confusion, and defendants' persistent invocation of the intoxication excuse, as a product of the time lag between the scientific establishment of the "facts" and their absorption by the general public.

"[S]cience has now rendered invalid all the familiar lines of excusatory arguments based on alcoholism. Scientific specialists in the field are of course aware of this. Unfortunately, however, most people, including most law professionals, are still unaware of it."

(Fingarette 1990a, p.77)

Within the same journal, Lehman (1990) attacks this view, defending the particular variant of disease theory adopted by Alcoholics Anonymous. Lehman criticises academic theories which regard alcohol abuse as essentially rational behaviour, arguing that they support a damaging misconceptualisation of responsibility.

"[T]he misunderstandings about responsibility that Fingarette's work betrays, often cause those who share them to drink and take drugs. People drink and drug themselves because their lives are painful. They are hurt because they try to live their lives according to ideas of self regulation that are derived from Western theory, but that do not fit our nature as human beings. For the resulting pain, alcohol is a sovereign remedy. So, the concepts that fail as a framework for understanding alcoholism are the same that guide so many to that life of psychic misery which fosters alcoholism, drug abuse, teenage suicide, compulsive overeating; all the destructive disorders of the modern self."

(Lehman 1990, p.106)

Fingarette (1990b) replies with equal ferocity, remarking on the vehemence of Lehman's attack:

"For scholars such as myself, who came to this study in the course of scholarly inquiry, and who have no background of alcoholism personally or in the family, the fierce emotions and reactions aroused were initially surprising and disturbing."

Eventually, one becomes accustomed to the situation, but never with sang froid."

(Fingarette 1990b, p.125)

Disease theory continues to attract academic adherents. Alcoholism has recently been defined as "an exciting, fascinating disease" (Vaillant 1980, p.15), "an incurable illness and disease" (Denzin 1987, p.31), and "a disorder that can be defined in clinical terms and requires a proper regime of treatment" (Kessel and Walton 1989, p.2).

#### **b) Disinhibition**

The belief that alcohol causes disinhibition of behaviour from conventional moral standards has been challenged for several years by ethnographers (Macandrew and Edgerton 1969). More recently, Woods (1981), reviewing pharmacological research and theory, could identify no contemporary pharmacologist who believes that alcohol elicits disinhibited behaviour. Nevertheless, Felker (1989), discussing the legal attribution of responsibility is prepared to conclude that alcohol contributes directly to crime through its disinhibiting effects. Kessel and Walton assert that

"groups of people have had their passions so inflamed by alcohol that they carried out cruel, senseless, irrevocable actions from which, if the highest mental processes were functioning intact, each individual would recoil with disgust."

(Kessel and Walton 1989, p.11)

#### **3. Legal resistance**

Disease theory is a notable example of an academic theory which has influenced legal discourse. Holding that alcoholic drinking is involuntary conduct because of the loss of control over drinking brought about by the condition of alcoholism, disease theory has profound implications for the attribution of criminal responsibility to alcoholics (Kittrie 1971; Mitchell 1990). Where the law has accepted this theory of alcoholism, it has nevertheless resisted the implication that

evidence of alcoholism should procure a defendant's acquittal. Mitchell (1990) observes that one means of achieving this has been to argue that alcoholism is irrelevant to the legal determination of criminal responsibility. According to this argument, whether or not intoxication is involuntary is immaterial, because the offending behaviour itself must be voluntary. For example, an individual may be compelled to drink, but he is not compelled to drive in his intoxicated condition.

Mackay (1990) notes a different strategy, employed by the Court of Appeal. The Court allowed that alcoholic inability to abstain would constitute a defence of diminished responsibility. However, by requiring proof that the first drink in the sequence leading to the intoxicated offence was itself taken involuntarily, it ensured that such a defence was virtually unachievable. Thus, the law is not a passive recipient of the authority of academic alcohol theory, but preserves its own purpose of sanctioning misconduct when applying that theory to legal decisions.

#### **4. Non-academic motivations for distortion**

Mitchell (1988) argues that alcohol theorists themselves are responsible for the failure of lawyers to catch up with contemporary alcohol theory. In his view, experts offer distorted representations of research findings in order to fulfil aims beyond the pursuit of truth.

"Medical witnesses deny intent not from ignorance or misperception of legal definitions but in order to achieve certain results. Those results include diverting offenders to treatment, increasing psychiatric funding, publicizing therapeutic ideals, and opposing retributionist practices. The duplicity here is evidenced when rehabilitationists use the ordinary, criminal law standards of responsibility to hold their own clients accountable for behavior. Intent is only denied in a retributive context."

(Mitchell 1988, p.100)

Reviewing legal cases involving the intoxication excuse, Mitchell "could find no genuine case where intoxication caused an automatic or involuntary act", but several in which "odd, intoxicated behaviour was incorrectly alleged to be irrational, motiveless, and thus involuntary" (1988, p.94). That lawyers choose not to perceive this obvious fact about their own cases, must, he argues, be due to more than simple deference to the authority of another academic discipline. He offers three reasons for judicial tolerance of the intoxication excuse. A successful intoxication defence to a charge of murder, by reducing it to manslaughter, opens up the range of discretionary determinate sentences from the otherwise mandatory life sentence. Judges are attracted to this opportunity to maintain their sentencing discretion. Additionally, some judges adhere to a therapeutic ideology of legal practice. Furthermore, production of misleading testimony by defence lawyers is encouraged by the incentive to win their case.

Lawyers' preoccupation with the tension between the public interest and the rights of defendants to have their mental state taken into account, and alcohol theorists' preoccupation with disputed interpretations of research findings, have made both vulnerable to distortion in the pursuit of their separate objectives. When lawyers and alcohol theorists meet in the adjudication of criminal responsibility, these objectives are pursued through a dialogue which resorts, not to the academic wisdoms of either discipline, but to an appeal to common sense assumptions about the effects of alcohol, despite potent arguments from both camps that intoxication is not a valid excuse for criminal conduct.

"But by now it is no news that both of these approaches, the medical and the legal, however inspired, can in practice disregard human dignity when ignorance, social prejudice, well-intentioned dogma, lack of funding, or routinization take over."

(Fingarette and Hasse 1979, p.193)

### **A return to common sense?**

Medical conceptualisations of alcoholism have been significantly instrumental in humanising a traditionally punitive approach to drinking problems (Ajzenstadt and Burtch 1990; Heather and Robinson 1985). Nevertheless, they have been the target of sustained criticism from academics themselves that they serve the interests of those who promulgate them by misleading the public. Fingarette alleges:

"The public currently has good reason to believe (though mistakenly) that alcoholics drink uncontrollably. Physicians and health professionals of all kinds, public service groups, treatment centers, government officials - in short many kinds of seeming authorities - have for years been barraging the public with pronouncements to the effect that alcoholism is a disease, and that alcoholics are helpless victims of a compulsion to drink."

(Fingarette 1990a, p.82)

The promulgation of such theories is alleged to mislead alcoholics themselves, diminishing their capacity for improvement. Roman and Trice, whilst accepting disease theory, nevertheless question its "double-bind" effect of consigning the alcoholic to a passive sick role which absolves him of responsibility for his condition, but simultaneously requires him actively to seek treatment and to stop drinking.

"The expectations surrounding these sick roles serve to further develop, legitimise, and in some cases even perpetuate the abnormal use of alcohol."

(Roman and Trice 1968, p.245)

Objections to medical conceptualisations of alcoholism continue (Faulkner, Sandage and Maguire 1988; Fingarette and Hasse 1979; Heather and Robinson 1985; Nusbaumer 1983). More generally, critics complain that theories of deviant behaviour which imply reduced responsibility on the part of the deviant, provide the public with ready-made excuses for their transgressions. Thus, Peele claims that "trying to assess the combination of motives that drives people to commit crimes

serves primarily to invite the more resourceful criminals to present the most saleable excuses for their misbehavior" (1990, p.96). Similarly, Mitchell suggests that legal doctrine on intoxicated crime feeds the public with "a false picture of the intoxicated offender as wild, dangerous, unconscious, or out of control" (1988, p.87), promoting belief in the excusability of intoxicated misconduct.

Discontent with the results of applying academic theory to the intoxication excuse has led several academics to appeal for a return to common sense.

"The message in all this is that one of the best antidotes to addiction is to teach children responsibility and respect for others and to insist on ethical standards for everyone - children, adults, addicts."

(Peele 1990, p.100)

Shiner (1990) argues that lawyers have worked themselves into an impossible position over the intoxication excuse, by committing the basic philosophical error of regarding the human mind and body as distinct entities. They have consequently concluded that the state of a person's mind cannot be inferred from his actions. Such philosophical naivete ignores common sense, which recognises that intentionality is directly demonstrated through visible action. Thus, of an attacker or someone brandishing a rifle, "(w)e know he is acting intentionally, because to act in that way *just is* to assault or brandish, and to assault or brandish *just is* to assault or brandish intentionally" (Shiner 1990, p.19). Therefore, in judging criminal responsibility, one has only to imagine oneself a witness at the scene of the crime and to consider how one would distinguish intentional from unintentional behaviour: "Easy" (Shiner 1990).

Fingarette and Hasse eloquently defend common sense.

"There is, unfortunately, no single, simple sign or label that identifies the condition at issue here. Only a review of the defendant's history, conduct, physical health, and general demeanour can provide an adequate picture. This is not a picture that can be read off with scientific precision, or even with science at all, though scientific data may be of help. It is a picture that can only be assembled and assessed from the perspective of practical lay judgement, the judgement of ordinary people who know how to get along in life taking practical account, as they go, of the bearing of law on their conduct. The test they apply to the defendant is a test they themselves pass every day of their lives: Is the defendant, as portrayed up to the moment of the offending act, and in the circumstances of that act, on the whole able to take into account in a practical way, in acting as he does, the criminal significance of his act?"

(Fingarette and Hasse 1979, p.193)

## **LAY THEORIES OF DEVIANCE AND JUSTICE**

### **Characteristics of lay theories**

Lay theories are the common sense notions of the non-expert about the nature of, and relations between, objects and events in the world. The academic study of lay theories, however, has itself suffered from misconceptions about what, and how, lay people think about social phenomena. Two such "common sense theories about common sense theories" have particularly underpinned much of the academic study of lay beliefs and attitudes:-

#### **a) "Lay theories are simple theories."**

Thus, for example, by offering restricted choices of answers, research into lay theories of crime causation, alcoholism and insanity can produce the impression that lay explanations of these phenomena are simplistic, compared to academic multi-causal theories (Finkel and Handel 1989; Furnham 1988; Semin and Manstead 1983). More sensitive research techniques reveal complexity and subtlety in lay conceptualisations. For example, using a case vignette methodology, lay subjects have demonstrated the capacity to discriminate finely between insanity and personality disorder. Lay diagnoses of insanity

are parsimonious rather than grossly inclusive of unusual behaviours or mental processes (Finkel and Handel 1989; Roberts, Golding and Fincham 1987). Furthermore, lay conceptualisations of insanity are not rigid, but "flexible, shifting in relevance and determinativeness from case to case, rather than remaining constant" (Finkel and Handel 1989, p.55).

**b) "Lay beliefs are straightforwardly related to lay attitudes."**

Thus, for example, lay attitudes towards alcoholics have been assumed to be either simply moralistic (alcoholics are bad) or medical (alcoholics are sick) (Furnham 1988). Studies, however, reveal that people frequently hold ambivalent attitudes, subscribing in part to both moralistic and medical views. Further, a particular conceptualisation of alcoholism does not clearly predict attitudes towards alcoholics (Furnham 1988; Heather and Robertson 1985). Such ambivalence has sometimes been explained as a phenomenon of the transition between traditional moralistic beliefs and full absorption by the public of contemporary medical conceptualisations (Orcutt 1976). This hypothesis apparently assumes that lay people strive to avoid the discomfort of conflicting ideas and attitudes and to achieve the comfortable certainty of simplicity. As will be seen, however, research suggests that lay people tolerate considerable conflict between their theories, and between their beliefs and attitudes with equanimity.

With these cautions about the shortcomings of some research into lay theories stated, it is nevertheless possible to draw from the available literature five characteristics of lay theories: their function; ignorance; contradiction; complexity; indeterminateness.



## 1. Function

By enabling people to form judgements about cause and effect relationships, lay theories provide a conceptual framework for attributing responsibility (Furnham 1988). Thus, lay theories provide basic premises for making moral judgements, by defining whether an outcome is to be attributed to forces in the environment or to the will of individual actors (Berglas 1987), and by distinguishing conditions for making intuitive judgements of fairness, blameworthiness and praiseworthiness (Furnham 1988; Meehl 1977). Thus, McHugh (1970) suggests that common sense attributions of responsibility are based on a behaviour's occurrence in a situation where alternative actions are apparently available, and the actor's knowledge of those alternatives.

Lay theories also serve specific individual interests. Furnham argues that:

"people do not hold beliefs for simple rational, logical and dispassionate reasons. Theories nearly always serve a function, such as to bolster or maintain self-esteem, to ensure group solidarity, to provide a social or moral framework through which to comprehend new facts. Lay theorists, then, appear to be much more psychological than logical in nature."

(Furnham 1988, p.208)

Suggested functions of responsibility attributions have included needs to experience control over the physical and social world (Hewstone 1983), to believe in a just world, and to defend oneself against blame (Fitzmaurice and Pease 1986; Furnham 1988; Shaver 1985). However, this concentration on individual motivations neglects an important social function of lay theory. The expression and exchange of common sense wisdom provides a vehicle for the transmission of cultural values and beliefs. Critics of the individual focus of attribution research point out that judgements of responsibility are essentially social, collective processes (Harre 1981; Hewstone 1983; Tajfel and Forgas 1981; Semin and Manstead 1983). Semin and Manstead remark that "the central

medium through which the accountability of conduct takes place is *talk*" (1983, p.19).

## 2. Ignorance

Lay theories about social phenomena often appear ignorant despite considerable exposure to their manifestations. For example, Furnham comments:

"As the drinking of alcohol in nearly all societies is, and has been, a frequent occurrence, people are very familiar with the consequences of alcoholism. However, they remain surprisingly ignorant about the effects of alcohol and the causes of, or cures for, alcoholism."

(Furnham 1988, p.79)

The persistence of erroneous beliefs about distant phenomena is not altogether surprising, since the believer may simply lack an opportunity for disconfirmation (Crocker, Fiske and Taylor 1984; Tajfel and Forgas 1981). However, the persistence of erroneous beliefs about common experiences appears counterproductive. It seems reasonable to expect an erroneous belief to be corrected in the light of experience. Crocker, Fiske and Taylor (1984) suggest that lay theories are constructed in ways which make them difficult to challenge through experience. For example, beliefs about mental illness may be nonspecific about what a mentally ill person should or should not do in any particular situation. In this sense, theories may not be "logically disconfirmable", since they are ill-defined as to what constitutes, and what does not constitute, an example of the theory (Crocker, Fiske and Taylor 1984).

An example of a theory's protection from disconfirmation arises in Murphy's (1986) observation that store detectives select suspects on the basis of notions about how an honest shopper would look and behave. Given the prevalence of shoplifting, store detectives may have their theories repeatedly confirmed, since "targeting on one specific group,

however selected, is likely to prove 'successful', and a self-fulfilling prophecy is established" (Murphy 1986, p.147).

Most lay people appear to think that the sentences passed in the courts are too lenient, yet when asked about specific examples of crime, they favour sentences which are broadly in line with, or sometimes less harsh than current sentencing practice (Hough and Mayhew 1983; Hough, Moxon and Lewis 1987; Stalans and Diamond 1990). Plausible explanations for this discrepancy point to public ignorance about crime and criminal justice. Stalans and Diamond (1990) observe that most lay people assume that offences are usually much more serious than they actually are; for example, that burglars carry weapons and vandalise property. Thus, when asked general questions about crime and sentencing, people think of offences which are atypical of those usually passing through the courts. Similarly, Roberts, Golding and Fincham (1987) suggest that public belief that the insanity defence constitutes an unwarranted loophole in the criminal law, is linked to a significant overestimation of its use and success, and misunderstanding of the consequences for the defendant of an insanity acquittal. Stalans and Diamond (1990) suggest that it is necessary to understand not only *what* lay people think, but *how* they come to think it.

"The failure to come to grips with the way people think about the law can result in considerable distortions in the conclusions we reach about what they think."

(Sarat 1977, p.455)

Erroneous lay beliefs about the consequences of punishment may profoundly influence public policy, uncorrected by academic knowledge. For example, Ross (1975) remarks that the "Scandinavian myth" that harsh punishments for drinking and driving are an effective deterrent has led to the adoption of draconian laws in other countries despite lack of supportive

evidence. Ross suggests that it is more appropriate to see deterrence as stemming from deep-rooted cultural attitudes.

### **3. Contradiction**

Furnham observes:

"A logical analysis of lay theories often reveals them to be fairly inconsistent in the sense that antonymous presuppositions are simultaneously held by people who may be unaware of, or simply not concerned by, contradiction."

(Furnham 1988, p.208)

For example, Marsh and Campbell (1979) studied pub licensees, who almost unanimously blamed alcohol as a major cause of disturbances on their premises. They also frequently claimed to be able to identify troublemakers "coming through the door". The belief that likelihood of troublemaking was based on visible attributes, such as race, contradicted the belief in alcohol itself as the real cause of violence. Furthermore, licensees were aware that their often considerable personal consumption of alcohol did not cause violence in themselves.

### **4. Complexity**

The complexity of lay theories is seen in their relationships to culture, individual differences and specific situations.

#### **a) Culture**

Lay theories are derived from cultural beliefs, modified by individual experience. Thus, Swidler defines culture as

"a 'tool kit' of symbols, stories, rituals and world-views, which people may use in varying configurations to solve different kinds of problems."

(Swidler 1986, p.273)

Culture thus provides basic premises for beliefs about cause, effect, responsibility and morality (Forgas 1981b; Harre 1981; Moscovici and Hewstone 1983; Semin and Manstead 1983; Tajfel

and Forgas 1981). The pervasiveness of these cultural foundations has already been seen in their influence on academic theory.

Sanders and Hamilton (1987) found that cultural differences in the attribution of responsibility for wrongdoing reflected broad cultural differences in social structure and attitudes. Thus, American concern with attributes of the criminal and the criminal act, contrasts with Japanese interest in the role relationships between offender and victim. Sanders and Hamilton conclude that "the rules of retributive justice may have deep seated, widely shared cultural roots" (1981, p.291).

#### **b) Individual differences**

Furnham argues that culture alone cannot explain how different lay theories come to be held by different individuals within the same society. For this it is necessary "to establish which socialisation experiences and maturational processes contribute to the establishment of which specific, stable beliefs about human behaviour." (Furnham 1988, p.8). Different lay theories may derive from differences in individuals' relationships to a phenomenon. Thus, for example, Furnham suggests possible distinctions between lay theories about addiction, based on the quality of direct or indirect experience with the phenomenon: theories held by non-addicted lay people, by addicts and by professionals without specific theoretical training.

Differences between the theories of individuals within a single culture are not fully understood. For example, Sanders and Hamilton (1987) found no support for the common sense belief in systematic demographic differences in the ways people attribute responsibility. However, Hough, Moxon and Lewis (1987) found differences in punitiveness according to age, education, and rural or inner city residence.

Different political beliefs appear to be linked to different explanations of crime, with Conservatives favouring individualistic theories, while Labour voters prefer societal explanations (Furnham and Henderson 1983). However, although it seems intuitively reasonable to assume that beliefs about justice are derived from broader beliefs and attitudes such as political ideology (Furnham 1988; Stalans and Diamond 1990), such relationships between belief systems are not obvious beyond the level of broad divisions (Furnham 1988). For example, belief in free will does not necessarily result in greater punitiveness than belief in determinism, despite its implications for responsibility judgements (Viney, Waldman and Barchilon 1982).

Personality differences may influence beliefs about responsibility to a limited extent. Carroll and Payne (1976) found that individuals who tended to perceive the locus of control for behaviour as internal to the actor based inferences about responsibility for a crime primarily on information about the offence and offender. Individuals who tended to locate the locus of control for behaviour in external forces were more concerned with information about the offender's environment. However, these emphases did not amount to strong differences. Ryckman, Burns and Robbins (1986) found that authoritarianism was not consistently associated with support for harsher punishment.

### **c) Situational specificity**

Lay theories may be flexible belief systems, influenced by the perception of specific situations. Roizen (1981) reports survey data suggesting that people may hold general, and apparently contradictory beliefs that alcohol causes feelings of aggression, romance, friendliness and sleepiness, but rarely claim that alcohol produces any one of those feelings on each drinking occasion.

"In this observation would seem a nice demonstration that alcohol is not linked to its various effects in

lockstep fashion in popular opinion but is instead regarded very much as a matter of the particularities of the drinking event. That most of us might agree that alcohol may help us to be **friendly** does not, then imply about common opinion that alcohol always or even usually will have this effect."

(Roizen 1981, p.241)

Similarly, lay theories of crime appear to vary according to perceptions of individual offenders and offences (Furnham 1988; Furnham and Henderson 1983).

### **5. Indeterminateness**

Lay theories of crime and justice provide a framework for deciding upon responsibility and punishment. However, general beliefs about crime causation and the purposes of punishment do not straightforwardly prescribe action in specific instances. In order to achieve this connection, information about specific offences and offenders must be reconciled with the general belief system (Asquith 1977; Hogarth 1971). Their compatability, however, is not always obvious.

Firstly, lay beliefs about criminal responsibility do not necessarily equate with beliefs about guilt and blameworthiness, nor do they link to beliefs about punishment in obvious and direct ways. For example, although most lay people believe that mental illness reduces rationality and criminal responsibility, they are ambivalent as to whether guilt, blameworthiness and punishment are inconsistent with such reduced competencies (Roberts, Golding and Fincham 1987).

"Theoretically, Anglo-American jurisprudence grants mercy and affords at least minimal treatment to the insane defendant rather than assigning punishment. Society remains uncomfortable with the idea of mercy and genuine exculpation for insane defendants, however, and expresses explicitly a desire for retribution."

(Roberts, Golding and Fincham 1987, p.225)

Similarly, Critchlow (1985) found that although intoxication softened judgements of cause, responsibility and blame for wrongdoing, suggested punishment was not affected. Critchlow suggests that people hold a "strict liability" view of punishment which prescribes equal punishment despite diminished responsibility.

However, such judgements may themselves be influenced by the conceptual forms available. Roberts, Golding and Fincham (1987) found that, despite evidence of the capacity of lay people to discriminate finely and appropriately between insanity and personality disorder, the provision of a broad diagnostic category of "guilty but mentally ill" led to shifts in judgements in favour of this category. The authors argue that the provision of an ambiguous category reduces the clarity of judgement. Further, whilst the ambiguous category of guilty but mentally ill "satisfies the retributive component it also assuages the conscience of the potential juror by appearing to promise some sort of special treatment" (Roberts, Golding and Fincham 1987, p.226).

Secondly, when people talk about the causes of crime, they stress social conditions and distal causes such as unemployment, poverty and addiction (Furnham 1988; Furnham and Henderson 1983). However, when people act on crime, they engage in self-protection from victimisation.

"People appear to operate with two disparate sets of theories - those about the causes of crime and those about the prevention of victimisation."

(Furnham 1988, p.169)

Belief about an issue is not necessarily an obvious indicator of the emotional feeling which it arouses. Public fear of crime often appears to be exaggerated in relation to the real chances of victimisation (Hough and Mayhew 1985). However, Furnham (1988) observes that fear of victimisation is not a necessary consequence of the belief that one's personal chance



of becoming a victim is high. Other feelings such as fatalism or personal control may reduce anxiety. Equally, belief that one's personal chance of victimisation is remote is not a guarantee of low anxiety, since contemplation of the offence may evoke feelings of abhorrence or defencelessness.

Nevertheless, concurrent belief that one has a high chance of victimisation and anxiety about the prospect do not necessarily produce self-protective behaviour. For example, Lejeune and Alex (1973) suggest that fear and anticipation of being mugged are insufficient in themselves to overcome powerful cultural expectations of the "street-role" of citizens, which do not include alertness to the possibility of imminent attack by strangers.

Thirdly, as suggested in Chapter One, lay judgements of responsibility are influenced by anticipation of their consequences. Thus, harsh mandatory sentences for particular crimes, such as the death penalty for murder, deters juries from convicting defendants (Carroll and Payne 1977).

Complex interrelationships between different sets of beliefs and attitudes, compounded by situationally specific perceptions, render the behavioural outcome of judgement indeterminate. Thus, Palys and Divorski criticise the "black box" approach to sentencing research, in which the "empirical focus is solely on the relationship between 'inputs' (i.e. offence, offender, and contextual variables) and 'outputs' (i.e. sentencing outcomes), while attributes or perceptions of the judges themselves are ignored" (1984, p.333).

Some of the foregoing discussion may be illustrated with an example of lay theorising about crime. Judge Pickles deplores the lack of education of the judiciary in the disciplines of sociology, psychology, criminology and penology: "[t]he English bench as a whole is too ignorant, isolated, and, of course, self-satisfied" (1987, p.67). However, he later

castigates those same disciplines for their own ignorance, remarking that "criminologists know more about books and statistics than they do about criminals" (Pickles 1987, p.135). Despite his self-confessed ignorance, he confidently sets out his theories about crime causation, amongst which he includes the decline in religious belief, egalitarianism, "women's lib" and welfarism. He affirms himself, however, to be agnostic, egalitarian, "pro-women's lib" and welfarist. These statements illustrate the confidence of lay theories despite ignorance, contradiction and complexity in their relationships to broader social attitudes and self-perception. It has been for the Court of Appeal to comment on the influences of Judge Pickles' theories on his sentencing practice.

#### **Lay theories and decision making**

The characteristics of lay theories do not merely demonstrate their unreliability for judging responsibility. A more appropriate analysis might suggest that lay theories provide flexible frameworks for making rapid judgements about complex issues, thereby enabling decisions to be taken without undue hesitation.

Theories which depict human judgement as an exercise in logical, scientific and mathematical reasoning based on the rigorous accumulation and assimilation of available information (e.g. Kelley 1967) have attracted increasing criticism (Abelson 1976; Carroll and Payne 1976; Eiser and Van Der Pligt 1988; Hewstone 1983; Ickes and Layden 1978; Jaspars 1983; Langer 1978; Mandler 1984; Nisbett and Wilson 1977; Palmerino, Langer and McGillis 1984; Sillars 1982; Semin and Manstead 1983; Tversky and Kahneman 1974). Critics point to the fact that "the highly influential views of information-processing psychology argue that human rationality is seriously limited by biological constraints" (Carroll and Weaver 1986, p.20). Some suggest that the support of experimental research for a view of human judgement as a

logical, statistical process is at least in part an artifact of research design (Abelson 1976; Carroll and Payne 1976), which fails to represent "messy, real-world decisions" (Abelson 1976, p.38). In so far as individuals may be capable of processing information in such highly rational ways, the likelihood of their doing so is inhibited by pressures of time, the difficulty of such reasoning processes, and the huge amounts of information in the environment which would need to be processed to achieve results (Abelson 1976; Hewstone 1983; Mandler 1984; Sillars 1982).

Alternative theories of information processing explicitly recognise that "people fail to behave consistently with normative rationality, but instead make simplifications and shortcuts that are reasonable but may produce inferior outcomes" (Carroll and Weaver 1986, p.20). Such perspectives have stimulated social psychologists to confront "the question of whether humans analyse social cues *at all* in their day-to-day social interactions" (Hewstone 1983, p.10). The answer has increasingly been couched in terms of the "mindlessness of ostensibly thoughtful action" (Langer 1978, p.38). The consequent theoretical perspective has centred on the learning of basic intellectual frameworks for selecting and interpreting information in the environment and the utilisation of these frameworks to make rapid judgements about the nature of specific situations and the appropriate action within them. Such frameworks have been called "cognitive scripts" (Abelson 1976; Hewstone 1983; Langer 1978) or "cognitive schemata" (Crocker, Fiske and Taylor 1984; Eiser and Van Der Pligt 1988; Holstein 1976; Mandler 1984; Sillars 1982). Cognitive scripts or schemata enable individuals to ignore substantial quantities of information in the environment and yet to respond rapidly, by prescribing basic cues for the identification of, and appropriate response to specific situations.

Abelson defines a cognitive script as

"a coherent sequence of events expected by the individual, involving him either as a participant or as an observer."

(Abelson 1976, p.33)

Abelson suggests that individuals are capable of generating "hypothetical scripts". A hypothetical script "abstracts critical features of alternative situations, and its employment involves reasoning about those features" (Abelson 1976, p.35).

Similarly, Holstein defines a cognitive schema as

"knowledge about a domain that establishes relations between specific events or entities within that domain. A schema provides hypotheses about incoming stimuli which include plans for interpreting and gathering schema-related information."

(Holstein 1985, p.84)

Crocker, Fiske and Taylor explain the advantages of utilising cognitive schemata.

"Social schemas are very useful to perceivers: They help us to structure, organise, and interpret new information; they facilitate encoding, storage, and retrieval of relevant information; they can affect the time it takes to process information, and the speed with which problems can be solved. Schemas also serve interpretive and inferential functions."

(Crocker, Fiske and Taylor 1984, p.197)

Judgements based on such scripts may promote insensitivity to potentially useful information (Langer 1978). Furthermore, once learned, they may be resistant to change, despite inaccuracy, because of the stability and order which they impose on an otherwise uncertain and complex environment (Crocker, Fiske and Taylor 1984). Thus, the dangers of reliance on scripts are inefficiency, inaccuracy and the

temptation to fit reality to the script rather than vice versa (Crocker, Fiske and Taylor 1984).

Two implications of this view of human information processing are particularly pertinent to this discussion. Firstly, Langer argues that such a theoretical perspective explains discrepancies between expressed attitudes and overt behaviour.

"To expect people who report beliefs and opinions on issues, when made to think about those issues, to later behave in a manner consistent with those beliefs and opinions is to assume that they are thinking while they are behaving."

(Langer 1978, p.46)

Secondly, the perspective challenges the assumption that social phenomena are defined and understood simply by acquiring the "facts". Individuals employing different scripts will perceive different "facts" as salient to their understanding and response to the same social situations (Eiser and Van Der Pligt 1988). Furthermore, the interpretation of, and emotional response to similar "facts" may differ. An example of the differing social judgements which may result is provided in Wiseman's discussion of skid row.

"Which view of Skid Row is the 'real one'? Is it a pathological area - a dirty, miserable, smelly firetrap, peopled by ill, discouraged, and even desperate men? Or is it a warm and friendly but ragged campus, abounding in opportunities for socializing, camaraderie, making deals, playing games, and getting by?"

(Wiseman 1970, p.43)

Wiseman suggests that there may, after all, be no single "truth", but that "the change in appearance and meaning is the result of the application of different frames of mental reference to the same phenomena" (1970, p.43). Even the same individual may utilise alternative "frames of mental reference" at different times, as when skid row men, after a

period in an institution, perceive it, for a time, through the eyes of the non-participant outsider (Wiseman 1970).

The relevance of this perspective to an analysis of lay theories lies in the similarities apparent between cognitive scripts and lay theories. Both may appear ignorant of "facts", be contradictory, and bear complex relationships to the perception of self and social situations. Both provide basic premises for the interpretation of and response to social phenomena. In these senses, lay theories and cognitive scripts are theoretically analogous. Cognitive scripts and schemata, however, are generally described as concrete representations of social situations (Abelson 1976). Lay theories are often assumed to be generalisations about social phenomena, although some commentators suggest this is an inaccurate portrayal (e.g. Jaspars 1983) and the situationally specific application of different lay beliefs has been noted.

The attempt to explain why people hold lay theories, despite their apparent unreliability for accurate judgement formation, may draw on this theoretical analogy. In their general forms, lay theories provide hypotheses about social phenomena which guide the selection and interpretation of information. They do not determine responses, because of the influences of immediate factors concerning the motivation of the perceiver, features of the specific situation and the time and effort required for the conversion of abstract hypotheses into specific responses. People thus often rely on concrete theories about specific situations and events.

#### **Lay and academic theories: a comparison**

Furnham (1988) defines the differences between lay and academic theories, although it is to be pointed out that the earlier discussion shows that academic theories do not always conform to their ideal types. Academic theories are general, explicit, coherent and internally consistent. They are subject to test by falsifiability, distinguish between cause and

correlation, explain processes linking phenomena, and consider the relative importance of multiple causative factors. Academic theories are "strong": they are based on numerous observations, integrate information from related areas of research and produce predictions of future events. By contrast, lay theories usually concern specific phenomena, and are implicit, incoherent and inconsistent. Lay theorists seek verification of their theories, confuse cause and correlation, describe types of phenomena rather than relationships between them, and overstate the causal significance of human action. Lay theories are "weak": they are not based on precise, reliable information.

Furnham's distinctions confer obvious status on academic theories as sources of reliable explanations of social phenomena. It has generally been assumed that crucial decisions in the formulation of social policy would be improved by appeal to academic theories rather than by reliance on common sense. Thus, Furnham and Henderson argue:

"It may be true that legislation and methods of preventing and treating delinquency have been based on lay theories, politically motivated decisions or the need for retribution. Ideally, however, legislation and methods of reducing delinquency should be based on empirically verified academic theories. This is not to say that lay theories are unimportant and are not worthy of research - rather it is to point out that they are no substitute for careful theorizing and research of academic criminologists, sociologists and psychologists."

(Furnham and Henderson 1983, p.118)

It has already been shown, however, that some academics doubt that academic theories of intoxication and criminality have assisted the just operation of the law. Meehl is cautious about the authority claimed for academic theories, observing that "the behavioral sciences are plagued with methodological problems that often render their generalized conclusions equally dubious" (1977, p.10). Lay theories, or "fireside inductions", as Meehl calls them, are not necessarily untrue

because they are derived unscientifically from "the culture's authority plus introspection plus anecdotal evidence from ordinary life" (Meehl 1977, p.10). Meehl urges caution before discarding lay theories as unhelpful or untrue on account of their scientific weakness.

"In thinking about law as a mode of social control, adopt a healthy skepticism toward the fireside inductions, subjecting them to test by statistical methods applied to data collected in the field situation; but when a fireside induction is held nearly *semper, ubique, et ab omnibus* a similar skepticism should be maintained toward experimental research purporting, as generalized, to overthrow it."

(Meehl 1977, p.28)

In the academic quest for truth, however, there has been little reference to the academic study of lay theory itself. Furnham, Jaspars and Fincham (1983) note that even in the discipline of social psychology, which has studied both academic and lay explanations of behaviour, there has been little interaction between the two fields of inquiry. The academic study of lay theories has been justified less in terms of establishing the true explanations of phenomena than by the anticipation of manipulating lay theories to achieve some social advantage. Thus, the study of lay theories has been concerned with the development, persistence and change of lay beliefs, and with their structure, function and interrelationships (Furnham 1988), rather than with the attempt to uncover truths about the world in lay wisdom. The justifications for such study have generally centred on expectations of influencing lay theories, or the decisions and behaviours which are prompted by them. For example:-

a) "The study of lay theories may illuminate the notions of responsibility embodied in the formal institutional structures of society such as the law."

For example, Jacobs argues that the emergence of special treatment in law for drunk driving offences as distinct from other forms of traffic violation is derived from the "offense



against morality, decorum, and good citizenship" (1989, p.64) which drunk driving represents. Furthermore, Jacobs argues that the erroneous common belief in the universality of drunk driving, fostered by a loose equation of drinking and drunkenness, has impeded the law's attempts to grapple with the real problem of dangerous intoxicated driving. Disabusing the public of its erroneous beliefs about the effects of alcohol would, it is suggested, bring about consequential changes in public tolerance of intoxicated misconduct and, thereby, in drinking behaviour itself (Lang 1981).

**b) "Problematic behaviour may be changed by matching treatment to the lay beliefs of the subject."**

For example, Furnham (1988) suggests that the effectiveness of alcoholism treatment programmes may be enhanced by matching patients to the regime in which the theoretical explanation of the cause of alcoholism most closely resembles the beliefs of individual patients. Furnham and Henderson (1983) advance a similar argument for the effective treatment of delinquency.

**c) "Lay beliefs may be more effectively altered if their psychological function is understood."**

If the need for a particular belief is identified it may be obviated, or satisfied in different ways, so that inaccurate or damaging lay theories may be altered (Furnham 1988). For example, Lang (1981) advocates the development of alternative ways to achieve pleasurable changes in consciousness, without the troublesome connotations of lay beliefs about alcohol's effects on responsible conduct.

The boundaries and directions of influence between academic and lay theories have been shown to be dynamic, interactive, rather than unidirectional, processes. Peele exemplifies the ambiguity in the demarcation between academic and lay theories in what is intended as a denunciation of the damaging influence of false academic theorising.

"In the area of addiction, what is purveyed as fact is usually wrong and simply repackages popular myths as if they were the latest scientific deductions. To be ignorant of the received opinion about addiction is to have the best chance to say something sensible and to have an impact on the problem."

(Peele 1990, p.101)

Closely examined, this outraged assertion makes little logical sense, despite its intuitive appeal to distrust of academic theorising and faith in common sense. If academic theories are truly versions of "popular myths", or lay beliefs, and are also usually wrong, then by implication common sense is also usually wrong. How, then, can reliance on simple common sense itself be expected to produce any statement more sensible than the false wisdom of academic theory?

The disparaging comments of Peele and Judge Pickles illustrate the common sense "ivory tower" assumption that academics are too remote from the realities of the social phenomena they ponder to contribute sensibly to their comprehension. However, common sense itself is not an entirely reliable source of wisdom. A possible solution might be found in the "professional theories" of practitioners intervening directly in the social phenomena in question. Such professionals are not academic theorists, conducting research and building formal theory based on abstracted principles. Nor are they truly lay theorists, since they may draw directly on academic theory to illuminate their professional perspectives and practice.

## **PROFESSIONAL THEORIES**

### **Characteristics of professional theories**

Five features of professional theories are significant: their function; individualisation; organisational structure; conferral of professional identity; and accountability.

## 1. Function

Professional theories, whilst couched in general terms, enable the practitioner to interpret and respond to specific instances of the social phenomenon with which they are concerned. This does not mean that professional theories determine behaviour. However, the abstract principles of professional theories must be capable of rapid application to concrete examples of their subject matter and conversion from interpretation into response.

Professional theories are therefore geared to the interpretation of and response to "real" examples of phenomena such as alcoholism and crime, and are informed by professionals' exposure to this reality. However, this concern with "real" instances does not in itself demonstrate the objective "truth" of professional theories. For example, Scott (1970) observes that professional theories may conceptualise blindness as a technical handicap to be compensated by aids and learned adaptational techniques, a psychological trauma involving shock and grief, requiring rehabilitation through learning adaptive skills and attitudes, or a condition producing special vulnerability to depression, necessitating recreational diversion. Similarly, professional theories of mental illness may take be somatherapeutic (concentrating on organic disfunction), psychotherapeutic (concentrating on the self-concept and personality of the patient), or sociotherapeutic (emphasising the patient's social milieu) (Scott 1970). Thus, Scott argues:

"One of the connotations associated with the notion of a professional ideology is that the conceptions of stigma embodied in them are empirically true, or at least truer than the conceptions which laymen hold. The claim of expertise implies that the claimant has a comprehensive understanding of the nature of stigma and its impact on human behaviour - an understanding firmly rooted in scientific knowledge... [T]his connotation is partly inaccurate

if only because the meaning of a stigma to different experts is often quite different and in some cases even contradictory."

(Scott 1970, p.269)

## 2. Individualisation.

Professional practice requires the application, in "real" instances, of general theories about the nature of a social phenomenon and the appropriate response to it (Curnock and Hardiker 1979). Studies of professional practice suggest that this is achieved through typification: the construction of general case typologies, or diagnostic categories, and their application to individual cases, cued by information from personal contact, case records and discussion with third parties (Hawkins 1983; McCleary 1978; Pfuhl 1980; Sudnow 1965). Typologies provide both explanations of individual character and behaviour, and prescriptions for the appropriate professional response. While case typologies are informed by the abstract conceptualisations and ideologies of the profession (Curnock and Hardiker 1979), they are also derived inductively from repeated experiences of real instances. Thus, Sudnow describes the development of typologies of crime and criminals by public defenders, based on the accumulated experience of specific cases.

"In the course of routinely encountering persons charged with 'petty theft', 'burglary', 'assault with a deadly weapon', 'rape', 'possession of marijuana', etc., the P.D. gains knowledge of the typical manner in which offenses of given classes are committed, the social characteristics of the persons who regularly commit them, the features of the settings in which they occur, the types of victims often involved, and the like. He learns to speak knowledgeably of 'burglars', 'petty thieves', 'drunks', 'rapists', 'narcos', etc., and to attribute to them personal biographies, modes of usual criminal activity, criminal histories, psychological characteristics, and social backgrounds."

(Sudnow 1965, p.259)

The use of case typologies has also been observed in studies of professional practice in the fields of parole (Hawkins 1983; McCleary 1978; Maguire, Pinter and Collis 1984), probation (Curnock and Hardiker 1979; Drass and Spencer 1978), juvenile delinquency (Asquith 1977; Morris and Giller 1981), disability, (Scheff 1966), alcoholism (Shamblin 1990) and psychiatry (Daniels 1970).

### **3. Organisation**

Professional practice is shaped by the goals and resources of the organisation in which it is located. Thus, professional typologies are not simply generalisations about an organisation's clientele, but concern the services which it provides.

"Since the typologies which agents use are provided by the organizations within which they work, the typologies are heavily influenced by the organization. In particular, typologies and their use reflect and are sensitive to organizational goals and functions, particularly in reference to the organization's place in some larger social structure. They also reflect the goals and viewpoints of the agents themselves within these organizational arrangements."

(Drass and Spencer 1987, p.279)

These remarks highlight three aspects of organisational influence on professional theories: the professional agency; the larger system of which the agency is a part; and the discretion exercised by individual professionals within the constraints imposed by the first two conditions.

#### **a) Agency**

The professional agency defines the available range of case typologies and responses. This agency influence has been ascribed titles such as "theory of office" (Drass and Spencer 1987), or "bureaucratisation of deviance" (Pfuhl 1980). Drass and Spencer define the professional theory of office as a "working ideology", which "consists of typologies of deviant actors and appropriate processing outcomes, as well as rules

which link the two" (1987, p.278). For example, Daniels observes that:

"psychiatrists are like representatives of any bureaucratic agency. They order their expectations of the clients to be serviced according to their understanding of the goals and powers of the bureaucracy. And so they attempt to fit their clients into the well-established categories."

(Daniels 1970,p.164)

#### **b) System**

Professional agencies do not necessarily enjoy complete autonomy in constructing their theory of office, since they may be located within, and accountable to, wider organisational systems which influence their sphere and mode of practice. For example, Daniels (1970) comments on the shaping of army psychiatric practice to the needs of the military services for soldiers to be generally fit for combat. Similarly, the professional practice of the probation service is framed by its location within the criminal justice system (Ashworth, Genders, Mansfield, Peay, Player 1984; Curran and Chambers 1982; Curnock and Hardiker 1979; Parker, Casburn and Turnbull 1981; Parker, Sumner and Jarvis 1989).

#### **c) Discretion**

The process of typification is held to involve the application of professional skill and judgement. Individual discretion is a highly valued feature of professional status. Differences between professionals in their reasoning about typologies in relation to particular cases, however, has also attracted allegations of arbitrariness and personal prejudice from unsympathetic observers (Pfuhl 1980; Shamblin 1990).

#### **4. Identity**

An ideology, coupled with special knowledge and resources, provides a cohesive professional identity. Learning the principles underpinning practice constitutes the process of induction into a profession and acquisition of professional

identity (Asquith 1977; Scheff 1966; Shover 1974). Thus, new entrants are powerfully motivated to learn the professional typologies which provide the basic tools for functioning. Progression from crude basic typification to proficiency in the full range and subtlety of theories represents significant professional accomplishment.

"A fairly accurate index of socialization into an agency might be the degree to which a staff member uses the diagnostic packages that are prevalent in that agency."

(Scheff 1966, p.143)

Recognition of deficiencies in the typologies may lead to disillusionment and departure (Shover 1974), maintenance of basic competence through suppression of doubts (Scheff 1966; Shover 1974) or professional advance through creative refinements to the existing conceptualisations (Scheff 1966). The mastery of professional theories therefore carries considerable prestige.

## **5. Accountability**

Professional theories provide the essential justifications of individual practice. Whilst discretion is a prized feature of professional activity, complete autonomy is rare. Within a professional organisation, practitioners' decisions are subject to evaluation, and therefore must be capable of justification. Professionals are held accountable for their conduct, judged against the organisation's ideology, knowledge and practices, including the recognised typification processes (Asquith 1977; Drass and Spencer 1987).

"[U]nder a model of professional decision-making, the ultimate justification of a decision is that the decision was made through the correct exercise of *professional* judgement. The criteria on which a decision is made are drawn from a stock of professional knowledge and though the professional may exercise discretion, some check can be made on

his decision by reference to that stock of professional knowledge which creates for him a *frame of relevance*."

(Asquith 1977, p.65)

### **Professional theories and decision making**

Professional theories facilitate economical information processing. In this sense, they provide cognitive scripts which directly relate clientele to services. The analogy with cognitive scripts suggests that professional theorising involves concrete reasoning about situations, providing rapid applicability to specific instances.

"A frame of relevance provides the professional with a set of generalisations or typifications about delinquency which allows him to identify particular cases as coming under a more general category. Definitions of need and assumptions about causation then relate to a variety of factors such as broken homes, deprived areas and so on depending on the particular professional stance. Thus, the process of interpretation of information and the identification of need against a particular frame of relevance allows the professional to make sense of a wealth of potentially ambiguous information."

(Asquith 1977, p.65)

Professional rules for information processing may be learned by exposure to professional practice (Scheff 1966). Thus, non-professional observers of practice, particularly if familiar with the system within which the profession is operating, may learn basic rules of professional decision making. The lawyer, Sir David Napley remarks:

"I have discovered over the years that, even in those cases where I ultimately refer the client for some form of psychiatric investigation, I can now usually, more or less, ask the same sort of questions and frequently arrive at roughly the same sort of conclusions as psychiatrists do. Indeed, I have come to the view, although I hold psychiatrists (or some of them) in the greatest of respect, that



many of the matters with which they are concerned can often be reduced to the application of simple psychology and common experience."

(Napley 1983, p.166)

Would "simple psychology and common experience" enable Napley to perform psychiatric diagnosis in all spheres of psychiatric practice? His own professional familiarity with the criminal justice system, its customary modes of dealing with like cases, and the influence of psychiatric evaluations within it may facilitate his performance of diagnostic tasks in that specific setting. This example shows that basic rules of professional decision making may be learned independently of the more abstract principles which inform professional activity.

Critics (e.g. Pfuhl 1980) deplore the rule-bound professional transformation of individuals into "typical cases", attracting "routine remedies" (Morris and Giller 1981). Thus, Harris and Webb reproach welfare agencies for their practices of "routine individualisation", rendering treatment impersonal, inflexible and insensitive to individual differences.

"[S]imultaneously everybody and nobody is individualised. Routine individualisation exists as the very child of the social, between, at the one extreme, the non-discretionary application of specified rules, and at the other, the *truly* individualised response to every problem, the flexible, creative practice which, though part of welfare work's professional persona, is altogether unrealistic among bureau-professionals whose lives are measured out in files and cases, and who have little option, at least after the first flush of enthusiasm has worn off, other than to approach each new client with the question: 'what type of case is this?'"

(Harris and Webb 1987, p.110)

Thus, professionals are accused of employing typologies in the service of their bureaucratic routines, rather than using

"real" knowledge to understand and respond flexibly to individual circumstances.

"[T]hough the assumed causes of delinquency may have little empirical validity, they do at least have heuristic value. That is, whether they truly are the causes of delinquency or not has less significance than the value they have for the individual by allowing him to make sense of and impose explanations and order on information in his role as professional."

(Asquith 1977, p.65)

Defences against these charges are frequently ambivalent. Scheff argues that professional organisations are capable of developing rich, flexible and accurate case typologies, while equally commenting on the tendency to rely on "minimal working concepts" (1966, p.142). Meehl (1973), while vigorously defending the proper application of diagnostic knowledge derived from empirical research in clinical psychology, equally fiercely condemns the failure of many professionals to utilise available knowledge adequately. Far from inflexible routinisation, however, Meehl sees the results of poor practice in inappropriate, irrelevant use of individualised information.

#### **Professional and academic theories: a comparison**

Five features contrast professional and academic theories: their relationships to cultural beliefs and attitudes, to organisational interests, to multiple disciplines, to outcomes, and to their subject population.

##### **1. Cultural beliefs and attitudes**

Professional theories assume the existence of a body of knowledge about their subject matter (Asquith 1977; Scott 1970). Nevertheless, only a fraction of the knowledge derived from academic research filters through to the professional practitioners "whose constructed meanings have the greatest impact on people with stigmatizing conditions" (Scott 1970, p.269). However, professional theories are not comprised only

of fragmented academic theories, fleshed out by practical experience.

"[T]he conceptions of stigma contained in professional ideologies are only partly determined by empirical knowledge derived from direct experiences with and scientific studies of stigmatized people. Their content is also determined by, and reflects, certain social, cultural, and political forces in the environments in which experts are immersed and on which they depend for economic support."

(Scott 1970, p.269)

Thus, whilst academic theories may promote changes in lay conceptualisations and the language in which lay beliefs are expressed, the social legitimation of a particular profession depends on effective communication of the profession's ideology in existing lay terms.

"Expert conceptions of stigma reflect prevailing cultural values, attitudes, and beliefs. In a sense, this is inevitable. Experts must use the 'native tongue' in order to communicate their constructed meanings to laymen, and the modes of expression that a language affords are grounded in the core values of a culture. Moreover, it is laymen who usually grant legitimacy to experts' claims to special knowledge about stigma; any constructed meanings that are dissonant with lay values, beliefs, and attitudes will probably be rejected as nonsensical."

(Scott 1970, p.270)

Furthermore, societal disapproval of its deviant members, often dictates that expensive professional services must be justified in terms of rehabilitation, or reduction of the level of non-conformity among the clientele (Scott 1970). Thus, core cultural values may determine the structure and expression of professional theories and the goals of professional activity.

## **2. Organisational interests**

Shover, pointing to the diversity of professional theories of crime among different agencies, which "appear to develop their

own *ad hoc* correctional 'theories' and categories of offenders" (1974, p.357), remarks:

"The success of alleged behavioral 'experts' in winning the legally established prerogative to tinker with offenders can, in the light of these facts, only be considered remarkable."

(Shover 1974, p.357)

In this sense, Shover argues, our academic knowledge of criminality is less seriously deficient than is our comprehension of the functioning of the professional organisations which translate theoretical principles into interventive strategies.

In the quest for social legitimacy, the claims of professional theories may owe less to academic knowledge than to the interests of the profession itself in survival and advancement. As has been seen, similar allegations have been made of the proponents of academic theories. However, despite the fragmentation of academic theories in their translation into professional theories, this process is often a major vehicle for the transmission of academic theories into lay life. Schneider's criticism of the blaming of "medical imperialism" (Heather and Robertson 1985) for the advancement of the disease theory of alcoholism may be understood in this light.

"The disease concept of alcoholism has a long history in America and has been supported both by medical and non-medical people and organizations for a wide variety of reasons. That certain forms of deviant drinking are now or have been for more than one hundred and fifty years medicalized is not due to a medical 'hegemony', but reflects the interests of the several groups and organizations assuming, or being given, responsibility for behaviors associated with chronic drunkenness in the United States. The disease concept owes its life to these variously interested parties, rather than to substantive

scientific findings. As such, the disease concept of alcoholism is primarily a social rather than a scientific or medical accomplishment."

(Schneider 1978, p.370)

Professional expansionism is often assumed to imply the profligate application of professional diagnostic typologies to bring as wide a subject population as possible under the authority of professional intervention. For example, Pfuhl alleges:

"(I)f investigative bodies consist of psychiatrists, the probability increases that a decision of incompetence will result, likely as an expression of the psychiatric construction of reality. Being trained to 'find mental illness' psychiatrists do precisely that!"

(Pfuhl 1980, p.196)

The reality of professional practice, however, is less simple. For example, the dependence of professional agencies on wider organisational systems may encourage the exclusion of potential subjects from the profession's diagnostic categories. Thus, Daniels found that psychiatric practice in the armed forces is concerned less with clinical diagnostic criteria than with social judgements about 'reasonable' or 'honorable' breakdown which can occur to anyone under sufficient pressure" (1970, p.168). Abstract academic principles for the construction of a profession's typologies are therefore modified to accommodate organisational pressures and expectations.

### **3. Multiple disciplines**

Diverse perspectives contribute to professional intervention in social problems, including, for example, nursing, psychology, social work and psychiatry. From the interaction of several professions, rooted in different academic disciplines, professional theories may emerge which are "hybrids" (Scott 1970) of these separate perspectives (Asquith 1977; Scott 1970).

Different academic disciplines also interact. Contemporary theories of intoxication, as has been seen, attempt to integrate pharmacological, psychological and sociological knowledge. Such integration, in academic theorising, reflects the pursuit of new abstractions at greater levels of sophistication and coherence. In professional theorising, however, it is more likely that integration represents the piecemeal accumulation of wisdoms which appear pragmatically to advance professional practice and survival. Such piecemeal theory building can produce internal contradictions through failure to discard discredited theory (Sheldon 1978).

#### 4. Outcomes

The exigencies of practice may result in disparities between professional conceptualisations and the academic meanings of the same concepts in abstract theory. For example, Asquith remarks:

"There is an essential difference between a notion of justice in theory and the notion of justice as an operational concept. Though there may be some dispute at the theoretical level as to whether a system of delinquency control based on the meeting of need can be a system of justice, such a clear cut distinction may well be lost completely at the practical level. In considering the significance of the status of key individuals in the administration of justice conceptual niceties give way to practical difficulties."

(Asquith 1977, p.62)

Davis (1983), comparing academic criminology to the professional practice of probation officers, relates their differences to their distinct goals. Academic goals concern the discovery of new facts and the construction of abstracted theory. To the academic, therefore, "logic" is related to empirical evidence and principles of relationships between objects and events, without the interference of value judgements. Professional goals concern immediate, practical requirements to respond to concrete situations in conformity to organisational expectations. Thus, "logic", to the

professional practitioner is equated with common sense and linked to the evaluation of performance outcomes (Davis 1983).

Murphy (1986) identifies discrepant professional and academic conceptualisations of the "professional criminal". Academic criminologists use the term to refer to those comparatively few offenders whose criminality is highly organised, who offend as a full-time occupation, are linked to criminal networks and make profit. Store detectives, who rarely encounter such professional criminals, nevertheless regularly perceive professionalism among their suspects, attributed on the basis of skill and confidence in stealing and dealing with arrest.

#### **5. Subject population**

Academic and professional theories are concerned with similar subject populations. Academic theories, however, do not require the legitimation of their subject populations. Although professional organisations attract criticism for imposing their conceptualisations on to a powerless clientele (Pfuhl 1980; Scott 1970), nevertheless, professionals cannot function without the collaboration, at some level, of those who use their services. Professional judgements therefore have to be negotiated in interaction with the clientele, who may influence the outcome to varying degrees, for example, by paying for services (Scheff 1966).

Studies of professional decision making reveal a negotiated process in which clients are explicitly or implicitly taught the diagnostic categories and rewarded for conformity to those typologies by the provision of service (Scheff 1990; Shamblin 1990; Spencer 1983; Scott 1970).

#### **Professional and lay theories: a comparison**

Three aspects of professional and lay theories of criminal responsibility bear comparison: their relationship to cultural

beliefs and attitudes; differences in emphasis and subtlety; and the seductiveness of lay styles of reasoning.

### **1. Cultural beliefs and attitudes**

The academic knowledge of professionals is infused with the perspectives of their social and cultural backgrounds. Wiseman (1970), for example, observes that professional theories about skid row life are derived from the combination of professional training in psychological and sociological concepts, and the middle class values of most professionals' backgrounds. Such values may be exposed at the surface of professional judgements if the professional is inhibited from explicitly expressing special knowledge, as when communicating with a lay audience (Curran and Chambers 1982).

Professional theories are also susceptible to individual differences in perspective which may guide the acquisition and interpretation of information within the parameters of theory. For example:

"Individual beliefs about the causes of events, crimes in particular, therefore lead to consideration of different information about a parole applicant, different inferences about the responsibility of the person for the crime, and different conclusions about the appropriate handling of the case."

(Carroll and Payne 1976, p.21)

### **2. Emphasis and subtlety**

Crocker, Fiske and Taylor (1984) suggest that professional expertise derives from the possession of well developed cognitive schemata for reasoning about specific instances of the profession's concerns. Thus, professionals, through the practiced use of their theories, are able to process information more effectively, paying more attention to conflicting information and moderating judgements in the light of the additional information perceived.



Carroll and Payne (1977) compared decisions about parole cases made by criminal justice experts and college students. They found basic similarities in the reasoning processes and judgements made, but experts used more information and combined different information more flexibly than students. Similarly, Lawrence and Homel found differences in the reasoning processes of experienced and novice magistrates.

"Major experience/inexperience differences occurred at the levels of what magistrates brought to the cases and their reasoning. Experts had more patterned approaches, and were directed by their treatment objectives to assess cause of the defendant's behaviors, and their prospects of responding to treatment and individualized approaches. Although the novice knew and responded to ritualized evidence-gathering procedures, he seemed to work with single details."

(Lawrence and Homel 1986, p.180)

Crocker, Fiske and Taylor (1984) suggest that, in consequence of such practiced subtlety, professional theories may be more resistant to change than lay theories, because they integrate more information into a stable, coherent pattern, are based on more experience and have stronger links between component parts. Change, therefore, may have a higher cost to the professional than the novice, since alteration in one aspect affects other areas of knowledge and experience.

Scott (1970) argues that the refinement of professional theories may result in discrepancies in the conceptualisations of lay and professional people. The finer, explicitly defined distinctions between normality and deviance of professional theories may reduce their correspondence with looser lay conceptualisations, despite broad similarities. As a result, the more marginal judgements of professional and lay people may differ. Thus, for example, judges and juries may be prepared to overrule a professional affirmation of criminal responsibility in favour of an insanity verdict (Howard and Clark 1985).

### 3. The seductiveness of lay theorising

Meehl attacks professionals in clinical mental health practice for "ignorance, errors, scientific fallacies, clinical carelessness, and slovenly mental habits" (1973, p.298) despite available and reliable diagnostic procedures. Carroll and Payne (1976) note the accumulation of research evidence that professionals tend to rely on case-specific information for making judgements rather than the available academic information about, for example, base-rates of a particular attribute or behaviour. They suggest that rather than base judgements on statistical information about the frequency of a particular crime, decision makers prefer to compare the immediate situation or person under scrutiny with others in their personal experience, as do lay people.

Abelson (1976) suggests that professional judgements based on concrete, "scripted" reasoning rather than hypothetical, abstracted principles are far more common than is acknowledged. It is professionally undesirable to justify judgements about a person on the basis of perceived similarities between that person and oneself, for example. Not only is it harder to utilise abstracted reasoning, but, Abelson suggests wryly, it is intrinsically less satisfying.

"Introspectively, it is not much fun operating at this level, either - and the consequent decisions are conflictful and unconfident."

(Abelson 1976, p.37)

Conflict and lack of confidence stems from the disconcerting effect of parsimonious information processing, despite statistical assurance of its relevance and accuracy. Studies of human information processing demonstrate a paradoxical relationship between quantity of information, quality of decisions and the confidence of decision makers. In general,

"studies indicate that the effects of increasing the amount of information are to increase the variability of the responses and to decrease the

quality of the choices, while also increasing the confidence of the decision maker in his judgements".

(Carroll and Payne 1976, p.24)

Dawes (1976) refers to this phenomenon as our "cognitive conceit", or unjustified faith in our human mental capacities for processing plentiful information efficiently, a failing to which professionals are no less prey than lay people. Thus, while professionals prefer to base their judgements about individuals on personal contact, rather than documentary evidence interpreted in the light of statistical knowledge, the decisions which consequently emerge are not more, but possibly less accurate (Meehl 1973; Ruback and Hopper 1986).

Criticisms of the comparatively narrow advantages of professional information processing over lay, professional neglect of academic knowledge relevant to decision making, and professional susceptibility to lay attitudes and styles of reasoning, have led to accusations that professionals make quite unwarranted claims to expertise.

"We must, in short, seriously begin to question whether these occupational claims rest upon anything more than common-sense assumptions and images".

(Shover 1974, p.358)

## CONCLUSIONS

Academic theories construct general principles, abstracted from the concrete evidence of research, to describe the nature of social phenomena and to derive from these descriptive principles logical conclusions as to the manner in which change may be effected. Such prescriptions are often directed at policy rather than practice and thus are not easily converted into prescriptions for dealing with individual situations. Lay theories represent the common sense wisdom of the non-expert, derived from direct and vicarious learning. Their general forms do not determine the responses of the lay theorist in specific situations, in which immediate factors strongly influence judgement and behaviour, possibly by

invoking "cognitive scripts". Professional theories convert abstract conceptualisations of a phenomenon into rapid interpretations and responses to specific situations, by providing well developed scripts derived from special knowledge and experience and modified by the expectations of the professional agency.

**CHAPTER THREE**  
**RESPONSIBILITY, CHOICE**  
**AND**  
**ACADEMIC THEORIES OF ALCOHOL-RELATED CRIME**

This chapter considers whether academic research and theory has undermined the confident ascription of criminal responsibility to intoxicated offenders. It is suggested that the legal concern that academic knowledge erodes the principle of free will is bolstered more by the deterministic expression of alcohol theory than by the substance of its research; and that academic theory about the alcohol-crime relationship often rests on common sense assumptions. The chapter examines firstly the alcohol-crime association; secondly, academic interpretations of offenders' theories of intoxicated crime; and thirdly, the major emphases of academic theories of the alcohol-crime relationship. Dispositional, situational and substance focused approaches are each illustrated with a particular theoretical conceptualisation of the alcohol-crime relationship.

**THE ALCOHOL-CRIME ASSOCIATION**

Research has repeatedly demonstrated the frequency with which alcohol consumption precedes crime commission. This statistical alcohol-crime association has been found in surveys of offenders (Washbrook 1977), studies of criminal careers (Pittman and Gordon 1958; Collins 1982) and studies of particular offences, including murder (Gillies 1965, 1976), rape (Rada 1975; Wright and West 1981), robbery (Walsh 1986), assault (Berkowitz 1986; Mayfield 1976) and burglary (Bennett and Wright 1984a). Researchers have become so accustomed to the association that failure to find it is sometimes attributed to methodological defects such as ineffective inquiry or inefficient recording (Pittman and Handy 1964), rather than to its actual absence. Collins, reviewing the accumulated literature, concludes:

"[C]onsiderable evidence suggests that alcohol is often present in or before criminal events, and that a disproportionate number of criminal offenders have alcohol problems."

(Collins 1982, p.188)

The association is particularly strong for violent crime (Collins 1982), a factor which has contributed to a concentration of research and theory on this relationship (Miller and Welte 1986; Pernanen 1982).

The repeated establishment of the alcohol-crime association reflects the preoccupation of much alcohol research with indexing the social harm attributable to alcohol misuse. Alcohol has been implicated in almost all forms of social ill, of which crime is only one. Others include domestic violence (Gayford 1975; Kantor and Straus 1987; Wilson 1982), accidents (Denney 1986; Royal College of Physicians 1987), employee absenteeism (Plant 1981; Polich 1979; Rix 1981), divorce (Blane 1979; Jacob and Seilhamer 1982), prostitution (Blane 1979), suicide (Beck, Wissman and Kovacs 1976; Blane 1979) and acute and chronic sickness (Royal College of Physicians 1987). In 1985, McDonnell and Maynard estimated the total annual cost of alcohol-related harm at an alarming £1614million.

The repeated finding of an association between alcohol consumption and a problematic event explains very little about the relationship between the two phenomena. Nevertheless, the tendency to assume cause from association, noted in Chapter Two, pervades much of this literature. The single cause assumption is linked to a variety of deficiencies in the collection and interpretation of the research data demonstrating the association:-

a) The influence of cultural beliefs and attitudes on the exercise of academic research was noted in Chapter Two. Pernanen (1982) suggests that proper examination of cultural variations in alcohol use and crime rates might challenge the

assumed stability of the alcohol-crime relationship. For example, Pernanen notes that France has a very high national consumption of alcohol, but a low homicide rate, while the reverse pertains in Central and South America.

b) The association has not been adequately contextualised within the drinking patterns of the general population. It tends to be assumed that the statistical association demonstrates an abnormal drinking pattern peculiar to offenders. However, "impact figures" (Pernanen 1982) created by statistical assertions about the extent of alcohol consumption by offenders would signify little if they resemble the customary drinking patterns of comparable groups in the general population (Evans 1986; Pernanen 1982). For example, Kantor and Straus (1987) found that although male heavy drinkers were more likely to abuse their wives than light or non-drinkers, nevertheless the majority of heavy drinkers did not abuse their wives. Washbrook (1977), however, attributed his finding, that a group of male prisoners appeared no more alcoholic than a group of male employees, to defects in the research methodology.

c) Research has concentrated on convicted, and particularly imprisoned, offenders. However, Collins (1982) suggests that alcohol-involved offenders may be over-represented in the criminal justice system. Reasons for this are unclear, and probably multiple. Contributory factors may not involve a causal relationship between alcohol and crime. For example, the perception of alcohol as an indicator of culpability, noted in Chapter Two, may increase the likelihood of prosecution and harsh punishment.

d) Research has neglected to contextualise pre-offence drinking within offenders' customary drinking patterns (Miller and Welte 1986). Bennett and Wright (1984a, 1984b) found that the frequency of burglars' pre-offence drinking closely reflected the frequency of their drinking in itself. Kantor

and Straus (1987) found that although wife assaults frequently followed drinking, most occurred when neither partner had been drinking.

e) The "malevolence assumption" (Hamilton and Collins 1982) has also infected aspects of victim research, through findings of an association between drinking and victimisation (Goodman, Mercy, Loya et al. 1986; Hough and Mayhew 1983, 1985; Wright and West 1981). By strengthening theories of victim precipitation, this assumption imputes blame to victims, although the criminal justice system relies heavily on the assumption of "innocent" victims (Shapland, Willmore and Duff 1985). A less emotive analysis might suggest that the association reflects situational aspects of crime, such as the likelihood of victim and offender meeting in a public drinking place.

f) Covariation between levels of alcohol consumption and crime rates does not necessarily reflect a causal relationship. Pernanen (1982), reviewing "natural experiments" in which the availability of alcohol was reduced through events such as price increases or strikes in the liquor industry, found an association with a reduced rate of violent crime. However, Pernanen cautions that consequences of reduced alcohol availability such as reduced levels of social interaction in public places, may explain this covariation. Smith and Burvill (1987) found that a lowered legal drinking age in Australian states was followed by a rise in juvenile crime. Violent crime, however, was much less affected than property crime, such as opportunistic car thefts, suggesting that juvenile criminal activity was influenced by the changes in opportunities for typical juvenile crime brought about by heightened interaction in public drinking places.

g) Situational factors associated with alcohol-related offences suggest a complex causal relationship. For example, violent crime commonly occurs in or around licensed premises



(Felson, Baccaglioni, and Gmelch 1986; Luckenbill 1977; Goodman, Mercy, Loya et al 1986). Such crime, however, is not only associated with drinking, but also with concentrations of young adult males (Felson, Baccaglioni and Gmelch 1986; Hope 1985), city centre locations (Hope 1985) and the physical design of pubs (Marsh and Campbell 1979).

h) The alcohol-crime association, and covariation between alcohol availability and crime, feed an assumption that increased drinking will inevitably be accompanied by increased crime. At the individual level, however, this does not appear to be true. Indeed, very heavy or chronic drinking may suppress serious offending (Collins 1982; Hamilton and Collins 1982; Pernanen 1982; Pittman and Gordon 1958; Washbrook 1977).

Thus, cultural, situational and individual variables may all have a strong bearing on the alcohol-crime relationship, but have often been neglected in data collection and interpretation, due to the intuitive obviousness of alcohol itself as a plausible cause of crime.

## **OFFENDERS' THEORIES**

### **Overview**

It was noted in Chapter Two that academic research does not generally regard lay theories as a source of objective truth. Nevertheless, researchers have on occasions asked offenders about their beliefs about the influences of alcohol on their criminal behaviour (e.g. Bennett and Wright 1984a, 1984b). Such information also emerges during the course of interviewing about other aspects of offending (e.g. Athens 1980; Walsh 1986), participant observation research (e.g. Parker 1974), and the collection of biographical data (e.g. Athens 1982; Maguire 1982). Such sources suggest four distinctions made by offenders between intoxicated and sober crime, suggesting qualitative differences in the exercise of rationality and intentionality: motivelessness; impulsivity; indiscriminateness; and incompetence. These distinctions,

however, imply degrees of motivation, deliberation and skill which are not generally associated with sober crime. They appeal to intuitive common sense notions, which are accepted or discredited by researchers according to their own perspectives.

### **1. Motivelessness**

Although the obvious purpose of robbery is to obtain money, Cordilia (1986) found that men convicted of group robbery after drinking quite often said that money was not important. Parker, during drinking sessions with a gang, observed that "one can get into a fight for almost no apparent reason" (1974, p.145). Burglars (Bennett and Wright 1984a, 1984b) and opportunistic robbers (Walsh 1986), sometimes assume that intoxication has caused their offence, since they do not recollect forming any prior intention. Offenders also appear to regard impulsivity and indiscriminateness as evidence of the motiveless of their intoxicated crimes.

Such statements imply that motives for sober crime are well articulated. However, when asked generally about their criminal motives, offenders offer mundane, unambitious and often vague reasons. For example, burglars usually cite wanting money as their motive (Bennett and Wright 1984a; Walsh 1986), but, as Walsh remarks,

"few seemed to have any clear idea of what they were looking for beyond 'money', and of those who did have a definite notion of their wage and return for skill, most set their sights very low and were content with quite trivial amounts, usually £100 or less."

(Walsh 1986, p.33)

Ill-gotten gains are often small (Maguire 1982; Walsh 1986). Further, the uses to which offenders put them display little ambition or deliberation, revolving around basic subsistence (Bennett and Wright 1984a) and, particularly, pleasures such

as drinking and gambling (Bennett and Wright 1984a; Maguire 1982; Walsh 1986).

Criminal motivations have complex sources, including both historical factors in the offender's prior experience, and situational factors providing the immediate opportunity for the offence (Bennett and Wright 1984a; Clarke and Cornish 1985; Cordilia 1986). Moreover, motivation to offend is generally intermittent, limited, and highly dependent on the confluence of the motivation itself and an opportunity to satisfy it (Bennett and Wright 1984a; Best and Luckenbill 1982; Briar and Piliavin 1965; Cornish and Clarke 1987; Pfuhl 1980; Walsh 1986).

"Realistically, then, commitment to legitimate values is a modality, a condition characteristic of most people most of the time. Second, for most people, release from moral constraint is situation specific, short-lived, and must be renewed from time to time. This episodic release, as the term implies, is an event that stands out or apart from other customary conditions. Thus, there is no contention here that willingness with respect to one form of deviance is generalized to other forms. Rather, people are released from moral constraint in a specific, episodic, and recurrent manner."

(Pfuhl 1980, p.70)

Such episodic, situationally specific motivation is not easily distinguishable from motivation intermittently "caused" by alcohol. Given the customary frequency of offenders' drinking (Bennett and Wright 1984a, 1984b; Miller and Welte 1986), it may be more appropriate to regard alcohol as a prevalent feature of situations in which criminal opportunities arise, or are generated by already motivated offenders.

Criminal motivations include emotional rewards; for example, excitement, relief of boredom, unhappiness and anger (Bennett and Wright 1984a; Maguire 1982; Feeney 1986); beating the system (Bennett and Wright 1984a; Pfuhl 1980); peer group solidarity (Best and Luckenbill 1982; Cordilia 1986; Scully

and Marolla 1985; Wade 1967); triumph over fear (Munro 1972); and demonstration or preservation of self-image (Pfuhl 1980; Scully and Marolla 1985; Wade 1967). Further, single offences may serve multiple purposes (Pervin 1986), which may be more or less fully articulated by the offender. For example, wanting money is compatible with also wanting excitement, although the former, being concrete, may be more easily articulated.

Intoxication itself achieves such goals, providing camaraderie (Cavan 1966; Marsh, Dobbs and White 1986), excitement (Dorn 1983; Parker 1974; Maguire 1982) and opportunities to demonstrate one's status to peers and others (Cavan 1966; Dorn 1983; Maguire 1982; Parker 1974). Thus, a cluster of activities, including intoxication, offending and gambling (Cornish 1978) satisfy similar motivations.

Attributing motivelessness to intoxicated crime, therefore, wrongly implies that motivation for sober crime is well articulated, ambitious, and independent of situational contingencies. Intoxication and offending have some common motivations. Motivelessness in fact appears to be a more accurate description of the sober, non-offending activities in the lives of ordinary offenders (Parker 1974; Patrick 1973).

"Life with the gang was not all violence, sex and petty delinquency. Far from it. One of the foremost sensations that remains with me is the feeling of unending boredom, of crushing tedium, of listening hour after hour at street corners to desultory conversation, and indiscriminate grumbling."

(Patrick 1973, p.80)

## **2. Impulsivity**

Offenders suggest that they commit intoxicated crime "on the spur of the moment", without prior deliberation or intent to offend. This theme emerges in accounts of intoxicated robbery (Cordilia 1986; Walsh 1986), burglary (Bennett and Wright 1984a, 1984b) and rape (Wright and West 1981).

However, impulsivity is not peculiar to intoxicated crime. Bennett and Wright (1984a) found that the idea of offending sometimes seemed to "pop into" burglars' heads, with no identifiable precipitating factor. They suggest that with experience offending becomes mere routine, obviating the need for contemplation. Furthermore, planning has a cost in flexibility, causing difficulty in adapting to setbacks by switching targets, compared with a more opportunistic approach (Bennett and Wright 1984a). Walsh (1986) sees impulsive burglary as a popular protective strategy against the anxiety provoked by pondering the hazards of the enterprise.

Despite the apparent impulsivity of intoxicated violence, ethnographers in group drinking situations record keen awareness of the behavioural cues associated with aggression, careful avoidance of producing them, and defusing of volatile situations (Archard 1979; Mungham 1976; Parker 1974).

Moreover, spontaneity is an integral feature of some types of crime. For example, Zimring (1981) suggests that spontaneity characterises robbery by young offenders because they typically offend in groups, engage in little preparation and rely on numerical strength. Street robbery, in any case, depends heavily on speed and surprise for success, allowing little time for deliberation (Feeney 1986; Lejeune 1977; Walsh 1986). Similarly, vandalism is rarely planned, but develops in playful group interaction, seizing opportunities immediately to hand (Best and Luckenbill 1982; Wade 1967). Furthermore,

"[b]ecause most delinquent activities require few resources, such as special skills or equipment, many occasions can be transformed into situations for delinquency."

(Best and Luckenbill 1982, p.52)

Parker (1974) suggests that the apparently spontaneous fighting between young men in city centre pubs must be understood in the context of situations which lack rules regulating confrontations, necessitating pre-emptive action.

Historical factors promote readiness to seize sudden opportunities. Cordilia (1986) suggests that socially isolated men are highly motivated to preserve tenuous relationships with drinking companions. Wade argues:

"Little exploration of feelings of fellow members of a delinquent group need be made when past natural histories of their careers indicate predispositions to any behaviour hinting of excitement, danger, and even malice."

(Wade 1967, p.101)

Experience enables robbers (Feeney 1986; Walsh 1986) and thieves (Carroll 1982; Carroll and Weaver 1986) to identify opportunities more rapidly, and to be readier to seize them. Experience thus provides a "pattern" (Feeney 1986) or "script" (Forgas 1986; see also Chapter Two) for an offence.

Suddenness masks the generally orderly execution of impulsive offences. The "ethogenic approach to social psychology" (Marsh and Paton 1986) assumes that all behaviour is understandable given sufficient knowledge of the actor's perceptions and motivations. This perspective has fostered a series of studies showing logical sequences of events and behaviour leading to the completion of impulsive robbery (Lejeune 1977; Luckenbill 1980), assault and homicide (Athens 1980; Felson and Steadman 1983; Luckenbill 1977), rape (Athens 1980) and vandalism (Wade 1967).

Impulsivity, therefore, reflects prior experience, a defensive psychological strategy and factors integral to certain types of crime.

### **3. Indiscriminateness**

Indiscriminateness implies that intoxicated offenders commit random offences, rather than selecting offences or targets on a rational basis. Burglars may attack premises, not on the basis of prior selection, but merely because they are encountered after leaving the pub (Bennett and Wright 1984a;

Maguire 1982). Cordilia (1986) suggests that intoxication distorts normal priorities to the extent that sober individuals find their intoxicated violence incomprehensible. Parker's (1974) accounts of group drinking sessions are replete with apparently indiscriminate attacks on people and property.

Intoxicated indiscriminateness has been called illusory by anthropologists, who find that even the most outrageous drunken violent and sexual orgies are constrained by rules: for example, prohibiting violent victimisation of women and children, sexual partnership with children and kin, or the use of certain weapons (Macandrew and Edgerton 1969). Discrimination is also affirmed on occasion by offenders. For example, in Maguire's biography of a professional burglar violence is resolutely eschewed, despite considerable heavy drinking, because "there's no profit in this game" (1982, p.100).

Sober criminals, however, do not always practice fine discrimination. Patrick found that juvenile gang members were

"capable of both utilitarian and non-utilitarian delinquent acts. The same boys could steal objects for profit, for their own consumption, and for 'the hell of it' all in the one day. They committed thefts as the need and the mood of the moment took them without regard for the neat classifications of sociologists."

(Patrick 1973, p.200)

Bennett and Wright (1984a) found that burglars' willingness to attack different types of dwelling increased with experience. This probably reflects, not increasing indiscriminateness, but learning, for example of the much lower risk of apprehension than that anticipated by novices. This, again, given the frequency of pre-offence drinking, may explain the willingness to seize opportunities casually encountered after drinking.

Fine discrimination between types of offence and target is constrained by the limitations of available opportunities (Collins 1982; Letkemann 1973; Walsh 1986). For example, robbers profess to principles about victimising groups such as the elderly or women (Lejeune 1977; Walsh 1986), but these scruples are "easily eroded in the attempt to select the most accessible or vulnerable target" (Lejeune 1977, p.135).

Indiscriminateness, therefore, is not a necessary consequence of intoxication, nor is subtle discrimination practised by the majority of sober offenders.

#### 4. Incompetence

Inadequate preparation, clumsiness, and unnecessary risk taking are regarded as qualities of intoxicated crime (Bennett and Wright 1984a, 1984b; Cordilia 1986; Walsh 1986). Offenders believe that intoxication inhibits successful performance of dishonest crime and that it promotes aggressive offences (Cordilia 1986; Walsh 1986; Wright and West 1981). Walsh remarks that drinking sessions in which burglars exchange useful information

"can easily degenerate, due to boasting based on alcohol intake, into a 'dare', where nobody really *wants* to, but feel now that they *have* to, as a result of group pressure, carry out a task which is fraught with needless risk."

(Walsh 1986, p.44)

Nevertheless, intoxicated people often competently perform complex behaviours which are particularly valued. Anthropological studies reveal the competent performance of social functions such as ceremonial duties despite intoxicated interference with basic motor functions (Marshall 1981). Blane suggests that the apparent decrease in alcohol-related problems over the life span

"may reflect not a reduction in alcohol-related problems but a more sophisticated capacity to modulate the behaviors in question so that they



don't come to the attention of those whose function it is to identify such behaviors."

(Blane 1979, p.27)

Observers of offenders remark on the high value placed on personal control (Walsh 1986) and skills such as verbal quick wittedness (Campbell 1986; Parker 1974), displayed during drinking sessions.

Professional crime is a comparative rarity. For example, dwelling-house burglaries are frequently committed by juveniles (Maguire 1982), in offenders' own, often disadvantaged, neighbourhoods (Bennett and Wright 1984a; Maguire 1982; Hough and Mayhew 1983), achieving little gain (Maguire 1982; Walsh 1986) and involving needless risks (Bennett and Wright 1984a; Maguire 1982; Walsh 1986). Experienced burglars know *how* to execute careful crime, but frequently fail to implement their knowledge (Bennett and Wright 1984a; Maguire 1982; Walsh 1986). Roebuck and Johnson (1962), comparing specialist and "jack-of-all-trades" offenders, found that the latter displayed gross incompetence throughout their criminal careers, despite their comparative sobriety.

The technical sophistication of much crime is low. Common, rather than specialised, knowledge and skills are very frequently applied to criminal activity (Letkemann 1973), and learning involves the mastery of psychological defences against anxiety at least as much as technical ability (Carroll 1986; Lejeune 1977; Walsh 1986). Preparation is often minimal (Bennett and Wright 1984a; Lejeune 1977; Maguire 1982; Walsh 1986), equipment basic (Walsh 1986), and success reliant on victims' or observers' naivete rather than on subterfuge (Bennett and Wright 1984a; Buckle and Farrington 1984; Lejeune 1977; Lejeune and Alex 1973; Murphy 1986; Steffensmeier and Terry 1973; Walsh 1986).

Maguire (1982) suggests that burglars' customary lifestyle, favouring hedonism, profligacy and dare-devilry, militates against the consistent use of knowledge and skill. Bennett and Wright (1984a) found that unnecessary risk taking was itself prompted by rewards such as the certainty of gain, excitement and convenience.

Incompetence, therefore, is not a necessary consequence of intoxication, nor is it a distinctive quality of intoxicated crime.

### **The Appeal to Common Sense**

These observations suggest that levels of motivation, preparation, discrimination and skill in sober crime are over-estimated in subjective comparisons with intoxicated crime. Offenders generally seem to weigh opportunities and risks in a rough and ready way, rather than with objective precision, opting for "what seems reasonable at the time" (Bennett and Wright 1984a; also Clarke and Cornish 1985; Cornish and Clarke 1986). In crime, as in other activities, as noted in Chapter Two,

"[c]omplex situations are typically dealt with through simplified strategies or heuristics involving limited comparisons and judgements".

(Carroll 1982, p.64)

Thus, Coid (1986a), reviewing sober and intoxicated rape, concludes that the most significant finding is probably their essential similarity.

In making their distinctions between intoxicated and sober crime, offenders appeal to common sense beliefs about alcohol's effects, rather than to special insights derived from experience. Indeed, the intuitive reasonableness of their claims is reflected in the difficulty, in much of the literature, of distinguishing fully between offenders' theories and the assumptions of the researchers.

Taylor (1972) criticises the frequent tendency of academics to discredit offenders' accounts in favour of their own theories, or to accept them only under special conditions such as guaranteed privacy. Such responses smack of academic arrogance. Nevertheless, the dilemma is real. Firstly, offenders may be motivated, under any conditions, to offer self-justificatory or self-excusatory accounts, rather than to acknowledge fault or failure to themselves or to others (Maguire 1982). Secondly, offenders' accounts reflect the ignorance of lay people generally about alcohol. Fitzmaurice and Pease (1986) also note that offenders' theories of crime usually reflect popular beliefs, rather than special insight. Thirdly, people appear often to have little or no knowledge of the "real" reasons for their actions, invoking instead reasons which, although incorrect, strike them as plausible (Nisbett and Wilson 1977). Thus, offenders may offer intoxication as a primary explanation when it appears to be either the most desirable or the most likely reason for their behaviour, on the basis of common sense beliefs about alcohol's effects on rationality. Furthermore, when directly asked to compare their intoxicated and sober crimes, offenders may bring to mind occasions with distinctive features, such as arrest, which may be attributed to intoxication.

Researchers appear to respond to offenders' accounts with acceptance or qualification, according to their particular personal beliefs, theoretical perspectives and research focus. This can lead to notable contradictions.

#### **a) Personal beliefs**

Researchers' willingness to believe in the irrationality and incompetence of intoxicated offenders' behaviour contrasts strikingly with their confidence in the reliability of their own intoxicated reasoning. Participant observers produce confident commentary after heavy drinking sessions with their subjects (Archard 1979; Parker 1974; Hobbs 1988). Hobbs, investigating the police, recalls:

"For the most part I spoke, acted, drank, and generally behaved as though I was not doing research. Indeed, I often had to remind myself that I was not in a pub to enjoy myself, but to conduct an academic inquiry and repeatedly woke up the following morning with an incredible hangover facing the dilemma of whether to bring it up or write it up."

(Hobbs 1988, p.6)

Maguire's (1982) repeated endorsement of burglars' denunciation of intoxicated crime as irrational contrasts oddly with the respectful biography of a successful professional thief, whose accounts are replete with references to heavy drinking which go unremarked by the author. Maguire's concept of "professionalism" appears to disqualify the possible relevance of intoxication to this analysis.

#### **b) Theoretical perspective**

Berkowitz (1986) disputes Luckenbill's (1977) assertion of the significance of onlookers in violent interactions. No assaulter in Berkowitz' study believed that the presence or absence of an audience influenced his offence. This, however, ignores the evidence from experimental research that people fail to recognise the effects of an audience on their behaviour (Latane and Darley 1970), which suggests that the responses of Berkowitz's assaulters were predictable but unreliable. By contrast, Berkowitz argues that assaulters increased their violence in response to signs of their victims' pain, although themselves unaware of this stimulus. Berkowitz' selectivity as to which "unconscious" responses he recognises complements his theoretical preference for the explanation of wilful harm inflicted by "explosive" men with weak ego defences.

Similarly, Cordilia (1986), favouring a symbolic interactionist perspective, explains intoxicated group robbery as the attempt to prolong intense, but tenuous relationships, although interviewed offenders did not articulate their motives in this way.

### **c) Research focus**

Researchers sometimes appear "blind" to their subjects' obvious intoxication when offending. Maguire's (1982) disregard of intoxication when examining "professionalism" has been mentioned. Athens' (1980) investigation of violent crime, derived entirely from offenders' accounts, achieved detailed explanations of the motives for and execution of offences without invoking alcohol as a cause, although the majority mentioned being heavily intoxicated. Athens himself does not comment on the prevalence of intoxication in these accounts. For both offenders and researchers, focusing on the sequence of events and decisions leading to an offence appears to render alcohol superfluous to causal explanations of crime.

### **Summary**

Offenders' theories of intoxicated crime are derived from lay beliefs about alcohol, and are likely to be invoked as explanations of offences when other reasons are unacceptable or unavailable. They are capable of detailed accounts of intoxicated crime without invoking alcohol as a cause. Researchers tend to accept or reject the appeal to intuitive common sense according to their personal beliefs, theoretical perspectives and research focus.

## **DISPOSITIONAL THEORIES**

### **Overview**

Dispositional theories of deviance attempt to link the development of deviant behaviour to distinctive experiences or personality characteristics. They therefore primarily concern the processes of initiation, development and change during drinking and criminal "careers". Research emphasises methods such as longitudinal studies, cross-sectional surveys, studies of special populations such as prisoners or alcoholics in treatment, and personality measurement.

### **a) Life experiences**

The development of individual drinking problems has been studied by longitudinal comparisons of drinking patterns between early and later adolescence (e.g. Marsh, Dobbs and White 1986), adolescence and young adulthood (e.g. Ghodsian and Power 1987) and youth and later adulthood (e.g. McCord and McCord 1962). The manifestation of drinking problems has been studied through cross-sectional population surveys (e.g. Hauge and Irgens-Jensen 1987). Collectively, such studies suggest that although early and later drinking problems are linked, individual drinking patterns fluctuate so considerably over the life span that "no reliable predictive statement can be made about a given individual even in the presence of extensive information about the person's drinking behavior, personality and life history" (Blane 1979, p.28; also Collins 1982; Zucker 1979). Despite the instability of individual drinking patterns through the life cycle, there is in general a marked shift from comparatively common problematic drinking in young adulthood towards unproblematic drinking in maturity (Blane 1979; Collins 1982; Sadava 1987). Drinking problems are experienced differently in youth and middle age (Hauge and Irgens-Jensen 1987; Zucker 1979). Similar fluctuations, and the tendency towards desistance after young adulthood are found in criminal careers (Briar and Piliavin 1965; Collins 1982; Hirschi and Gottfredson 1983).

Multiple life history factors are implicated in the development of drinking problems. These include, for example, ethnicity, religion and culture (Blane 1979; Goldman, Brown and Christiansen 1987; Greeley, McCready and Theisen 1980; Zucker 1979), parental relationships and models (Goldman, Brown and Christiansen 1987; Greeley, McCready and Theisen 1980; Zucker 1979), family size (Zucker 1979) and socio-economic status (Blane 1979; Collins 1982; Zucker 1979). Such factors, however, interact with each other to exert their relative influences in complex combinations (Collins 1982; Cox 1987; Sadava 1987; Zucker 1979). Furthermore, the salience of

different factors to an individual's drinking pattern changes over the life span, for example in the relative influence of parental and peer group models (Zucker 1979). Finally, the influence of historical factors is heavily modified by the individual's contemporary social position and drinking environment (Blane 1979; Collins 1982; Harford, Wechsler and Rohman 1983; Hauge and Irgens-Jensen 1987; Hope 1985; Nusbaumer, Mauss and Pearson 1982; Sadava 1987; Zucker 1979). Again, similar factors have been found to predict persistent delinquency (Farrington 1987; Loeber and Dishion 1983; West and Farrington 1973).

#### **b) Personality characteristics**

The "alcoholic personality" concept has been discredited by the failure of research to link alcoholism convincingly to distinctive personality characteristics (Cox 1987; Fingarette 1988). Nevertheless, the concept retains its attractiveness. Some theorists, while recognising the lack of supportive evidence, continue to argue the importance of personality factors in alcoholism. For example, Ludwig suggests that

"the lack of a typical alcoholic personality does not mean that there is not a constellation of inchoate attributes common to alcoholics, or most individuals for that matter, which can become exaggerated and hypertrophied in response to a growing dependence upon alcohol and all of the deception, interpersonal difficulties, and expenditure of energy it entails to maintain so destructive a habit."

(Ludwig 1988, p.78)

It is unclear how far some measures of personality which characterise alcoholics, such as low self-esteem, depression, anxiety, high field dependence and external locus of control, are a cause, and how far a consequence of alcoholism (Cox 1985, 1987; Heather and Robertson 1985). Cox argues that

"the intense negative affect observed among alcoholics is largely a consequence of long-term alcohol abuse."

(Cox 1985, p.215)

The suggestion in some research that individuals prone to develop drinking problems are more sensitive to alcohol's effects than others (Cappell and Greeley 1987; Cox 1987; Sher 1987), nevertheless begs the question how such individuals come to value those effects. For example, Sher (1987) notes that individual susceptibility to alcohol's tension reducing effects appears to be unrelated to personality measures of anxiety proneness.

Personality characteristics which do appear to predict problematic drinking, such as impulsivity, non-conformity and low self-control, do not self-evidently explain its onset. Despite the consistent finding of these personality characteristics,

"there is no uniform evidence that substance users and abusers were maladjusted or psychologically distressed prior to their substance use."

(Cox 1985, p.215)

These personality characteristics also resemble characteristics such as troublesomeness, aggression and anti-social behaviour, which have been found to predict delinquency (Farrington 1987; Loeber and Dishion 1983).

Thus, adolescent problem drinking and delinquency appear to be part of a cluster of non-conforming behaviours which may have common psychosocial foundations (Collins 1982; Sadava 1987; Zucker 1979). Although the intensity of offending during later criminal careers appears to covary with periods of heavy drinking, this is not in itself evidence of a causal effect of frequent intoxication on criminality (Collins 1982, 1986). Collins (1982) suggests that in fact adolescent delinquency may precede drinking, and adult criminality may exacerbate



drinking problems. This perspective has received scant attention, perhaps because it runs counter to the common sense cause and effect relationship between drinking and crime.

Dispositional explanations of the relationship between acute intoxication and specific criminal events are largely of two types: that intoxication exacerbates the factors which predispose individuals to commit crime; or that there is an underlying common cause of both drinking and offending (Pernanen 1982).

Approaches of the former type usually rely on assumed pharmacological effects of alcohol, such as disinhibition (Pernanen 1982). More detailed attempts have difficulty encompassing the varied strands of relevant research. For example, Blum (1982) suggests that the probability of violence among alcoholics is enhanced by the stressfulness of social situations caused by their external locus of control, field dependency and impaired abstract reasoning. This argument, however, overlooks evidence that violence is suppressed among very heavy drinkers (Kantor and Straus 1987) and that the offences of chronic alcoholics are typically non-violent, drunkenness offences (Washbrook 1977; Pittman and Gordon 1958).

Blum's account suggests predictability of offending from the combination of personal attributes and the effects of alcohol. However, both intoxicated and sober individuals vary considerably in their responses to different situations (Pervin 1986; Toch 1986). For example, males may confine their violence to domestic situations (Fagan, Stewart and Hansen 1983), but even there not all provocative situations will result in violence (Dobash and Dobash 1984).

Approaches of the latter type usually identify personal attributes which are thought to underlie both excessive drinking and criminality. The concept of "undersocialisation",

examined below, falls into this category. Such common cause conceptualisations may offer explanations of the apparent covariation of drinking and offending careers, or the transfer of deviance from offending to drinking in later life, since both behaviours are thought to stem from the same psychosocial sources. Once again, however, explanations of the relationship between acute intoxication and specific criminal events tend to appeal to alcohol's assumed effects.

### **Undersocialisation**

The concept of "undersocialisation" (Bahr and Caplow 1974) is not a unified theory, but is invoked to a greater or lesser extent by several alcohol and crime theorists. It is also a popular lay and professional concept, expressed in terms such as "inadequacy", "inability to cope", "dependency" and "poor self-control". Underpinning the various academic, lay and professional manifestations of the undersocialisation concept is the theme that drinking and offending are maladaptive solutions to the failure to develop sufficient psychological resources to respond competently to the demands of conventional social life.

The popularity of the undersocialisation concept is accompanied by a tendency to regard its explanatory power as self-evident. Thus, it receives only passing mention in some of the literature on alcoholism (e.g. Jellinek 1960) and crime (e.g. Washbrook 1977). Pittman and Gordon explain the shift from property crime to chronic drunkenness offences in terms of undersocialisation.

"[T]he criminal career is generally divided into two distinct phases. The first covers the earlier years of life, generally when the man is under 40 years of age, and is marked by arrests and incarcerations for offenses that are seemingly unrelated to excessive use of alcohol. However, these arrests and incarcerations mean that their attempted criminal careers have been unsuccessful. They then drop out of active crime, not only because of ineptness and age, but also through the emergence of the new pattern of adaptation to societal norms and

requirements which is reflected in increased drinking and life on Skid Row. In terms of their perception of the life situation, drinking forms a part of a new pattern of gratifying psychological needs, replacing the unsuccessful attempt to achieve that gratification in a career of crimes against property."

(Pittman and Gordon 1958, p.542)

They continue:

"The penal institution is thus functional for those inebriates who show long and continuous histories of incarceration, in that it meets, although in a socially disapproved way, the basic psychological needs of their personality structure. Incarceration, on the other hand, is dysfunctional in the sense that it provides the situation in which the developing dependency can be fixed in the personality pattern where it is already evident as an inability to develop autonomy in adulthood."

(Pittman and Gordon 1958, p.546)

The undersocialisation concept lies at the heart of some theoretical accounts of intoxicated crime. For example, Cordilia's (1986) symbolic interactionist analysis of robbery arising in a group drinking context appeals to the generation of intense, tenuous relationships between socially isolated individuals in a drinking situation.

Control theory (Briar and Piliavin 1965; Gottfredson and Hirschi 1990; Hirschi 1969; Hindelang 1973; Wiatrowski, Griswold and Roberts 1981) provides an example of a rigorous theoretical account, complemented by considerable research, of the release of criminality through the failure of socialisation experiences to develop strong internal controls, or "commitments to conformity" (Briar and Piliavin 1965). Nevertheless, since crime is not continuous even among poorly controlled individuals, it is necessary to examine specific criminal events (Clarke and Cornish 1985), to determine the factors which motivate the individual to act on the coincidence of his weak self-control and the opportunity to offend (Briar and Piliavin 1965; Hirschi 1986; Shover 1985).

The undersocialisation concept implies that the deviant lifestyle is less demanding than the conventional one. Individuals who have failed to achieve adequate levels of socialisation for competent performance in conventional life, turn to deviance as an easier route to survival. However, both alcoholic and criminal lifestyles make heavy demands on individual resources (Archard 1979; Cook 1975; Healy 1988; Phillimore 1979; Shover 1986; Walsh 1986; Wiseman 1970). Cook, observing the frequent use of the word "inadequate" in social workers' reports on skid row men, remarks:

"These 'judgements at a distance' do not reflect in any way the qualities the men need to survive on skid row. The resourcefulness and energy required on skid row can at times be considerable, and hordes of the passively inadequate men described could not survive at all."

(Cook 1975, p.164)

Significant skill deficits are deficits for criminal competence as much as for conventional activities. Roebuck and Johnson (1962) attribute the failure of "jack-of-all-trades" offenders to progress in professional crime to their clumsiness, poor self-discipline, frequent apprehension, indiscriminate choice of crime and isolation from more sophisticated criminals. The single area of relative social competence displayed by these offenders was their comparative sobriety!

Bahr and Caplow (1974) found that skid row drinkers were more sociable, had more friends and more family and community ties than abstainers, whose histories were marked by non-attachment.

"A condition such as 'undersocialization', cannot be the major factor in the development of a certain behavior if it appears most consistently in the lives of those who do not exhibit the behavior. The heavy drinkers in our sample may indeed be undersocialized in comparison with the general population, but this deficiency cannot be the

explanation for their excessive drinking if it is even more characteristic of abstainers and moderate drinkers on the Bowery."

(Bahr and Caplow 1974, p.256)

Facilitated by the assumption of social rejection, noted in Chapter Two, the point that skid row life is more tolerable if the individual participates in its major social activity is often taken to imply "escape" through intoxication. There are, however, distinct benefits to be derived from participation in skid row drinking, including a degree of sociability and support unavailable to the abstainer (Bahr and Caplow 1974; Peterson and Maxwell 1958; Rubington 1958). This incentive encourages the adaptation of individual drinking behaviour to the predominant pattern of the drinking group (Rubington 1958; Wallace 1965). The filtering of information on the basis of a particular conceptualisation, suggested in Chapter Two, may lead to the perception of undersocialisation in behaviour which is a product of this "social organisation of deviance" (Best and Luckenbill 1982). Four examples of this may be given:-

a) Skid row drinking patterns are shaped by the tension between chronic poverty and the desire to maintain drinking (Archard 1979). Loose drinking groups are formed for the procurement and consumption of alcohol, avoiding police interference (Archard 1979; Cook 1975; Peterson and Maxwell 1958; Rubington 1978). Such transient relationships, driven by economic and situational necessity, may appear to reflect inability to sustain social ties.

b) Skid row men have neither the financial resources nor the opportunities to make long term plans or provisions. Feeding, clothing, drinking and shelter are day-to-day activities, funded by the small financial and material resources available from casual work, state and charitable welfare, small scale theft and begging (Archard 1979; Cook 1975; Healy 1988; Peterson and Maxwell 1958; Phillimore 1979; Wiseman 1970).

Analyses of these activities, however, show each to require a degree of enterprise, persistence and skill which is masked by the superficial appearance of passive receipt of hand-outs.

c) The suppression of serious offending among chronic heavy drinkers may appear as the result of incompetence exacerbated by physical and mental deterioration (e.g. Pittman and Gordon 1958). However, opportunities for large scale or organised crime are simply absent in the environments and social groupings within which skid row men move (Archard 1979; Pernanen 1982; Wiseman 1970).

d) Failure to remain in treatment facilities may appear to the providers as evidence of inadequacy and lack of commitment to rehabilitation (Archard 1979). However, skid row men appear to employ a different definition of treatment resources as, for the most part, a means of maintaining their lifestyle, rather than changing it. Such facilities provide short term detoxification, shelter, food and escape from police surveillance to restore the physical and psychological stamina required by the rigours of skid row life (Archard 1979; Healy 1988; Wiseman 1970).

### **Summary**

Research prompted by dispositional perspectives has demonstrated that some groups of individuals have an increased risk of drinking problems (Sadava 1987; Zucker 1979). However, closer prediction of individual drinking careers has not been possible. Nor has it been possible to identify a causal relationship between problem drinking and criminality. The two appear to have common psychosocial foundations. Dispositional explanations of specific intoxicated criminal events are weak, encouraging the attribution to personal characteristics of responsibility for behaviour which is in fact heavily influenced by the environments in which individuals move. Psychosocial factors must be considered in relation to the specific situations in which individuals

become motivated to act upon such predispositions as they have, either to drink or to commit crime (Adesso 1985; Bennett and Wright 1984a; Best and Luckenbill 1982; Berkowitz 1986; Fingarette 1988; Ludwig 1988; Pervin 1986; Toch 1986).

## **SITUATIONAL THEORIES**

### **Overview**

Situational perspectives recognise that criminal activity requires "the confluence in time and space of the target and offender in the absence of effective deterrents" (Gottfredson 1984, p.3). Thus, they are primarily concerned with the analysis of specific drinking and criminal events, examining the contributions of situational factors to the production of crime: the human (Garofalo 1987; Gottfredson 1984; Hough and Mayhew 1983, 1985; Lejeune and Alex 1973) and physical (Bennett and Wright 1984a; Maguire 1982; Mayhew, Clarke, Sturman and Hough 1976) targets of crime; and the development of criminal opportunities (Bennett and Wright 1984a; Clarke 1980; Clarke and Cornish 1985; Hope 1985).

Drinking behaviour is heavily influenced by situational factors. For example, it varies according to the public or private nature of the drinking context (Harford 1979, 1983; Marsh, Dobbs and White 1986), presence and number of drinking companions (Harford 1983; McCarty 1985), models for drinking behaviour (McCarty 1985; Nusbaumer, Mauss and Pearson 1982; Zucker 1979), and gender of drinking companions (Harford 1983; Wilsnack and Wilsnack 1979). Harford (1983) suggests that different factors such as drinking context and type of drinking companion interact in complex ways to modify drinking behaviour. Nusbaumer, Mauss and Pearson (1982), however, argue that the detailed attention to social situational factors neglects the special reinforcements for heavy drinking provided in the design and management of public licensed premises.

Bennett and Wright (1984a), by contrast, argue that situational research in criminology has concentrated narrowly on immediate factors in the physical environment, to the neglect of relevant social situational factors such as the presence and behaviour of peers. Similarly, Hope (1985) argues that an analysis of city centre disorder should include a broad examination of situational and socio-cultural factors concerning the leisure preferences of those who congregate in city centres, physical factors concerning the design of city centres and drinking places, and issues in the management of licensed premises.

Such arguments encourage a theoretical perspective in which alcohol itself may be defined as a situational factor, defining the context of social interaction (e.g. pub), its nature (e.g. leisure) and the range of anticipated behaviour (e.g. disinhibited) (Cavan 1966; Gusfield 1987). Both alcohol (Barrett 1985; Harford 1979; McCarty 1985; Sadava 1987) and crime (Campbell 1986; Clarke and Cornish 1985; Cornish and Clarke 1986; Forgas 1986; Pervin 1986; Toch 1986) theorists argue that individual perception and cognition are crucial to the explanation of the influence of situational factors on behaviour. Thus, situational analyses of crime must be highly crime specific in order to identify important aspects of decision making (Cornish and Clarke 1986).

The pursuit of research into broad categories of crime such as assault obscures fine differences between sub-categories of offences under that heading. Situational analyses of violent interactions (e.g. Luckenbill 1977; Felson and Steadman 1983) are primarily accounts of escalating mutual aggression between males, often arising in a public drinking setting. Examining domestic violence, Dobash and Dobash (1984), found that during an attack female victims repeatedly attempted to appease, rather than to incite a male aggressor. They suggest that this signifies a crucial distinction between domestic assaults and public violence between males: that the intention to attack is



formed by the aggressor prior to the interaction itself, rather than emerging within it. Any role played by alcohol in a premeditated assault must differ, at least in the initial stages, from that implied when violence is an unplanned outcome of a situationally inspired aggressive interchange.

Situational perspectives thus usefully present alcohol as a contributor in conventional decision making processes, rather than attributing qualitative alterations in rationality to its effects. They aid an understanding of the variability of individual behaviour in different situations. Paradoxically, however, analyses of intoxicated crime tend to imply the inevitability of criminal, in particular violent, outcomes of drinking episodes in provocative situations.

### **Symbolic Interactionism**

Symbolic interactionism has provided a major contribution to the analysis of criminal events, particularly violence, on which much recent interactionist theory has focused (Felson and Steadman 1983), and which has particular attractions for theories of intoxicated crime. The theory stresses the importance of the establishment, management and preservation of self-image in social interaction (Felson and Steadman 1983). Thus, it has an affinity with lay explanations of violence as the result of "macho posturing", "refusal to climb down", and "face saving".

Luckenbill's (1977) study of "situated transactions" resulting in homicide illustrates this genre of research and theoretical analysis. Creating detailed reconstructions of incidents of criminal homicide from content analysis of the official documentation in each case, Luckenbill concluded:

"Transactions resulting in murder involved the joint contribution of the offender and victim to the escalation of a 'character contest', a confrontation

in which at least one, but usually both, attempt to establish or save face at the other's expense by standing steady in the face of adversity."

(Luckenbill 1977, p.177)

Luckenbill's study illustrates an earlier point: that a research focus on the sequence of events and decisions prior to an offence obviates the necessity of invoking alcohol as a contributory causal factor. Indeed, Luckenbill asserts that the analysis is generally applicable to homicidal assaults irrespective of alcohol involvement. Other research, however, has established alcohol involvement as one of only two factors which reliably distinguish fatal from non-fatal assaults; the other being the presence of a weapon (Pittman and Handy 1964). Indeed, this is the only qualitative difference between alcohol-related and sober crime to emerge during the literature search. The discrepancy therefore seems important.

One possible explanation is methodological. Despite the advantages of crime specificity, exclusive concentration on homicide might itself obscure vital differences between fatal and non-fatal assaults (Bankston 1988). Had Luckenbill's study included non-fatal assaults, alcohol involvement might have emerged as a distinctive factor in homicide. Certainly, alcohol is a prevalent situational feature in Luckenbill's account. Thus, Luckenbill's analysis may in fact embrace the significance of alcohol without explicitly identifying it.

For example, a fatal outcome might be attributed to alcohol's disinhibiting, or aggression arousing effects, resulting in greater attacking force by an intoxicated aggressor, or greater resistance in an intoxicated victim. Such an explanation would also usefully account for Luckenbill's failure to identify a decision to use lethal force, but only a "working agreement" between participants to use violence itself.

However, an appeal at this stage to alcohol's assumed effects is premature. Felson and Steadman (1983) found that although both victim aggression and victim intoxication were related to the severity of a violent assault, these two factors were themselves unrelated. This finding contradicts the prediction that resistance will be greater among intoxicated victims through disinhibition or aggression arousal. Further, if alcohol fails to intensify victim aggression, by implication it may equally fail to intensify assailants' attacks.

Alternative explanations may be suggested for Luckenbill's failure to identify a decision to use lethal force. One possibility is again methodological. Possibly Luckenbill's data was drawn predominantly from homicides in which fatality was indeed an unpremeditated, even unforeseen outcome of a violent incident. Alternatively, a clue might lie in Luckenbill's observation that the homicides were characterised by prior "rehearsals", in which aggressive interactions involving the participants had occurred. The failure of previous strategies to prevent a recurrence of aggression might prompt assailants to use greater, if not explicitly lethal, force on the fatal occasion. The availability of such alternative explanations demonstrates that the stage has not yet been reached when only an appeal to alcohol's effects can explain a fatal outcome.

Symbolic interactionist accounts which attempt to include detailed analysis of alcohol's effects encounter difficulties deriving, paradoxically, from the complementary attractiveness of some of these effects to the theoretical perspective itself. Such attraction may encourage theorists to stress these effects disproportionately to their demonstrated impact on behaviour. Thus, symbolic interactionists have stressed particular pharmacological effects of alcohol on perception and cognition, such as field dependency and subjective feelings of power and control (Cambell 1986; Cordilia 1986; Gibbs 1986). Gibbs (1986) has developed a sophisticated model

of the contribution of these effects to the development of bar-room violence, drawing on earlier work by Pernanen (1976, 1982). The theoretical attractiveness of such effects stems from their conceptual affinity with key symbolic interactionist concepts of role-taking, situational identity, and defence of self-image. These perceptual and cognitive changes are seen to enhance the subjective importance of immediate self-presentational roles, assumptions of mastery over people and events, and situational cues to aggression, whilst simultaneously impoverishing the sophistication and range of the behavioural repertoire.

However, Pernanen (1982) cautions that these effects have been found in experimental studies of the effects of comparatively low doses of alcohol on behaviour such as competitiveness in card games. Theoretical extrapolation to violence under conditions of heavy intoxication relies on the assumptions that perceptual and cognitive changes occur incrementally with dosage and that competitiveness and violence are part of the same behavioural repertoire. Empirical support for these assumptions is unavailable (Pernanen 1982). Pernanen's description of the connotative attractiveness of the limited available empirical evidence to broad theoretical analyses also reflects the fundamental influence of common sense notions on academic theory noted in Chapter Two.

"The seeming relevance may stem largely from semantical connections between the concept of 'power', with the concept of (potential) force, and 'risk', with disregard for (potential) adversity such as physical punishment or sanctions in general. The latter concept is thus rather closely coextensive with the concept of deviance, and relevant alcohol effects are perhaps implicit in the notion of 'drinking for courage'."

(Pernanen 1982, p.25)

The distortion of empirical evidence, encouraged by its affinity with a theoretical perspective, results in analyses

which imply that aggression, escalating into violence, is a virtually inevitable outcome of increasing intoxication.

"[V]iolence is the product of certain kinds of interpersonal interactions, and alcohol affects perception and cognition in ways that make the occurrence of these kinds of interactions more likely. The bar is the context within which these interactions occur, and it features environmental qualities that can shape both drinking and the expression of aggression."

(Gibbs 1986, p.137)

But "[a]lcohol-related violence is rare in relation to the number of man-hours devoted to drinking" (Evans 1986, p.146; also Blum 1982; Smith and Burvill 1987). Bankston (1988), criticising this weakness in interactional analysis, recommends control theory as a more useful theoretical framework. Control theory, by focusing on the erosion of constraints on violence in aggressive situations, would alert the analyst to features of alcohol use situations affecting the release of conventionally inhibited behaviour, such as heightened interaction, crowding, physical design, drinking companions, drinking styles, bystanders and pub management (Cavan 1966; Harford 1979, 1983; Harford, Wechsler and Rohman 1983; Hope 1985; McCarty 1985; Marsh and Campbell 1979; Pernanen 1982; Zinberg 1984). Once again, there is a beguiling affinity between this theoretical frame and concepts of disinhibition and aggression arousal, so that alcohol might be seen to contribute directly to the weakening of behavioural controls.

At this point, however, the conceptual distinction between "escalatory" and "erosive" situational factors becomes difficult to sustain in practice, since both the pertinent situational variables and the behavioural outcome are the same in either case. Furthermore, this approach offers no clearer identification of the (literally) "decisive" element in the use of force, again implying inevitability through the progressive erosion of controls. Thus, other situational

approaches have problems in explaining intoxicated crime in common with symbolic interactionism.

Theoretical approaches such as these risk invoking alcohol as an all-purpose explanatory tool. For example, Gibbs (1986) claims that alcohol may explain *both* variation *and* consistency in individual responses to different situations. Cordilia (1986) suggests that alcohol "magnifies" the significance of situational cues, enhancing individual responses. Such appeals to alcohol's effects explain everything and nothing. In attempting to retain sufficient flexibility to acknowledge the indeterminateness of behaviour in alcohol use situations, theoretical statements about alcohol's effects may become so general that they explain little or no more about behaviour than theories of sober crime.

"In general the causes of alcohol-related violence and deviance may not be so different from the event-based etiology of sober deviance and violence. The excessive situational determination, impulsivity, inability to delay gratification, etc., which have been put forth in explanations of general deviance and crime, can be created artificially (as an analogue of sorts) by the use of alcohol."

(Pernanen 1982, p.30)

### **Summary**

Situational perspectives on intoxicated crime are primarily concerned with drinking and criminal events. Their advantages derive from the recognition of alcohol as a situational factor, and a contributor to normal decision making processes. Theoretical attempts to specify alcohol's contribution to the formation of criminal intention, however, either become overly deterministic or remain uninformatively general.

## **SUBSTANCE FOCUSED THEORIES**

### **Overview**

Substance focused theory and research primarily concerns the identification of changes in mood and behaviour directly attributable to the pharmacological effects of alcohol. It has

already been seen that dispositional and situational theories of alcohol-related crime often appeal to these assumed effects (Hamilton and Collins 1982; Pernanen 1982).

Substance focused research emphasises methods such as clinical observation and testing, measurement of physiological responses of light, heavy and non-drinkers to varied alcohol doses, and behavioural observation and subjective self-reports under the same conditions. A major tool in such experimental research has been the balanced placebo design methodology, in which subjects' beliefs about whether or not they have consumed alcohol are manipulated independently of the actual administration of alcohol or placebo doses. Substance focused theories relate experimental findings to "real world" conditions, by drawing on the contributions of ethnographic observations of drinking behaviour in natural environments.

Substance focused research has pursued the precise specification of conditions in which particular mood and behavioural changes will result from alcohol ingestion. However, it has been impossible to identify specific effects of alcohol on the brain and central nervous system which induce responses with potentially straightforward links to criminal behaviour, such as aggression (Brain 1986; Evans 1986). Others, such as sexual responsiveness appear in fact to be suppressed (Coid 1986a). Alcohol's physiological effects appear to be generalised and indeterminate as to behavioural consequences (Pernanen 1982). Ironically, this genre of research has convincingly demonstrated the significance of non-pharmacological factors in intoxicated behaviour, and in particular the role of expectancies, or subjective beliefs about the effects of alcohol.

The central concept underpinning substance focused explanations of the alcohol-crime relationship is "loss of control". Unlike dispositional theories, which postulate low self-control as an individual characteristic, substance

focused theories suggest that episodic loss of control is itself induced by alcohol's pharmacological effects. Lay theory encapsulates this notion in the observation that some intoxicated individuals "can't hold their drink". This key concept underpins the relevance of substance focused theories both to drinking and criminal careers, through a concern with chronic inebriation, and to drinking and criminal events, through a concern with acute intoxication. Thus, the loss of control assumption pervades substance focused conceptualisations of alcoholism and disinhibition.

### **1. Chronic inebriation: alcoholism**

The loss of control concept in theories of alcoholism implies that chronic inebriation destroys the ability to regulate drinking itself voluntarily. Its significance in theories of alcohol-related crime is largely connotative: by implication, control over other behaviour is also lost (e.g. Kessel and Walton 1989); or "desperate" crime results from the need to continue drinking (e.g. Cameron 1964).

Disease theory (Jellinek 1960) hypothesised that chronic inebriation damages cell tissues so that alcohol's presence in the bloodstream triggers involuntary drinking; that alcoholics perpetuate drinking in order to avoid the discomfort of withdrawal; and that this loss of control over drinking is permanent. These hypotheses have been disconfirmed by clinical research. Initial alcohol consumption does not trigger involuntary drinking in alcoholics (Mendelson and Mello 1987; Wilson 1987); alcoholics may tolerate self-imposed withdrawal (Archard 1979; Healy 1988; Fingarette 1988; Mendelson and Mello 1979); and alcoholics may resume non-problem drinking (Armor 1980; Polich 1980). The extent of drinking by alcoholics following detoxification is influenced by their social circumstances, such as marital status (Armor 1980), and the degree of tolerance of drinking in their environment, as in "dry" or "wet" hostels (Cook 1975; Rubington 1958).



Ethnographic studies reveal alcoholic drinking to be a controlled activity. In skid row drinking groups, the "runner" does not consume the bottle instead of returning to the group. Consumption itself is moderated by sipping, passing on, pauses and conversation (Archard 1979; Peterson and Maxwell 1958; Rubington 1978). Crude spirit consumption is an intermittent response to economic necessity and does not cause continuous reliance on the practice (Archard 1979; Cook 1975; Peterson and Maxwell 1958). The novice must practice consuming it slowly, in small sips, made palatable with orange juice (Archard 1979; Cook 1975).

Such evidence of voluntary self-regulation has presented academic theory with the problem of explaining why alcoholics continue, or resume heavy drinking in the face of the obviously disastrous consequences. Sober alcoholics frequently describe drinking as pleasurable (Mendelson and Mello 1979). However, simple enjoyment is an inadequate explanation, since despite their affirmations, direct observation of intoxicated alcoholics reveals progressive dysphoria, anxiety, agitation and irritability (Barrett 1985; Mendelson and Mello 1979). This discrepancy cannot be explained by the deleterious effects of alcoholism on memory, rendering alcoholics incapable of recalling their aversive experiences (Mendelson and Mello 1979; Wilson 1987). Notwithstanding the self-serving selectivity of such memory impairment, sober alcoholics do nevertheless recognise the long-term damaging consequences of their drinking (Wilson 1987).

Cox (1987) suggests that changes in the affective consequences of intoxication during alcoholic drinking careers produce concomitant changes in the motivation for drinking: alcoholics drink to offset negative affect. But drinking is a manifestly unsuccessful strategy for accomplishing this. Such reasoning begins to suggest that alcoholic drinking is irrational behaviour caused by alcohol's ruinous effects on the alcoholic's ability to assess his own internal emotional

states. Mendelson and Mello (1979), concluding that the explanation for persistent alcoholic drinking is as yet unknown, suggest that common sense assumptions about what constitutes a "positive" or "aversive" experience may require radical reappraisal.

These problems lead to a temptation to resort to the loss of control assumption, which pervades some academic expositions, despite attempts to retain notions of rationality and self-direction. For example, Ludwig (1988) argues that alcoholics simply refuse to believe that they will never be able to resume drinking without suffering aversive consequences. Notwithstanding the measure of clinical evidence, already noted, to support this alcoholic obstinacy, Ludwig's explanation is itself infused with the loss of control assumption. Thus, Ludwig suggests:

"[T]he attractive but controversial hypothesis of state dependent learning is probably overly simplistic, ignoring such alternative explanations as the disinhibiting effects of alcohol on the frontal cortex of the brain (which could explain why conscience has wryly been defined as 'a substance readily dissolvable in alcohol'), the influence of different discriminative stimuli as determinants of specific behaviors, and the ability of alcohol to unleash a whole array of conditioned responses. Whatever the true explanation, the problem remains clear. Virtually all psychotherapeutic approaches eventually falter once alcohol begins circulating in the brain, unlocking a highly predictable repertoire of the attitudes and behaviors associated with drinking."

(Ludwig 1988, p.61)

Much of the controversy about alcoholic loss of control has centred on the concept of "craving". Jellinek (1960) postulated irresistible craving as a defining characteristic of alcoholism. Ludwig (1988), acknowledging the evidence of self-regulation, suggests that craving is a "strong desire" which may or may not be resisted. Other theorists object that the concept of craving is meaningless: if craving is irresistible, then it is defined simply by drinking; if it is

not, it merely states the known fact that alcoholic drinking behaviour is variable (Fingarette 1988; Mendelson and Mello 1979).

This sterile academic dispute revolves around the question whether internal states can be said to exist if there is no behavioural evidence for them. Common sense, however, suggests, by introspection, that people frequently experience desires which they refrain from indulging. Indeed, this may be one of those "fireside inductions", held "*semper, ubique et ab omnibus*" which Meehl (1977) cautions academics against ignoring. Ludwig's (1988) graphic biographical accounts of craving experiences describe situations with which drinking is commonly associated, and in which the desire to drink therefore is generally regarded as unremarkable: whilst pondering an acute dilemma, watching sport on television, staying in a hotel, finishing a game of golf and flying. Arguably, the difference for the alcoholic derives from a conflict of interests: he simultaneously wants to drink, anticipating immediate pleasure, and also to abstain, anticipating longer-term misery. Cornish offers a similar explanation of compulsive feelings associated with gambling.

"If there is little evidence that the gambler is forced into ever more intense involvement by the compelling nature of the reinforcement itself, the subjective feelings of pressure or compulsion undoubtedly experienced by some heavy gamblers can still be given an alternative explanation. Where people have begun to gamble at an early age, for example, such feelings are particularly likely to arise as rival sources of reinforcement (wife, or family) begin to make their appearance in the gambler's life. At this stage, and not before, the gambler would become aware of conflicts of interest such as those between the earlier and smaller reinforcements provided by gambling and those larger and later ones provided by people and events outside the gambling situation. These conflicts might be responsible for belated attempts at 'impulse-

control' ... and the subjective feelings of 'loss of control' frequently reported as symptomatic of the 'compulsive' gambler..."

(Cornish 1978, p.208)

Despite experiences of aversive consequences, motivations for drinking persist, partly, at least, due to their very mundanity. They may become conditioned by association with particular situations (Barrett 1985; Fingarette 1988; Ludwig 1988; also Kaplan 1983 on drug use). Once motivated to drink, the alcoholic must choose which action - drinking or abstinence - will achieve greater satisfaction. This choice is not so starkly obvious as the evidence of aversive intoxication experiences and long-term damage suggests. For example, confidence in successful abstinence and the perception of relative gain from abstinence over drinking may be crucial factors in the decision (Orford 1980; also Sutton 1978 on smoking). Barrett also points out that evidence of the ultimately aversive consequences of alcoholic intoxication obscures the simple fact that

"people continue to use psychoactive drugs not because they necessarily 'feel good' or 'euphoric' but only that they 'feel' *better* soon after taking the drug than they did immediately before."

(Barrett 1985, p.133)

It is unnecessary to "feel better" on every drinking occasion. Intermittent success is sufficient to maintain an established habit (Cox 1985; Ludwig 1988; also Cornish 1978 on gambling). Further, alcoholics do not generally experience strong rewards for abstinence. The comparative sociability of the alcoholic over the abstinent skid row lifestyle (Bahr and Caplow 1974) has already been noted. Polich (1980) found that, four years after treatment, abstainers and non-problem drinkers fell substantially below general population norms on measures of social adjustment such as employment, personal satisfaction and psychiatric symptoms, even though they fared better than continuing heavy drinkers.

"Social rehabilitation, then, was not a common outcome even for those who were in remission at the four year follow-up."

(Polich 1980, p.105)

For the alcoholic, then, sobriety may be, if not an aversive state, then not a particularly positive one either. Once this is recognised, the alcoholic's decision to drink appears similar to any other mundane choice: a subjective balance of the perceived costs, risks and benefits of the different options within the actor's environment (Fingarette 1988; Ludwig 1988; Sutton 1978; Wilson 1987). Fingarette makes a point similar to one raised by the earlier review of offenders' theories of intoxicated crime: that it is a mistake to compare alcoholics' decisions to a standard of rationality to which sober decision makers do not generally conform.

"The general truth is this: Human beings do not always respond wisely and with foresight; we often drift, unwitting, into a tangled web of decisions, expectations, habits, tastes, fears, and dreams. The chronic heavy drinker is no exception - no more mysterious, no less vulnerable. For the person challenged by personal problems, heavy drinking is one of the culturally available responses, however imprudent and self-destructive."

(Fingarette 1988, p.103)

## **2. Acute intoxication: disinhibition**

Like undersocialisation, "disinhibition" is not a unitary concept, but has been applied to a range of suppositions about alcohol's destabilising effects on moral self-control (Lang 1981). These include disruption of higher order mental processes, triggering of aggression, arousal of sexual responsiveness and reduction of anxiety (Adesso 1985; Lang 1981). Academic theories of disinhibition, therefore, have obvious connotative links with lay notions such as "Dutch courage". Indeed, the fact that it is not easy to trace authoritative academic origins for such hypotheses, despite the considerable effort that has gone into testing them, suggests that they may be derived directly from lay notions.

The results of research into alcohol's disinhibiting effects have been comprehensively reviewed (e.g. Adesso 1985; Brain 1986; Cappell and Greeley 1987; Coid 1986a, 1986b; Evans 1986; Macandrew and Edgerton 1969; Lang 1981; Woods and Mansfield 1981). They repeatedly show that intoxication does not inevitably lead to disinhibited behaviour, is not culturally uniform in its behavioural consequences, does not trigger aggression, does not enhance sexual responsiveness and does not uniformly reduce anxiety. Furthermore, subjects' self-reports of mood changes after alcohol consumption frequently conflict with the evidence of physiological measurements.

Thus, in relation to alcohol's tension reducing capacity, for example, Cappell and Greeley observe "a huge gap between the apparent faith in the [tension reduction theory] and the quality of the evidence to support it" (1987, p.44). Instead, "there have been numerous observations of how complex are the relationships determining alcohol's credentials as an anxiolytic agent" (Cappell and Greeley 1987, p.44). Cappell and Greeley identify two points of key relevance to alcohol-crime theory. Firstly, subjects vary considerably in their experience of tension reduction, according to factors such as gender, dose, the nature of the anxiety provoking stimulus and customary drinking patterns. Secondly, mood enhancement is demonstrated only at low alcohol doses, with increases in anxiety and tension at higher doses. Alcohol-crime theory, however, has generally assumed that alcohol's effects are uniform and incremental.

A third issue appears more immediately compatible with alcohol-crime theory. Conflict situations appear particularly successful in eliciting tension reduction after alcohol consumption (Cappell and Greeley 1987). Contemplation of an offence appears to arouse conflictual feelings, as offenders weigh the anticipated gain against uncontrollable hazards (Carroll 1986; Walsh 1986). Intoxication is one strategy employed by offenders for coping with such conflict (Walsh

1986). Nevertheless, it is unclear what in the nature of conflict makes it amenable to alcohol's tension reducing effects, or in what circumstances intoxication will be preferred to other anxiety-reducing strategies (Cappell and Greeley 1987; Sher 1987). Volpicelli (1987), however, argues that tension reduction theory is fundamentally misguided in assuming that alcohol consumption precedes anxiety reduction, claiming that the evidence suggests that tension reduction itself elicits alcohol consumption. This interpretation would complement the frequent observation that offenders rapidly spend the proceeds of crime on alcohol (Bennett and Wright 1984a; Maguire 1982; Walsh 1986). Here, however, alcohol-crime theory based on disinhibition through tension reduction encounters the problems of continuing disagreement among alcohol theorists about the correct interpretation of the research evidence, and selection between attractive but opposing alternatives.

Pernanen expresses the implications for the alcohol-crime relationship in the following way:

"A central assumption in direct-cause thinking and a prevalent one in disinhibition theorizing is that alcohol ingestion has unvarying qualitative effects on psychological states and consequent behavior. Aggression and other relevant behavior in connection with alcohol use would thus result largely independently of situational or individual predisposing factors. A more realistic assumption in the light of systematic research findings, everyday observations, and both successes and failures of controlled and associational studies is that any relevant direct effects of alcohol are qualitatively indeterminate in their emergent psychological and behavioral consequences. Instead, these are determined by the effects of alcohol in conjunction with other factors which vary largely independently of the values of the alcohol use variables."

(Pernanen 1982, p.27)

Pernanen sees two alternatives for theory building. Theory may assume that "given a detailed enough specification of 'external' predisposing and situational determinants, a

satisfactory explanation can be given by a listing of these and a specification of their internal relationships" (Pernanen 1982, p.27). Alternatively, explanations may be developed which are explicitly premised "on the perceiving/cognizing individual and his/her structuring of the situation" (Pernanen 1982, p.27). The research reviewed above appears to have been primarily guided by the former principle, although the direct applicability of such precisely specified relationships to "messy, real-world decisions" (Abelson 1976) in which individual and situational factors are themselves highly variable, complex and fluid, seems questionable. Its results might more usefully be regarded as helping to define the crucial variables, and their inter-relationships, whilst constructing explanations of the latter type.

Paradoxically, the intensive efforts to specify precise relationships between alcohol's pharmacological effects and mood and behavioural changes have provided clear evidence of the crucial importance of cognition in the production of these changes. The balanced placebo design methodology, in which subjects' beliefs that they have consumed alcohol are manipulated independently of the administration of alcohol or placebo doses, has demonstrated that responses depend heavily on the belief in, rather than the fact of alcohol ingestion. These "expectancy" effects, or the influence of subjective beliefs about alcohol's effects, have emerged in studies of tension reduction (Cappell and Greeley 1987), aggression (Evans 1986; Goldman, Brown and Christiansen 1987), sexual responsiveness (Goldman, Brown and Christiansen 1987; Coid 1986a), mild forms of disinhibition such as laughter and sociability (Lang 1981) and alcoholic craving (Goldman, Brown and Christiansen 1987; Marlatt, Demming and Reid 1973; Fingarette 1988).

Expectancy effects have considerable implications for alcohol-crime theory. For example, as seen earlier, intoxicated



aggressiveness has been attributed to perceptual and cognitive impoverishment. However, since expectancy effects occur independently of alcohol's presence, individuals who do not believe that they have consumed alcohol may remain apparently immune to the implied psychological consequences of their deteriorating information processing capacity (Lang 1981).

Expectancy theory has particular advantages for the different theoretical approaches reviewed in this chapter. Firstly, the variability of intoxicated behaviour may be explained by postulating expectancies, themselves modified by dose, setting and individual differences, as a mediating factor between consumption and response (Goldman, Brown and Christiansen 1987). Secondly, learned expectancies may explain the links between prior life experiences and later alcohol-related behaviour (Adesso 1985; Douglas 1987; Heath 1981; Goldman, Brown and Christiansen 1987; Greeley, McCreedy and Theisen 1980). Thirdly, the significance of situational factors for alcohol-related behaviour may derive from learned associations, or expectancies (Adesso 1985; Goldman, Brown and Christiansen 1987; Ludwig 1988).

### **Summary**

The key concept underpinning substance focused theories of alcohol-related crime has been "loss of control". However, clinical and ethnographic research challenges the assumption that chronic or acute intoxication induces loss of control over either drinking behaviour itself or any other activity.

Substance focused research has not identified straightforward relationships between the pharmacological effects of alcohol and changes in mood and behaviour which might underlie criminality. It has exposed the over-reliance of alcohol-crime theory on assumptions about the uniformity of alcohol's pharmacological effects.

The major contribution of substance focused theory and research to alcohol-crime theory has been its demonstration of the importance of cognition in mediating mood and behavioural changes consequent on alcohol consumption. Theory and research concerning alcohol expectancies may have considerable implications for the development of theories of intoxicated crime. The inclusion of expectancy theory would shift the theoretical focus to the effects which the individual is *motivated to achieve* in the situation in which drinking takes place, his *belief* in alcohol's ability to achieve these effects, and how he learns to *interpret* alcohol's generalised pharmacological effects as specific changes in mood facilitating desired, but prohibited behaviour. Such a shift in theoretical emphasis would support the confident attribution of criminal responsibility, by implying the motivated use of alcohol in the commission of crime.

#### **CONCLUSIONS**

The single cause, or "malevolence" assumption has inhibited full theoretical consideration of cultural, situational and individual factors involved in the alcohol-crime association. Although offenders are capable of providing detailed accounts of intoxicated offences, which do not differ substantially from sober crime, they nevertheless attribute significant changes in the intentional and rational execution of crime to intoxication. These attributions appeal to common sense notions about alcohol's effects, and are likely to be invoked when other reasons for an offence are either unacceptable or unavailable. Researchers' acceptance of offenders' theories of intoxicated crime depends on their own personal beliefs about alcohol, theoretical perspectives and research foci. Academic theories of intoxicated crime reflect lay beliefs about alcohol's effects. Dispositional, situational and substance focused theories undermine the attribution of intoxicated responsibility, although the research evidence related to these theories does not itself support such a conclusion. Alcohol expectancy theory may provide a means of developing

academic theories of intoxicated crime in directions which allow for the possibility of motivated use of alcohol in facilitating criminality.

## CHAPTER FOUR

### LAY THEORIES AND JUDGEMENTS OF RESPONSIBILITY: NEUTRALISATION AND RATIONALISATION

This chapter explores the use of lay theories about alcohol in the construction of judgements of responsibility. It is suggested that alcohol expectancies are a specific variety of lay theory, constituting a body of common sense beliefs about alcohol's effects on mood and behaviour. As lay theories, alcohol expectancies provide an assumptive framework for the attribution of responsibility for intoxicated behaviour. The processes by which this may be achieved are explored in the context of offenders' pre-offence neutralisations and post-offence rationalisations.

#### ALCOHOL EXPECTANCIES AND LAY THEORIES: A COMPARISON

Alcohol expectancies may be compared with lay theories on three key dimensions: their definitions; their characteristics; and their relationship to decision making.

#### Definitions

In Chapter Two, lay theories were seen to be common sense notions about the nature of, and relationships between, objects and events in the world. Similarly, in their exposition of alcohol expectancy theory, Goldman, Brown and Christiansen explain the term "expectancy" in the following way:

"The term *expectancy* typically refers to an intervening variable of a cognitive nature. Whether explicit or implied, this cognitive variable is understood to be knowledge (information, encodings, schema, scripts, and so on) about relationships between events or objects in the real world. The term expectancy, rather than attitude or belief, is usually invoked when the author refers to the anticipation of a systematic relationship between events or objects in some upcoming situation. The relationship is understood to be of an if-then variety; *if* a certain event or object is registered *then* a certain event is expected to follow (although

the *if* condition may be correlated with, rather than causal of, the *then* event)."

(Goldman, Brown and Christiansen 1987, p.183)

Goldman, Brown and Christiansen (1987) define alcohol expectancies as a specific variety of such cognitions about causative relationships. Therefore, the definitions of lay theories and alcohol expectancies are essentially equivalent.

### **Characteristics**

In Chapter Two, it was seen that lay theories are characterised by their function of providing a conceptual framework for the attribution of cause, effect and personal responsibility, their ignorance, their contradiction, their complexity in relation to culture, individual differences and situational specificity, and their indeterminateness.

#### **1. Function**

Alcohol expectancies define a range of moods and behaviours which are susceptible to change through intoxication. Thus, they enable individuals to anticipate and interpret the effects of alcohol on their own and others' behaviour. Alcohol expectancies are common, rather than idiosyncratic beliefs (Brown, Goldman, Inn and Anderson 1980; Goldman, Brown and Christiansen 1987). As such, they provide a set of premises for social judgements about intoxicated behaviour and personal responsibility under intoxication.

#### **2. Ignorance**

Brown, Goldman, Inn and Anderson (1980) identified six independent alcohol expectancies common to adults with drinking histories ranging from abstinence to alcoholism: that alcohol positively transforms experiences, enhances social and physical pleasure, enhances sexual performance and experience, increases power and aggression, increases social assertiveness and reduces tension. Reviewing research, Goldman, Brown and Christiansen (1987) found considerable agreement about the

nature of alcohol expectancies, which also reflect Roizen's (1981) broader survey data mentioned in Chapter Two. However, the review of substance focused research in Chapter Three has already exposed the inaccuracy of these alcohol expectancies.

It was suggested that the ignorance of lay theories may be linked to difficulties in disconfirming them. In this context, it is to be noted that the alcohol expectancies identified above are entirely permissive. They do not insist that mood and behaviour on each drinking occasion will necessarily change in the ways which they postulate as possible effects of alcohol. Nor do they disqualify any sober moods and behaviours from manifesting themselves under intoxication. The alcohol expectancies, therefore, permit a considerable and variable range of moods and behaviours to be interpreted as the results of intoxication.

### **3. Contradiction**

The alcohol expectancies identified by Brown, Goldman, Inn and Anderson (1980) are mutually contradictory. For example, alcohol is believed to enhance sociability, to arouse aggression and to reduce tension. Similarly, Christiansen and Goldman (1983) identified seven alcohol expectancies among adolescents, which embrace blatant contradictions: for example, the beliefs that alcohol both enhances and impedes social behaviour; both improves and disrupts cognitive and motor functioning; and both arouses and relaxes. Furthermore, individuals may hold different expectancies for themselves and for others (Goldman, Brown and Christiansen 1987).

### **4. Complexity**

#### **a) Culture**

In Chapter Two, lay theories were seen to be derived from cultural beliefs and attitudes, modified by individual experiences of, and relationships to particular phenomena. This perspective is reflected in accounts of the origins and

development of alcohol expectancies. Macandrew and Edgerton argue:

"[I]f we are ever to understand drunken comportment, we must focus on the shared understandings of the nature of drunkenness that obtain among men living together in societies."

(Macandrew and Edgerton 1969, p.171)

Recent academic alcohol theory has again stressed the significance of culture in the transmission of beliefs about and attitudes to alcohol (Adesso 1985; Douglas 1987; Galizio and Maisto 1985; Greeley, McCready and Theisen 1980; Goldman, Brown and Christiansen 1987; Gusfield 1987; Lang 1981; Wilson 1987). Such theorists argue that a significant amount of learning about alcohol's apparent effects on behaviour occurs prior to direct experience of drinking. Alcohol-crime theorists have similarly seized on the theoretical importance of the "cultural phenomenology" (Collins 1989) of alcohol (also Gusfield 1981; Pernanen 1982). Pernanen argues:

"In addition to definite, although conceptually not easily delimited, and categorized effects on behavior, mood-modifying drugs (including alcohol) have been surrounded with informal and formal social arrangements, and societal reactive systems, which have partly determined social definitions and beliefs about the nature of the drugs and their users as well as the effects of the drugs. These social and cultural factors cannot be neglected in any attempts at explaining the psychological, behavioral, societal and cultural phenomena associated with alcohol use."

(Pernanen 1982, p.10)

#### **b) Individual differences**

Whilst culture may provide a basic conceptual framework for anticipating and interpreting alcohol's effects on mood and behaviour, individual experience modifies these notions in particular ways. Individual experience includes both vicarious learning from the examples of others and direct experience of alcohol consumption. Of the former, Wilson asserts:

"Vicarious learning or modeling is a robust form of cognitive learning that is seminal in the development of social behavior, including drinking. Complex behavior patterns and attitudes are acquired through observation of social models without any reinforcement of overt behavior..."

(Wilson 1987, p.343)

This specific learning is distinct from the transmission of broader cultural beliefs and attitudes, although the sources are to some extent the same, as in parental models. For example, Greeley, McCready and Theisen (1980) observe that within the same ethnic group, there are gender differences in the socialisation processes which lead to individual drinking practices.

Direct experience of alcohol consumption further increases the specificity of expectancies, leading, for example, to distinctions between expectancies for different dosages (Goldman Brown and Christiansen 1987; Wilson 1987), and drinking situations (Wilson 1987). Individual physiological differences (Goldman, Brown and Christiansen 1987; Wilson 1987) and differences in the personal values placed on the anticipated effects (Goldman, Brown and Christiansen 1987) may also contribute to this process of specific expectancy development.

"It does seem, then, that the two processes of social learning and experience with a drug contribute to the development of expectancies about the effects of a drug. This is precisely what social learning theory would predict: with increased experience one develops more specific expectancies from the generalized expectancies acquired through social learning processes."

(Adesso 1985, p.183)

Relationships between specific alcohol expectancies and broader social attitudes have not been explored. However, Greeley, McCready and Theisen's (1980) study of ethnicity and drinking behaviour suggests that factors such as religious beliefs will interact with beliefs about alcohol.



Goldman, Brown and Christiansen (1987) suggest that heavy, light and non-drinkers are not distinguished by qualitatively different alcohol expectancies, but by the differing strengths with which they hold common expectancies. They further suggest that different groups of heavy drinkers, such as college students, medical patients and alcoholics in treatment, hold common expectancies in varying degrees. Alcohol expectancies may interact with individual personality variables such as internality or externality of perceived locus of control. Such evidence, although tentative, indicates that individual self-perception is linked to alcohol expectancies (Adesso 1985).

### **c) Situational specificity**

The apparent contradictions between different alcohol expectancies may arise, at least partly, from a tendency to think of alcohol's effects in terms of specific situations, as was suggested of lay theories in Chapter Two. Brown, Goldman, Inn and Anderson (1980) identified expectancies by measuring subjects' responses to statements such as "Having a few drinks is a nice way to celebrate special occasions", "After a few drinks it is easier to pick a fight" and "Alcohol helps me sleep better". In order to decide on their agreement or disagreement with such statements, individuals may bring to mind occasions when alcohol has been associated with such outcomes. Picking a fight tends to occur on different occasions and in different situations to falling asleep, although drinking may precede both events. As was suggested in the discussion of lay theories, such situational specificity may enable people to disregard the inconsistency of their alcohol expectancies. These points also illustrate the theoretical utility of regarding alcohol as a situational variable, identified in Chapter Three.

## **5. Indeterminateness**

Goldman, Brown and Christiansen claim that

"expectancy patterns can successfully predict drinking behavior at all levels of the drinking

continuum, from beginning drinking in adolescents through alcoholism."

(Goldman, Brown and Christiansen 1987, p.207)

This claim, which is supported by other reviewers of the research evidence (e.g. Adesso 1985; Wilson 1987), suggests a discrepancy between lay theories and alcohol expectancies. The alcohol expectancies identified by Brown, Goldman, Inn and Anderson (1980) and Christiansen and Goldman (1983) do appear to be general beliefs about alcohol's effects on rationality, mood and behaviour. However, it is important to identify precisely *what* behaviour they predict, and *how* they may be successful.

Alcohol expectancies appear to be successful in the prediction of aspects of drinking careers. Goldman, Brown and Christiansen (1987) claim them to be more powerful predictors than the types of life history variable identified as significant in Chapter Three. This is perhaps to be expected. The importance of social learning about and experience with alcohol in the development of expectancies was argued earlier. The relevance of the research inspired by dispositional theoretical perspectives, reviewed in Chapter Three, to the fuller understanding of expectancy development becomes apparent when considered in this light. Individual life history and personality characteristics will themselves have a bearing on the exposure to, experience of, and development of beliefs and attitudes concerning alcohol. In this context, the greater predictive strength of the alcohol expectancies may reflect their status as a distillation of the influence of such factors on specific expectancy development.

Alcohol expectancies do not determine drinking or drunken behaviour in any specific drinking situation. However, since they are derived from batteries of statements which encourage situationally specific responses, they are quite closely tied to individuals' beliefs about the effects of alcohol in

particular situations. Goldman, Brown and Christiansen note that in the development of attitude theory and research,

"the more closely the measures of an attitude correspond to specific features of the situation in which a behavior will be performed, the better the predictability of the behavior."

(Goldman, Brown and Christiansen 1987, p.186)

It has been seen that alcohol expectancies are entirely permissive, and are not disconfirmed by the non-production of certain behaviours on specific drinking occasions. However, when applied to particular drinking situations, alcohol expectancies do specify certain forms of intoxicated behaviour as inappropriate. For example, sleeping is an inappropriate response to intoxication at a dinner party.

Alcohol expectancy theory thus far appears to have neglected to contextualise the role of alcohol expectancies in decision making within the drinker's social circumstances. Thus, the apparent irrationality of alcoholics' persistent strong expectancies for mood enhancement has not yet been explained within expectancy theory. Indeed, Goldman, Brown and Christiansen (1987) fail to remark upon the general inaccuracy and contradictoriness of alcohol expectancies, despite their confidence in the influence of those beliefs on behaviour. Rather, it appears that alcohol expectancy theory has, like other academic theories reviewed in Chapter Three, moved from prediction towards a deterministic position, in which individual behaviour is seen to be as much governed by cognitive expectancies as it was earlier thought to be by alcohol's pharmacological effects. This deterministic position produces the apparent irrationality of fixed beliefs about alcohol's effects, because it fails to contextualise those beliefs in the cultural, situational and individual circumstances within which they develop and are maintained.

An illustration of this may be found in Adesso's (1985) review of research evidence that frequent and problem drinking are

associated with strong expectancies for enhanced power, sexuality, tension reduction and cognitive and motor functioning. These are inaccurate beliefs about alcohol's effects. Adesso's argument, that experience with alcohol increases the specificity of expectancies, thus implies that frequent and problem drinkers fail to learn, or to draw the appropriate conclusions from their experiences.

The predictive power of alcohol expectancies might more usefully be considered in the light of Peranen's "perceiving/cognizing individual and his/her structuring of the situation" (1982, p.27). In particular, theoretical development might follow Barrett's advice that

"drug-taking behaviour is not reflexive. Rather, it is a goal-directed, purposeful, operant response."

(Barrett 1985, p.127)

Such a position would suggest that individuals are not passively driven by their alcohol expectancies, but acquire a sophisticated degree of control over alcohol's generalised effects, to produce desired changes in mood and behaviour in particular situations. In this light, the predictive power of alcohol expectancies reflects the identification of situations in which particular beliefs about alcohol's effects become salient, and may be invoked to anticipate, interpret and legitimate changes in mood and behaviour associated with alcohol in those situations.

#### **Alcohol expectancies and decision making**

It was suggested in Chapter Two that lay theories provide flexible conceptual frameworks for making judgements about complex issues. Applied in specific situations, concrete cognitive schemata facilitate rapid information processing and decision making.

In the foregoing discussion, it was shown that alcohol expectancies, when applied to specific drinking situations,

enable certain intoxicated behaviour changes to be defined as appropriate or inappropriate. A particular significance of this function derives from the generalised, non-specific effects of alcohol on mood and behaviour, discussed in Chapter Three. A few general "rules of thumb", selectively applied to specific situations, creates confidence, comprehensibility and predictability in drinking situations of considerable complexity, variability and ambiguity. Here, a theoretical analogy with cognitive scripts also begins to emerge. The situationally specific application of a set of general, flexible assumptions about the range and quality of alcohol's effects provides scripts for effective participation in social drinking occasions.

The analogy with cognitive scripts may also point to an explanation for the apparent irrationality of alcoholics' strong beliefs in alcohol's mood enhancing effects. The resistance to change of established scripts was noted in Chapter Two. This resistance is acquired precisely because the scripts have been found to "work" to the individual's satisfaction on most of the occasions on which they are invoked. Alcoholics' expectancies for mood enhancement will have been reinforced by repeated prior experiences of success in achieving mood enhancement, and sobriety itself may not offer rewards which strongly challenge alcoholics' perception that they generally "feel better" (Barrett 1985) after drinking than they do when sober. Factors involved in the persistence of this perception were explored in Chapter Three.

#### **Summary**

Alcohol expectancies, as general assumptions about alcohol's effects, constitute a specific variety of lay theory. Applied to specific drinking situations, alcohol expectancies may supply basic cognitive scripts for the anticipation, interpretation and legitimation of intoxicated behaviour and associated mood changes. It has been suggested that a deterministic approach to interpreting the relationship

between alcohol expectancies and behaviour implies fundamental irrationalities in the development and persistence of these expectancies, since they are inaccurate, contradictory and strongest for problem drinkers. Theory might more fruitfully be developed from the hypothesis that alcohol expectancies are linked to rational, purposeful behaviour.

The remainder of this chapter considers the potentially purposeful exploitation by offenders of lay theories about alcohol in the legitimation and explanation of intoxicated crime. This will be examined from two perspectives: pre-offence neutralisation and post-offence rationalisation. It is argued that the significance of lay theories about alcohol in the legitimation of criminal activity lies in the implications of these beliefs for judgements of personal responsibility.

It should be noted that the criminological literature is not entirely clear or consistent in distinguishing between "neutralisation" and "rationalisation". However, since the following discussion examines different stages in the offending sequence, it is useful to distinguish clearly between lay theories applied at these different stages. The distinction indicated by Minor (1981) has been adopted. "Neutralisation" refers to a personal rationale for legitimating a proposed course of criminal conduct. "Rationalisation" refers to a personal rationale constructed by an offender for excusing himself for crime after its commission. Rationalisation is thus to be distinguished from "mitigation", which here refers to a formal "account" (Scott and Lyman 1968) of a criminal offence offered publicly, in order to reduce judgements by others of culpability and consequent punishment.

#### **NEUTRALISATION**

The role of alcohol in offence neutralisation will be considered from four perspectives: its pharmacological effects; its cultural significance in moral judgements; its

situational significance in moral decisions; and its invocation as a techniques of neutralisation.

### **Pharmacological effects**

Goldman, Brown and Christiansen (1987) observe that the mechanisms which have often been postulated to explain the development of alcohol expectancies, such as classical conditioning, vicarious learning or causal attribution, do not themselves require any pharmacological effects. Expectancies are held to develop through the repeated association between alcohol consumption and particular behavioural consequences, whether or not alcohol directly produces that effect. Nevertheless, they sound a note of caution.

"It is possible using expectancy concepts to come very close to the point at which all alcohol-related behavior can be explained without reference to any pharmacological effects of alcohol as a drug. While this line of thinking serves as an interesting and challenging counterpoint to the more typical approach in the drug field of explaining everything with biological variables, one should never be so naive as to disregard pharmacology. Instead, an adequate balance between behavioral and pharmacologic mechanisms is the ultimate goal."

(Goldman, Brown and Christiansen 1987, p.182)

Thus, a discussion of the potential role of lay theories about alcohol in the neutralisation of moral inhibitions should be contextualised within a discussion of alcohol's pharmacological effects.

The failure of research to identify precise pharmacological mechanisms for the causation of intoxicated disinhibition was noted in Chapter Three. However, people commonly believe that alcohol produces alterations in mood consistent with disinhibited behaviour (Goldman, Brown and Christiansen 1987; Roizen 1981), and use alcohol to facilitate these changes (Cavan 1966; Macandrew and Edgerton 1969; Lang 1981). But whatever mood change an individual seeks or anticipates through intoxication, it seems unlikely that alcohol's

pharmacological effects alone can be relied upon to achieve it. Alcohol's pharmacological effects are highly susceptible to individual variables (Bardo and Risner 1985; Barrett 1985; Blum 1982).

"[T]he effects of a drug depend not only on biochemical factors such as its chemical structure, route of administration, and rate of metabolism, but also on individual biochemical differences among the organisms receiving the drug. The species of the organism, its age, gender, and health status are all known to alter the effect of a drug, some more markedly than others."

(Bardo and Risner 1985, p.91)

Although the common belief that alcohol disrupts intellectual functioning is justified (Berglas 1987), the manner in which it does so is complex. The extent of interference with different cognitive and motor functions depends on their complexity, specific sensitivity to disruption by alcohol, and the motivation and personality of the drinker (Blum 1982; Lang 1981; Woods and Mansfield 1981).

Evidence further suggests that mood changes consequent upon alcohol consumption are susceptible to situational influences. For example, solitary and group drinking lead to different affective changes (Blum 1982; Hartocollis 1962; McCarty 1985), alcoholic withdrawal experiences are related to the number of situational cues for drinking (McCarty 1985), and behaviour changes are more predictable in institutionalised settings involving unambiguous roles and authority (Blum 1982).

Such complexity and variability in the direct effects of alcohol on any one individual's mood, intellectual functioning and behaviour lead Barrett to argue that an adequate theory of drug-taking behaviour

"requires no assumptions about exactly how the person 'feels' either before or after drug use. It maintains only that the latter is preferred."

(Barrett 1985, p.128)



Theorists thus suggest that alcohol has a generalised effect on internal physiological arousal, but the specific emotional definition attributed to this experience by the drinker is guided by external cues (Blum 1982; Lang 1981; Marshall 1981; Zillman 1978). However, it is not suggested here that individuals merely respond passively to the combined experience of internal arousal and external cues. Individual motivation must also be considered in the interpretation of intoxicated mood changes. It is to be remembered that balanced placebo design experiments demonstrate the failure of subjects to respond to environmental cues for disinhibition when they do not believe that they have consumed alcohol, despite alcohol's effects on internal arousal. Pharmacologically induced arousal without awareness of alcohol consumption, therefore, does not cause a mood alteration despite the presence of salient situational cues (Lang 1981).

The experience of an emotion requires both arousal and an available explanation for it (Lang 1981; McCarty 1985). In drinking situations, individual arousal is potentially influenced by the multiple situational factors identified in Chapter Three, such as alcohol, peer group behaviour, crowding and physical design features. However, individuals may not identify all of these disparate sources of arousal, but "collapse" them into a single emotional attribution, the experience of which may be enhanced as a result (McCarty 1985; Zillman 1978).

"Individuals tend to combine undifferentiated physiological sensations. Consequently, all sensations are attributed to one specific salient stimulus rather than partitioned out among the actual sources. The perceived strength of the salient stimulus is enhanced, and emotional behavioral reactions may be amplified as a result of the transfer of excitation."

(McCarty 1985, p.271)

Reviewing experimental evidence that intoxicated individuals may attribute arousal either to drug ingestion or to

situational stimuli, McCarty (1985) implies that the "misattribution" of arousal to external stimuli is a mistake. However, the attribution of arousal to a drug may itself be purposeful, in permitting individuals to ignore other, less convenient, sources of discomfort.

Attitudinal research has revealed a remarkable human talent for altering the perception of internal states of arousal so that they complement the emotional condition implied by behaviour (Brickman 1978; Dienstbier 1978; Eiser and Van Der Pligt 1988; Zanna and Cooper 1974). Such research suggests that individuals prefer to experience consistency between their internal emotional states and external behaviour, to the extent that they will redefine their internal states in order to produce such consistency. This perspective has been fundamental to theories of attitude formation and change (e.g. Festinger 1957). It was noted in Chapter Three that alcohol appears to reduce tension in conflict situations. Possibly, therefore, alcohol consumption may facilitate the achievement of consistency between internal arousal and external behaviour in situations involving moral conflict.

For example, Dienstbier (1978) found that subjects, confronted with a moral dilemma over whether to cheat in a test, were more likely to cheat when they were able to attribute sensations such as heart acceleration and flushing to the side-effects of a pill. In Dienstbier's experiments, the pill was a placebo, but the ability to attribute the physiological signs of conflict to its effects reduced the inhibitory influence of such arousal on moral infractions. Zanna and Cooper (1974) found that subjects required to write an essay expressing opinions contrary to their personal beliefs did not demonstrate the reduction of inconsistency through attitude change usually observed in such exercises, when they were able to attribute signs of tension to the effects of a pill. Again, the experience of conflict appeared to be reduced or negated when arousal could be attributed to drug ingestion.

It is unnecessary for individuals to be fully aware of this process of redefining emotional arousal; indeed they frequently appear to be unaware of it (Eiser and Van Der Pligt 1988; Fitzmaurice and Pease 1986; Brickman 1978; Zanna and Cooper 1974). Nevertheless, the "appropriate" emotional definition of internal arousal may have to be learned by individuals engaging in a new behaviour (Brickman 1978), as in the case of novice drug users learning to experience disorientation as pleasurable (Best and Luckenbill 1982; Zinberg 1984).

Physiological arousal is often diffuse and non-specific (McCarty 1985). Dienstbier (1978) argues that certain emotions may be alike in their underlying physiological arousal, so that different emotional attributions may be made for similar arousal experiences. Again, this process may be purposeful. For example, fear may be eliminated if the arousal it engenders may be re-attributed to excitement (Dienstbier 1978). Thus, facilitated by features of drinking situations, intoxication may enable the drinker to define the experience of arousal as a specific mood change.

Applying such an analysis to the experience of arousal in drinking situations, it may be hypothesised that such situations facilitate an emotional attribution consistent with rule-breaking behaviour. It was noted in Chapter Three that drinking and offending offer common emotional rewards, such as excitement, camaraderie and status enhancement. Drinking situations thus facilitate the translation of arousal into definitions of mood which are also consistent with offending behaviour.

It is to be noted that this analysis of the achievement of consistency between mood and offending behaviour does not require the prior intention to commit crime. It is a product of a coincidence of emotional rewards offered by two different activities. This may account in part for the apparent

impulsivity of some intoxicated offending, such as that of youthful peer groups. Following intoxication, mood is already consistent with subsequent behaviour, as individuals seize opportunities for further excitement. Nevertheless, it is also possible that individuals intending to offend might exploit this coincidence of intoxicated and criminal moods, and drink purposefully to achieve "Dutch courage" (Bennett and Wright 1984a, 1984b; Walsh 1986). For example, a husband dwelling on his wife's faults while drinking, may experience sufficient "aggression" to enable him subsequently to assault her. Such an analysis complements the finding of Dobash and Dobash (1984), mentioned in Chapter Three, that the intention to attack is formed prior to the aggressive encounter between husband and wife.

Repeated experiences of an anxiety provoking event reduces the degree of anxiety which it elicits (Volpicelli 1987). Thus, the importance of alcohol as a facilitator of mood and behaviour consistency may diminish as the offender acquires criminal experience. The two activities of drinking and subsequent offending may then, over time, simply become part of an established "routine" (Bennett and Wright 1984a, 1984b), or scripted activity. Nevertheless, once mastered, the usefulness of alcohol for achieving mood and behaviour consistency may be invoked when required. The alcohol expectancy for the desired mood change having been learned and strengthened through experience, it is available for exploitation on subsequent occasions according to need.

Thus, intoxication provides a means of achieving consistency between emotional states and behaviour, which may facilitate moral infractions: firstly by enabling arousal to be attributed directly to alcohol rather than to moral conflict; and secondly by facilitating the re-attribution of arousal to emotions consistent with proscribed behaviour. The thrust of these arguments avoids the pitfalls of deterministic reasoning. For example, it would not be suggested here that an

intoxicated individual would show greater sexual curiosity (Coid 1986a, 1986b; Goldman, Brown and Christiansen 1987; Lang, Searles, Lauerman and Adesso 1980) because his expectancy for sexual disinhibition *causes* him to lose his customary guilt. Rather, it would be suggested that the convenient re-attribution to intoxication of the arousal caused by conflict between sexual guilt and temptation permits him to show that curiosity which he is *motivated* to indulge.

### **Culture and moral judgements**

Alcohol plays a significant role in the cultural definitions of different activities, for example, by symbolising religious ceremony or the transition from work to leisure (Douglas 1987; Gusfield 1987). Further, drinking

"has a moral connotation associated with a style of life - a patterned system of behavior regulating a wide range of actions and distinguishing one group from another. Alcohol, we are arguing, has had a special function as a symbol of a general style of life associated with levels of social status. It has been a symbol of group membership because it has communicated to observers the set of commitments of the drinker or abstainer to ways of moral conduct in realms of work, play, and familial association."

(Gusfield 1963, p.29)

Drinking is frequently and spontaneously invoked in explanations of the social significance of non-drinking behaviour. For example, Stone's (1962) study of attitudes towards fashion gave rise to a secondary analysis of drinking attitudes, because of the frequency with which respondents illustrated their remarks with references to drinking. Assertions about the drinking styles of different social groups were invoked by Stone's respondents to support inferences about social status and moral rectitude. Information about, for example, the amount and kind of beverage consumed, frequency of drinking and drunkenness, or favoured drinking locales, was advanced to convey a broader picture of the social group to which individuals belonged,

together with inferences about its respectability or undesirability. The social context of drinking is an important source of individuals' perceptions of their own and others' status, both as drinkers and as social and moral actors, in drinking careers from adolescence to alcoholism (Archard 1979; Bahr and Caplow 1974; Cook 1975; Harford 1983; Harford, Wechsler and Rohman 1983; Hauge and Irgens-Jensen 1987; Mars 1987; Marsh, Dobbs and White 1986; Phillimore 1979; Rubington 1958; Wilsnack and Wilsnack 1979).

However, social and moral judgements based on inferences from drinking styles are neither unambiguous nor unanimous. Inferences from perceptions of drinking styles to judgements of social status can foster simplistic theories about the causes of drinking problems. For example, Douglas argues:

"Just because alcohol in this setting is the gate of access to all that is most desired, a person suffering social rejection would understandably turn to compensatory drinking, to possess at least the symbol of what he does not have. This suggests a vein for research among the social uses of alcohol: the more that alcohol is used for signifying selection and exclusion the more might we expect its abuse to appear among the ranks of the excluded."

(Douglas 1987, p.9)

Douglas' hypothesis is based on the assumption of social rejection noted in Chapter Two. However, the research noted above shows clearly that people are as acutely, if not more, conscious of drinking styles signifying low status as they are of drinking as a high status activity. For example, even among vagrant alcoholics much significance is attached to consumption of, or abstention from surgical spirits, but the nature of that significance also varies according to an individuals' own participation in or rejection of the practice (Archard 1979; Cook 1975). Douglas' analysis further fails to accommodate easily the occurrence of alcoholism among high status people.

There is considerable cultural diversity in the definitions of problems associated with alcohol (Heath 1981; Greeley, McCready and Theisen 1980; Jellinek 1960). Furthermore, even within a culture, such definitions may be ambiguous. For example, Raymond (1975) complains that the processing of drunk driving offences as traffic violations prevents drivers from recognising their own drinking problems. However, a society may perhaps justifiably perceive the problem as a *driving* problem with implications for public safety, rather than as a *drinking* problem, which is a private affair.

"Intoxication" is to some extent a subjectively defined experience, derived not only from drinking but from the specific drinking culture to which an individual belongs (Macandrew and Edgerton 1969). Thus, although young males frequently associate their drinking with unpleasant consequences such as hang-overs, nausea, recklessness, aggressiveness and police intervention (Collins 1982; Hauge and Irgens-Jensen 1987; Marsh, Dobbs and White 1986; Polich 1979; Wechsler 1979; Zucker 1979), the same occasions may also be associated with fun and excitement (Dorn 1983; Marsh, Dobbs and White 1986). Youthful male drinkers do not tend to criticise excessive drinking (Wilsnack and Wilsnack 1979). Indeed, in so far as youthful drinking is an important public affirmation of social roles and status (Marsh, Dobbs and White 1986; Wilsnack and Wilsnack 1979), the simplest way for a young person to demonstrate publicly that he has been drinking is to manifest drunkenness.

This social aspect of drinking behaviour could be an important contributor to reports of greater intoxication by younger drinkers when consuming similar amounts to older drinkers (Hauge and Irgens-Jensen 1987). Age-related changes in the experience of problems associated with drinking, from hang-overs and police intervention among the young to anxieties about health and control in later life (Hauge and Irgens-Jensen 1987), may reflect shifts in the social context of

drinking (Harford 1979) and in perceptions of appropriate alcohol-related behaviour.

Drinking, therefore, is a key reference point for social and moral judgements of people and behaviour. Its significance, however, is diverse and ambiguous. Subgroups within a culture both experience intoxication, and perceive its moral significance differently, according to such factors as age and the social context of drinking.

### **Drinking situations and moral decisions**

The influence of situational factors on behaviour has already been identified. Situational features also guide moral interpretations of behaviour (Dienstbier 1978). People discriminate between situations in terms of the moral rules to be applied to them (Campbell, Bibel and Muncer 1985). The mere presence of alcohol in a situation endows it with a particular moral meaning in setting it apart from serious, non-leisure occasions (Gusfield 1987). Thus, events and behaviour acquire different moral significance in drinking or sober situations.

Definitions of drinking situations, however, themselves vary widely (Roman 1982), including, for example, recreation, religious ceremony and business transactions. There is no singular moral definition which can encompass the range of situations in which alcohol is present, or the moral expectations and judgements of behaviour within them. For example:

"American ambivalence toward the subject is undeniable. Perhaps 30 per cent of the nation's citizens do not drink at all, yet others tolerate considerable latitude in drinking behavior. 'Getting *[sic]* loaded' at a college fraternity party, for example, more often than not is simply shrugged off as an instance of adolescent conduct. Hard-drinking, even to the point of drunkenness, is still accepted as the sign of 'being a real man' in some social circles. In other cases, drinkers who see nothing wrong with their own imbibing have doubts about it in others. Adults who routinely attend cocktail



parties express deep concern over drinking among their teenage (or younger) children."

(Lender and Martin 1982, p.191)

In many drinking situations, particularly recreational ones in public places, there is considerable ambiguity as to the moral meaning of behaviour. Cavan remarks on the central contradiction inherent in interactions between strangers in public drinking places:

"As strangers, they should be treated with the reserve and restraint that drinking is at the same time expected to diminish."

(Cavan 1966, p.43)

Cavan observes that such interactions are guided by a series of implicit norms and conventions which permit the simultaneous loosening of behavioural reserve and maintenance of social distance. Nevertheless, the constant ambiguity in these social relationships increases the unpredictability of interactions.

"Thus, while sociability is available to all in the public drinking place, there is little to guarantee that encounters between the unacquainted, once begun, will proceed in a neat and orderly fashion. Rather, from the onset their career is problematic, subject to a variety of contingencies that make them always tentative and often superficial."

(Cavan 1966, p.63)

Unpredictability is enhanced by the dislocation of public drinking situations from social roles which generally inform behaviour, such as parent, spouse, or employee (Campbell 1986; Cavan 1966). Public drinking situations commonly acquire the status of "time out" (Macandrew and Edgerton 1969) from these customary roles and their constraints on behaviour. This situational dislocation from social roles protects the integrity of individuals' "sober" identity (Campbell 1986; Cavan 1966; Gusfield 1987; Macandrew and Edgerton 1969). Furthermore, loose structures for conveying authority, and

prescribing social behaviour within the drinking situation itself (Blum 1982; Gusfield 1987; Hope 1985; Luckenbill 1977) create a precariousness in the establishment and maintenance of orderly conduct, particularly where actors are unfamiliar with each other (Felson, Baccaglioni and Gmelch 1986).

The unpredictability of public recreational drinking situations has encouraged the development of strategies for bringing behaviour under control at numerous social levels: law and public policy (Gusfield 1987); social rituals and sanctions applied on drinking occasions (Zinberg 1984); integration between drinking places and community social life (Plant 1981); authority and rules invoked within drinking establishments for dispute settlement (Cavan 1966; Gibbs 1986); and the careful, rulebound conduct of interactions (Cavan 1966). However, this should not obscure the point that moral ambiguity, and its associated unpredictability and risks, are precisely those features of public drinking situations which are valued, sought and created within them. A view of problematic behaviour in drinking situations, as merely a product of poor controls, requiring improvements in management and design, erroneously assumes that people unequivocally wish for the elimination of this moral ambiguity. However, the fun, excitement and enjoyable risks to be derived from the moral ambiguity of public recreational drinking situations are undoubtedly part of their attraction. "Time out" behaviour is thus motivated behaviour, licensed by the presence of alcohol in the drinking situation (Cavan 1966; Macandrew and Edgerton 1969).

Indeed, overt attempts to control actual or threatened rule infractions appear to be the primary immediate cause of the eruption of disorderly behaviour in public recreational drinking settings (Felson, Baccaglioni and Gmelch 1986; Marsh and Campbell 1979; Pernanen 1982). Attempts at control, even in volatile situations, may therefore be made in a non-

confrontational manner, avoiding explicit condemnation of the offending behaviour.

"Thus activities handled in unequivocal terms in most settings may, in the public drinking place, be treated with a tact and finesse that seem unwarranted by their nature."

(Cavan 1966, p.69)

In ambiguous situations such as these, alternative definitions for rulebreaking behaviour may be invoked which remove the potential moral opprobrium. In particular, behaviour may be defined as "play", "having fun", and perpetrators may define themselves as "pranksters" (Coid 1986b; Wade 1967). Thus, for example, behaviour which in a bus queue would be considered sexual assault, at a party is "a bit of fun" (Coid 1986b). Such occasions also require responses from others to the behaviour which are appropriate to its situational moral definition. Thus, a "victim" of unsolicited sexual approaches at a party who calls the police may be regarded as a "spoilsport" (Coid 1986b). These situational moral definitions and expectations of behaviour are closely connected to the kinds of intent attributed to it. The attribution of, for example, intent to offend sexual privacy is itself dependent on the situational cues informing participants of the nature of the occasion and the kinds of behaviour, or "scripts" appropriate to it.

Drinking situations thus become situations of "non-responsibility". Within such situations, the dynamics of group behaviour may play a vital role in the transformation of "time out", which merely implies permissiveness, into criminal activity. In situations of collective non-responsibility, the abdication of individual responsibility is a notable feature of group crimes such as rape (Wright and West 1981; Coid 1986a), vandalism (Wade 1967) and robbery (Cordilia 1986).

Thus, the presence of alcohol signifies a change in a situation's moral meaning, with implications for the kinds of

behaviour which will be deemed appropriate and the kinds of intent which will be attributed to actors. The moral definition of drinking situations may be ambiguous, particularly in public recreational drinking settings. This moral ambiguity facilitates unpredictability, "non-responsibility", the redefinition of offensive behaviour in non-pejorative terms, and the development of group dynamics in which individual moral responsibility is abdicated.

### **Techniques of neutralisation**

The discussion so far has identified various sources of diversity and ambiguity in moral judgements of intoxicated behaviour. Neutralisations of the moral offensiveness of behaviour are available through these sources of diversity and ambiguity. Under what circumstances might an individual invoke alcohol itself as a neutralising technique?

The selective invocation of alcohol as a technique of neutralisation may be linked to factors such as alcohol's power to overcome moral objections to the offence; the individual's readiness to offend; his preference for the available offending opportunities; and his prior experience. These factors are mediated by alcohol expectancies, or lay theories about alcohol.

#### **1. Overcoming moral objections**

Neutralisation is only necessary in circumstances in which the individual has some moral objection to the deviant behaviour under consideration. The individual who experiences no guilt or moral ambivalence about engaging in a certain behaviour has no need of self-excusatory devices to overcome it (Minor 1980). Theories which suggest that offenders are committed to deviant norms (e.g. Moran 1971) are repeatedly confronted by research evidence that offenders appear to subscribe to conventional moral standards (e.g. Ball-Rokeach 1973; Shover 1983). This implies that the majority of individuals contemplating an offence will experience a degree of conflict

between their internal emotional state and the behaviour under consideration, and will be motivated to achieve consistency between them, either by avoiding the behaviour or by altering their emotional state to achieve compatibility with it.

In drinking situations, it may be unnecessary to invoke alcohol itself to achieve neutralisation. Other techniques may be available and preferable (e.g. Minor 1981; Sykes and Matza 1957). Three conditions have been suggested on which a neutralisation technique may depend for its success: it must be acceptable to its user (Agnew and Peter 1986); the user must perceive the situation to be one in which it is applicable (Agnew and Peter 1986); and there must be time to generate it (Minor 1981).

Alcohol has particular attractions for meeting such conditions. Firstly, common cultural beliefs about its effects on rationality, mood and behaviour legitimate its invocation by individuals (Lang 1981). Secondly, the multiplicity and inconsistency of these beliefs facilitate the use of neutralisations invoking alcohol in a wide variety of situations and for diverse behaviours. Thirdly, the fact of prior consumption, and the universality of the alcohol expectancies, facilitate the immediate invocation of alcohol as an opportunity for deviance arises. The generation of successful neutralisations by the uninitiated in deviance can require considerable psychological effort, ingenuity and practice (Best and Luckenbill 1982; Carroll and Weaver 1986; Cornish and Clarke 1986).

"The deciding individual is obviously embedded in social, cultural, interpersonal, and historical contexts, all of which are affected, however slightly, by the final choice. Simultaneously, the train of thought engaged in by a person trying to make up his or her mind is dominated by the constraints and opportunities, values and norms, that characterize those interwoven contexts."

(Sloan 1986, p.1)

The availability of "common knowledge" about alcohol's effects provides a ready stock of neutralisations for immediate use. Thus, the alcohol expectancies, or lay theories, provide potentially powerful neutralisations for behaviour about which the individual experiences moral conflict. Evidence of their effectiveness has been found in the release of sexual responsiveness among high sex-guilt individuals (Lang, Searles, Lauerman and Adesso 1980), violence among individuals with rigid religious backgrounds (Roebuck and Johnson 1962), and wife assault among men who morally repudiate it (Kantor and Straus 1987).

## 2. Readiness to offend

Cordilia (1986) draws attention to the complex and variable relationship between historical and situational factors and the generation of motivation to offend. Historical factors in the individual's experience may themselves lead to motivation, or to the individual encountering situations within which motivation is generated. These differences reflect differences in the quality of the motivation, or readiness to offend.

In the first case, in which motivation arises through prior experiences, this may represent only a provisional readiness to engage in certain behaviour given the occurrence of a particular kind of situation. Pfuhl describes this as a state of willingness, which "means no more or less than that one is available for participation in a deviant act" (1980, p.70). Clarke and Cornish argue:

"Readiness involves rather more than receptiveness: it implies that the individual has actually contemplated this form of crime as a solution to his needs and has decided that under the right circumstances he would commit the offence."

(Clarke and Cornish 1985, p.167)

Alcohol may be related to this type of provisional readiness in two ways. Firstly, life experiences and personality characteristics, identified in Chapter Three as creating

"risk" or "vulnerability" to heavy drinking and crime, may be restated here as background influences in the generation of provisional readiness to offend. Such factors enable the individual to contemplate moral infractions more easily. Individual biographies influence exposure to and perception of deviant behaviour and the evaluation of the non-deviant alternatives (Clarke and Cornish 1985; Pfuhl 1980). For example, Athens (1989) argues that brutalising experiences contribute to readiness to respond to threat with violence. Repeated exposure to intoxicated violence may also strengthen the expectancy for this consequence of drinking, rendering it unsurprising and comparatively easy to apply to one's own behaviour.

Secondly, readiness is linked to self-concept in that it requires the ability to perceive oneself as one who would engage in the deviant behaviour under consideration (Clarke and Cornish 1985; Briar and Piliavin 1965; Pfuhl 1980). Alcohol, via the alcohol expectancies, has the capacity to facilitate episodic changes in self-concept, by licensing proscribed behaviour as the product of intoxication rather than personal moral failing. In this sense, the alcohol expectancies may provide the individual with provisional "permission" to offend, in the form of statements such as "If I were drunk I wouldn't care", or "If I were drunk I would react to that sort of provocation with violence".

Provisional readiness to offend may persist over time without being acted upon (Carroll 1982; Pfuhl 1980). However, once a provisional neutralisation has been formulated, motivation to commit the contemplated offence may itself be enhanced (Minor 1981). Furthermore, provisional readiness interacts with situational factors, and may be perpetuated by repeated exposure to the temptation to offend. For example:

"[V]iolent episodes between intimates have no exact point at which they begin or end; instead, they form an integral part of a continuing relationship. The factors associated with a man's use of violence

against his wife are present most of the time, and the specific factors leading to any particular event may occur days, months or even years before the event itself."

(Dobash and Dobash 1984, p.272)

Within certain relationships such as marriage, alcohol may already feature as a symbol of power and control (Blum 1982; Kantor and Straus 1987). The link between intoxication and marital violence may thus develop, and acquire increasing salience, over a series of hostile interchanges.

In the second case, Cordilia's (1986) analysis suggests that the motivation to offend may be generated within situations affording the opportunity for the offence. Motivation here is more closely related to the formulation of intention to commit a specific offence, as, for example, in Luckenbill's (1977) situationally inspired "working agreement" between aggressors to use violence.

Individuals may go to greater or lesser efforts to create opportunities to offend in the situations in which they find themselves. Drinking situations provide opportunities to "display" readiness to offend, for example, by discussing targets for burglary (Bennett and Wright 1984a, 1984b; Walsh 1986), or by projecting hostility (Parker 1974). Furthermore, such interactions facilitate the learning of perspectives which permit offending behaviour, by exposure to examples, neutralisations, opportunities and encouragement (Best and Luckenbill 1982; Pfuhl 1980).

Intoxication is one of a range of techniques employed by offenders "to manipulate their beliefs to make them compatible with intended courses of action" (Bennett and Wright 1984a, p.142). Others include contemplation of gain (Walsh 1986); concentration on the urgency of need (Walsh 1986); anticipation of heightened self-esteem and respect of others (Walsh 1986); exaggeration of skill (Lejeune 1977; Walsh



1986); minimisation of risks (Lejeune 1977); refusal to plan or to contemplate failure (Bennett and Wright 1984a; Walsh 1986); and redefinition of fear as enjoyment (Lejeune 1977; Wade 1967). A particular attraction of alcohol in this process may be its legitimisation of potential failure as the result of intoxicated incompetence, without reflection on the individual's public image as a competent operator (Berglas 1987). Equally, intoxication may enhance success through the experience of overcoming an intellectual handicap (Berglas 1987).

### **3. Preference**

Garofalo (1987) suggests that "target attractiveness", or the instrumental or symbolic value of the target to the offender is an important aspect of offence decisions. Offenders' preferences may reflect moral scruples about certain offences or offence targets (Maguire 1982; Munro 1972), or pragmatic considerations, for example, to do with anticipated victim behaviour (Walsh 1986) or the disposability of property (Garofalo 1987). Nevertheless, the frequent abdication from such moral or pragmatic stances, arising from factors such as the vagaries of opportunity and the urgency of need was noted in Chapter Three. Lay theories about alcohol's effects on rationality and morality provide non-pejorative explanations for behaviour which contradicts preferences, for example by invoking indiscriminateness or impulsivity.

### **4. Prior experience**

Repeated experience of an offence alters the perception of its moral significance, reducing the need to neutralise guilt or fear (Carroll and Weaver 1986; Feeney 1986; Jacobs 1989; Minor 1980; Pfuhl 1980). Such shifts in perception will reduce the importance of neutralisations based on beliefs about alcohol.

A further consequence of experience, however, may be that the offence becomes part of the series of scripted activities connected with drinking situations and established in the

offender's repertoire. Thus, offending "routines" (Bennett and Wright 1984a), "patterns" (Feeney 1986) or "scripts" (Forgas 1986) arising in drinking situations may acquire the concreteness and "mindlessness" of other, non-deviant behaviours commonly associated with drinking.

Experience of intoxication may also influence the perception of alcohol itself (Blum 1982; Zucker 1979). It has been seen that heavy drinkers hold conventional alcohol expectancies, but with particular emphases. The experience of success in acting out a particular expectancy, for example, for increased assertiveness under intoxication, is likely to reinforce that expectancy, perpetuating the association between intoxication and the offence.

### **Summary**

The presence of alcohol neutralises moral conflict in a variety of ways, involving its pharmacological effects, its cultural and situational significance for moral judgements, and the direct invocation of lay theories or expectancies. Intoxication facilitates mood changes consistent with moral infractions. Cultural and situational definitions of intoxicated behaviour are diverse and often ambiguous in their implications for the moral significance of behaviour. Lay theories about alcohol's effects may mediate offenders' decisions by providing rationales for overcoming moral objections, enhancing readiness to offend, attenuating preferences for particular offences or offence targets, and strengthening the association between intoxication and offending on the basis of experience.

### **RATIONALISATION**

It may not be possible to draw a rigid distinction between pre-offence neutralisation and rationalisation after the event. An offender may have more time after an offence to construct a rationalisation (Minor 1981), but once achieved, this may serve as a neutralisation for subsequent offences.

Walsh (1986) observes that burglars concentrate on their last offence and the intensity of their need in order to perpetuate their feelings of self-justification for future offending.

Nevertheless, it does not follow that techniques for neutralisation and for rationalisation are the same in all cases. For example, a rationalisation is likely to take into account the outcome of the offence. Thus, rationalisations may differ for successful and unsuccessful offences, with the latter type being constructed to compensate injured pride. The relationship between a rationalisation constructed following an unsuccessful offence and the neutralisation of subsequent offences may then depend on the prediction of future success. Thus, for example, intoxication may be invoked as a rationalisation for failure which does not reflect on the offender's general, sober competence (Berglas 1987).

Although rationalisations must be plausible, at least to the offender, they may be constructed in ways which do not reflect the real reasons for an offence (Semin and Manstead 1983), since their primary purpose is self-excusatory. In this respect, rationalisations may fall broadly into two types. Firstly, they may justify or excuse the offender's *act*. For example, a murderer "may select as an event leading to his violence one which places the brunt of responsibility for the murder on the victim" (Luckenbill 1977, p.197). Alternatively, rationalisations may justify or excuse the offender's *condition*. For example, Cook (1975) observes that alcoholics describe their problems in terms of the incurability of alcoholism, the inevitable failure of attempts at sobriety, and the inexorable escalation of the appetite for alcohol.

Taylor (1972) suggests that a full understanding of offenders' rationalisations for their behaviour requires an examination of four issues: the range of justifications available for particular offences; the role of others in defining the acceptability or unacceptability of the available

justifications; the variables affecting the acceptance and development of alternative rationalisations; and the significance of alternative rationalisations for the offender's self-image and behaviour. The following discussion will examine offence rationalisations from these aspects, under the briefer headings of availability; acceptability; alternatives; and behaviour and self-image.

### **Availability**

It was seen in Chapter Three that offenders do not appear to possess special insights into the causes of crime. Although rationalisations may not reflect real reasons for actions', offenders' explanations conform to cultural beliefs about the causes and justifications for behaviour (Semin and Manstead 1983), or "vocabularies of motives" (Taylor 1972). Cultural beliefs about alcohol circumscribe the motivational statements which may invoke alcohol (Pernanen 1982). Thus, for example, in Jewish culture, in which alcohol use is integrated with religious ritual and symbolism, motivations for drinking do not invoke the intoxicating effects of alcohol *per se*; whilst in Irish culture drinking motivations concern emotional release through the direct effects of alcohol (Greeley, McCready and Theisen 1980). Sykes and Matza's (1957) observation that delinquents' self-justificatory accounts are based on legal defences to crimes, probably reflects less the legal expertise of offenders than the fact that legal defences are themselves rooted in cultural beliefs about the causes and moral justifications of behaviour.

As reflections of cultural beliefs about reasons for actions, offenders' rationalisations are socially learned. Thus, for example, Scully and Marolla argue:

"We view rape as behavior learned socially, through interaction with others; convicted rapists have learned the attitudes and actions consistent with sexual aggression against women. Learning also includes the acquisition of culturally derived vocabularies of motive, which can be used to

diminish responsibility and to negotiate a non-deviant identity."

(Scully and Marolla 1984, p.530)

Whilst it is difficult to develop personal rationalisations for deviance independently of such deep-rooted cultural beliefs, it may also be advantageous to adopt the available vocabularies of motive. For example, observing the common tendency for sex offenders to explain their behaviour in terms of sudden loss of self-control, Taylor remarks:

"It is *others* who have led him to cite such motives, but most importantly it means that he can now represent his motives to himself in such deterministic terms before engaging in the action or before deciding upon whether to continue it."

(Taylor 1972, p.27)

It was noted earlier that cultural beliefs circumscribe social definitions of what constitutes a problem associated with drinking. Such beliefs may further influence offenders' perceptions of their behaviour. For example, Stephan (1989) argues that the lack of "problem consciousness" in cultural beliefs about drunk driving is linked to the failure of such offenders to perceive any reason to change their drinking habits. Jacobs takes this argument further, implying that rationalisation skills may be highly developed at the cultural level, in order to sustain justifications for activities which have unpleasant social consequences:

"Given the complexity, magnitude, potential dangers, and relentless occurrence of crashes and casualties, it is a tribute to our capacity for repressing unpleasant truths that we continue to think of automobile injuries as aberrational and perceive driving to be safe compared with other (actually safer) modes of transportation, such as airplanes."

(Jacobs 1989, p.16)

This tenacity in maintaining cultural beliefs and attitudes may be linked to the apparent absence from common vocabularies

of motives of one particular academic theory: drunk driving as suicide. Jacobs (1989) argues that such a proposition is consistent with evidence that most alcohol-related traffic fatalities are single-vehicle crashes; that many occur on clear roads during clear nights; and that suicide is statistically associated with intoxication and alcoholism. Nevertheless, attempted suicide is not a common explanation for drunk driving, and despite the potential advantages in challenging the retributive thrust of social attitudes to drunk driving, it does not appear to be commonly advanced by offenders.

Rationalisations which link intoxication and offending are facilitated by their common vocabularies of motive. The similarity of many incentives and rewards for both drinking and offending reduces the necessity to construct special rationalisations for offending. Explanations for drinking may be adopted or adapted in the development of offence rationalisations. In this context, it may be noted that academic theories of both drinking and crime themselves draw upon similar explanatory concepts. Thus, academic accounts of delinquency and drinking often appear interchangeable. For example:

"Because delinquent behavior is typically episodic, purposive, and confined to certain situations, we assume that the motives for such behavior are frequently episodic, oriented to short-term ends, and confined to certain situations."

(Briar and Piliavin 1965, p.36)

"[M]ost adolescent drinking is episodic and opportunist in character. Those who drink tend to drink when and where they can and few will have the routine drinking habits associated with regular adult drinkers."

(Marsh, Dobbs and White 1986, p.13)

Similarly, although it has been strongly argued that there are no theoretical concepts which satisfactorily explain the age-

crime relationship (Hirschi and Gottfredson 1983; Rowe and Tittle 1977), academic theorists have usually attempted to construct explanations invoking factors such as marriage, employment, or loss of confidence, which are held to alter the personal motivations of offenders (e.g. Collins 1982; Shover 1985). Such factors are similarly invoked by alcohol theorists to explain the age variation in drinking patterns (e.g. Blane 1979; Sadava 1987; Zucker 1979).

Thus, drinking and crime are semantically linked, facilitating the adoption and adaptation of common vocabularies of motive for the purpose of explaining one behaviour in terms of the other.

### **Acceptability**

The foregoing discussion suggests that offenders' rationalisations are derived from culturally available explanations of the causes and justifications of behaviour. Indeed, the most useful rationalisations will be constructed for their social, rather than purely personal, acceptability. Cameron (1964) found that although non-professional shoplifters might in fact employ sophisticated techniques for stealing, they differed markedly from professionals in the inadequacy of their excuses upon arrest. It appeared that non-professional shoplifters, through their failure to perceive themselves as criminals liable to be held to account in public, had devised rationalisations with a severely limited currency, plausible only to themselves.

Interaction with other offenders facilitates the learning of a repertoire of rationalisations (Best and Luckenbill 1982). These rationalisations may be adapted to complement the circumstances of the preceding crime. For example, Parker (1974) observed that following apparently impulsive fights, the gang would spend some time developing the appropriate rationalisations, such as "teaching a lesson" to a rival gang, or "self-defence" against an aggressive stranger. Notably,

Parker's gang do not appear to have found it necessary to invoke intoxication in the rationalisation of violence, although drinking had almost invariably taken place beforehand. They drew instead on perceptions of the social relationships between themselves and their victims. In only one instance, in which an argument developed within the gang itself, does Parker record that intoxication was invoked as a cause of the aggression. Here, however, rationalisation provided grounds, not for justification, but for tolerance and forgiveness.

The rehearsal of rationalisations among drinking or offending companions promotes not only the individual's personal repertoire, but also peer group solidarity (Parker 1974). To this extent, the acceptability of rationalisations shared between peers will be related to the needs of the group. For example, despite the public commitment of Alcoholics Anonymous to continual sobriety, "slipping" appears to be quite common amongst its members (Fingarette 1988). Confession and re-affirmation of commitment in the style of Alcoholics Anonymous meetings appears to reinforce group identification (Antze 1987).

Peer group rehearsals may also reflect the translation of unpleasant emotional concomitants of an offence into a non-pejorative, and even attractive experience. Fear may be redefined as thrill, and unnecessary risk-taking or incompetence as part of the hilarity of the occasion (Lejeune 1977). In this sense, rationalisations may assist the learning of re-attribution of arousal, discussed earlier: the individual who has learned to say with hindsight, "I was excited, not scared", may learn to say "I *am* excited, not scared" in later, similar situations. Thus, rationalisations may assist neutralisation of subsequent offending.

Alcohol, therefore, will not be invoked indiscriminately, simply because of its conveniently wide applicability. Rather,



the intoxication excuse will be applied selectively and purposefully as a rationalisation for offences for which other, perhaps morally more persuasive, explanations are unavailable or unnecessary. Ladouceur and Temple (1985) found that although convicted offenders reported consumption levels prior to their offence similar to their typical drinking pattern, they differed markedly in their perceptions of their intoxication. Rapists and burglars were more likely to report feeling very drunk at the time of their offence than were non-violent sex offenders and assaulters. A possible explanation for these differences in the subjective experience of intoxication might derive from the necessity, perceived by offenders, for special rationalisations for abhorrent or incompetent crimes which deflect responsibility on to an external agent.

#### **Alternatives**

The discussion so far has pointed to the essentially social nature of rationalisation. Even though they may be invoked for personal self-justification, rationalisations draw on cultural vocabularies of motive, are learned and rehearsed among social groups, and are most usefully developed with consideration of potential audiences. Cultural vocabularies of motives develop in accordance with the social need for them. For example, Morgan argues:

"Historically, when physical chastisement against wives was seen as a common prerogative of husbands, an alcohol-related or any other type of disinhibitory 'excuse' was not needed...However, in the last half of the 20th century, with relations within the family in flux, husbands attempting to retain dominance can no longer justify acts of violence and aggression as an automatic right. The mediating influence of disinhibitory alcohol behavior then is seen as a much easier association to make."

(Morgan 1981, p.414)

Alternative rationalisations are invoked according to the perceived expectations of different potential audiences (Scott

and Lyman 1968). For example, the exaggeration of violence in accounts of aggressive incidents among young male peers "may be acceptable within a social group which tacitly recognises the legitimacy of adding a sense of 'excitement' to routine events" (Marsh and Campbell 1979, p.7).

Social subgroups may develop alternative rationalisations for the different purposes of justifying behaviour to their own satisfaction or of explaining that behaviour to outsiders. For example, in the first case, Peterson and Maxwell (1958) observe that "winos", as one of the most vilified groups on skid row, share a range of justifications for drinking wine, including assertions that its effects are more deadening and longer lasting, that it is more easily digested and that it suppresses appetite more successfully than other beverages. In the second case, Wallace (1965) reports that skid row men offer explanations of their lifestyle to outsiders which serve to counter social opprobrium by condemning conventional standards, glorifying skid row, and producing biographies adapted to appeal to the preconceptions of the investigator.

Personal rationalisations require some social reference group within which they may be developed and sustained. Best and Luckenbill (1982) remark on the stress and disorientation experienced by solitary offenders, resulting in increasing difficulty in effectively utilising their limited, inflexible stock of rationalisations to sustain their lifestyle. Cameron (1964) suggests that the childishness of the excuses offered by non-professional adult shoplifters is linked to the development of rationalisations for stealing among juveniles, upon which mature offenders fall back in the absence of a contemporary peer group within which to generate more appropriate alternatives. Taylor (1972) notes that the isolation of sex offenders prevents them from developing alternative vocabularies of motive, resulting in the persistence of claims to intoxicated loss of control or overwhelming biological drives.

### **Behaviour and self-image**

The evidence, reviewed in Chapter Three, of the crucial significance of cognition in the production of alcohol-related behaviour, suggests that behaviour itself may be influenced by the available explanations and rationalisations for it. Anthropologists argue that in societies in which a limited number of clearly defined beliefs about alcohol's effects pertain, intoxicated behaviour is itself predictable; but in Western societies, the diversity and inconsistency of beliefs result in great variability in alcohol-related behaviour (Lang 1981; Macandrew and Edgerton 1969). Macandrew and Edgerton conclude caustically:

"The moral, then, is this. Since societies, like individuals, get the sorts of drunken comportment that they allow, they deserve what they get."

(Macandrew and Edgerton 1969, p.173)

Jacobs (1989) suggests that the ambiguity of cultural directives concerning drinking and driving encourages rationalisation and, thereby, lax compliance.

"Smokers are told that smoking causes emphysema and lung cancer and are exhorted not to smoke. Drivers are told that seat belts are an important safety device and are urged to wear them. People who drink and drive are told that drinking and driving are both alright and that even drinking/driving is alright if it is not excessive. People are not really meant to follow the injunction 'If you drink, don't drive.' What is meant is, 'If you drink excessively, don't drive.' This is a vague exhortation that starkly contrasts with such simple messages as 'Don't smoke' and 'Wear seat belts.'"

(Jacobs 1989, p.163)

However, the foregoing discussion should not encourage the conclusion that rationalisations are solely social in their construction. It has been argued that cultural and social beliefs and attitudes circumscribe the available range of rationalisations, their acceptability, and the generation of alternatives. Individual motivations, however, are likely to

influence the selection, utilisation and adaptation of rationalisations from among this cultural stock. Thus, for example, Snyder, Stephan and Rosenfield (1978) suggest that a variety of personal motives, such as desire for accuracy, to present oneself in a particular light, or to avoid disbelief, may compete against the general tendency for individuals to take credit for good outcomes of their actions, but to blame external causes for bad ones. In the case of rationalisations for deviance, the significance of the behaviour for the individual's estimation of his own moral character may crucially influence the selection and invocation of self-excusatory devices.

Cameron (1964) illustrates the crucial impact of a deviant attribution on self-image and behaviour in the finding that non-professional shoplifters almost universally desist abruptly upon initial arrest. These "snitches", having sustained hitherto a belief in their respectability, despite the regularity, deliberation and skill of their stealing, had no rationalisations capable of deflecting the sudden acquisition of the identity of "thief".

In developing a typology of criminal identities, Irwin (1970) acknowledges that in reality these characterisations overlap, are ambiguous, and frequently contradicted in the behaviour of offenders. Nevertheless, Irwin argues that such identities are meaningful to offenders, and subtly influence individual self-images.

"In spite of this overlap in the life routines of actual felons, the task of describing the systems in their ideal-typical form is being undertaken because they do exist as relatively distinct entities in the minds of some of the participants, and they operate, therefore, distinctly and differentially on an overall and long-term basis."

(Irwin 1970, p.7)

The major themes identified by Irwin in the identity of "thief" - the quest for the "big score", the moral code of

responsibility and loyalty to peers, and the importance of "coolness" and skill - are echoed by Walsh (1986) in his study of burglars. Such self-characterisations, albeit that they appear romantic and removed from realities of offenders' behaviour, nevertheless offset the severely pejorative terms in which they also frequently describe themselves (Walsh 1986). In this context, it is notable that rationalisations invoking alcohol may be either self-laudatory (e.g. a "hard drinker") or self-deprecatory (e.g. an "alcy").

Taylor argues that sex offenders are highly motivated to sustain rationalisations which appeal to loss of control, given the alternative necessity of coming to terms with socially abhorrent sexual preferences as an integral aspect of their own characters. Similarly, Shover remarks that persistent, yet incompetent ageing criminals resorted "alternately with resignation or desperation to the belief that it was 'too late' for them to accomplish anything in life" (1985, p.215).

The investment of offenders in the maintenance of a self-image which is, at least to some degree, non-deviant, accounts for the attractiveness of the intoxication excuse as a personal rationalisation for abhorrent behaviour.

"[I]f people have been brought up to believe that one is 'not really oneself' when drunk, then it becomes possible for them to construe their drunken changes-for-the-worse as purely episodic happenings rather than as intended acts issuing from their moral character."

(Macandrew and Edgerton 1969, p.169)

McCaghy suggests that the personal significance of such rationalisations has been ignored in the interpretation of sex offenders' invocations of the intoxication excuse as purely public denials of responsibility.

"We do not wish to naively imply that persons may not use their explanations of deviance as

manipulatory devices while fully intending to resume their deviant behaviour. Nor do we claim that denials or excuses involving drinking represent, either totally or exclusively, the intent or ability of individuals to avoid further deviance. We do wish to suggest, however, that the confrontation between society and the deviant may produce corrective efforts by the deviant which are misinterpreted because of society's emphasis on his accepting full responsibility for his deviance."

(McCaghy 1968, p.49)

Taylor (1972) further points out that a degree of tolerance is extended by prisoners only to those sex offenders for whom the offence could plausibly be attributed to temporary loss of control. Such stringent criteria for minimal social acceptance "suggests that it might be foolish to persuade the sexual deviant that he acted with consciousness and awareness" (Taylor 1972, p.36).

It was noted earlier that drinking styles are frequently invoked to illustrate or to impute social and moral characterisations. Equally, reference to one's personal drinking pattern is often a core aspect of self-concept. Athens' (1980) enquiry into the self-perception of violent offenders at the time of their offences, shows that offenders repeatedly explained their self-images, whether positive or negative, by reference to their drinking patterns. The selective utilisation of rationalisations invoking alcohol may therefore derive from individual motivations either to sustain a valued self-image or to acknowledge self-criticism.

### **Summary**

Offence rationalisations are based on cultural "vocabularies of motives". Drinking and offending share common vocabularies of motive, reducing the need to construct special rationalisations for offending, by facilitating the adoption and adaptation of drinking explanations. The most useful rationalisations are constructed for their social, rather than purely personal acceptability. Indeed, offender peer groups

develop and rehearse alternative rationalisations, suitable for different audiences. Rationalisations invoking alcohol are likely to be applied to offences for which morally more persuasive explanations are absent or unnecessary. However, rationalisations are also likely to be invoked according to individual motivations, particularly to sustain personal self-images.

#### **CONCLUSIONS**

Alcohol expectancies constitute a particular variety of lay theory about the effects of alcohol on rationality, mood and behaviour. Alcohol expectancies thus mediate judgements of personal responsibility for intoxicated crime. They facilitate the neutralisation of moral conflict about offending behaviour by overcoming moral objections, enhancing readiness to offend, attenuating moral or pragmatic preferences for specific offences or offence targets, and enabling offending to develop into a scripted activity in drinking situations. They also provide the basis for offence rationalisations, based on cultural vocabularies of motives, which appeal to different audiences and sustain personal self-images.

**CHAPTER FIVE**  
**LAY THEORIES AND JUDGEMENTS OF RESPONSIBILITY:**  
**MITIGATION**

This chapter examines the intoxication excuse in mitigation. It considers, firstly, the relationship between lay judgements of responsibility and formal courtroom mitigation; secondly, some special aspects of mitigation, and in particular, the process by which mitigation achieves its purpose of reducing judgements of culpability and consequent punishment.

**MITIGATION: THE APPEAL TO LAY THEORIES**

In Chapter Four, in drawing a distinction between rationalisation and mitigation, it was suggested that mitigation is "a formal 'account' (Scott and Lyman 1968) of a criminal offence offered publicly in order to reduce judgements by others of culpability and consequent punishment". This definition now requires deeper inspection, in order to determine the similarities and differences between accounts offered in everyday life and mitigation in the courtroom.

Scott and Lyman explain their concept of accounts in the following exposition:

"An account is a linguistic device employed whenever an action is subjected to valuative inquiry. Such devices are a crucial element in the social order since they prevent conflicts from arising by verbally bridging the gap between action and expectation. Moreover, accounts are 'situated' according to the statuses of the interactants, and are standardised within cultures so that certain accounts are terminologically stabilized and routinely expected when activity falls outside the domain of expectations."

(Scott and Lyman 1968, p.46)

These elements of everyday accounts can be perceived in courtroom mitigation. Scott and Lyman's definition points out the likelihood that certain cultural conventions for the



construction of accounts will be followed in courtroom mitigation, while special features will derive from the specific situation in which they are presented. A weakness of their definition when applied to courtroom mitigation may lie in their specification of conflict prevention as the function of account rendering. In the courtroom, following conviction for an offence, mitigation is less concerned with prevention of conflict than with reduction of punishment. Shapland's explanation of everyday accounts lessens this discrepancy.

"[O]ffence has been given to someone and the person giving the offence accounts for giving that offence and attempts to forestall punishment, i.e. he performs remedial work on the situation."

(Shapland 1981, p.43)

"Remedial work", according to Shapland, involves the restoration of equity to the harmed victim: by compensation; by some equivalent harm to be suffered by the offender; or by justification of the harm suffered by the victim. However, Shapland continues:

"Although restoring equity to the victim is important, the offender must also portray his current relationship to the rules which his conduct appears to have broken and do penance, whether directly to the victim, or separately, for breaking the rules as well as harming the victim."

(Shapland 1981, p.44)

Mitigation recognises the inevitability of punishment. Within this constraint, however, the similarities between accounts and mitigations are sufficient to warrant the observation that "the content of the mitigation speech is a special case of what would be said in everyday life" (Shapland 1981, p.43). Therefore, much may be learned about courtroom mitigations by a consideration of everyday accounts, or accounts in lay life. Two aspects of accounts require consideration for this purpose: their basic types and their specific features.

## **Types of accounts**

Accounts fall into two basic types: justifications and excuses (Scott and Lyman 1968; Shapland 1981; Shaver 1985). In the courtroom sentencing exercise, the primary judgement is that of moral culpability or blameworthiness, rather than absolute responsibility. Full denial of responsibility, therefore, is not an optional strategy in the attempt to mitigate punishment. It may be this presumption of personal accountability in the sentencing situation which contributes to some discrepancy between Scott and Lyman's (1968) typology of everyday accounts and Shapland's (1981) typology of mitigations. Scott and Lyman (1968) class "scapegoating" as a type of excuse, to reduce culpability; Shapland (1981) apparently assumes that scapegoating would be a justificatory technique of victim denial. Scott and Lyman (1968), however, class "the sad tale", in which the offender explains his act in terms of his own adversity, as a justification; Shapland (1981) perceives this as an excuse to reduce, rather than to deny, culpability. Nevertheless, these comparatively minor definitional differences do not discredit the essential point: courtroom mitigations observe the rules of construction and presentation established in everyday accounts and rooted in common sense assumptions about cause, responsibility and moral blameworthiness.

### **1. Justifications**

"Justifications are accounts in which one accepts responsibility for the act in question, but denies the pejorative quality associated with it."

(Scott and Lyman 1968, p.47)

This type of account asserts that "contrary to the perceiver's opinion, the action taken was a *positive* one" (Shaver 1985, p.162). Shaver (1985) suggests that such an assertion may be achieved by arguing either that the act did not in fact possess the morally reprehensible nature originally perceived

in it, or that its reprehensibility was outweighed by some larger social purpose which it served.

In the context of courtroom mitigations, such arguments would be heavily constrained by the fact of conviction and the inevitability of punishment. The presumption of personal accountability in this context, in which the judgement to be made concerns the extent, and not the fact, of culpability suggests that mitigation by justification is a high risk strategy, liable to be perceived as evasion of personal responsibility or assertion of commitment to a reprehensible morality. Some justificatory techniques, such as "condemnation of the condemners" or "self-fulfilment" (Scott and Lyman 1968) may be altogether impermissible in these circumstances. Others, such as denial of either the injury or the victim (Scott and Lyman 1968), may require strategic presentation to achieve acceptability. For example, Shapland, Willmore and Duff (1985) point out the heavy reliance of sentencing proceedings on the assumption of the "blameless" victim. In Schafer's words:

"The norm-delineated functional role of the victim is to do nothing to provoke others from attempting to injure his ability to play his role. At the same time, it expects him actively to prevent such attempts. This is the victim's functional responsibility."

(Schafer 1968, p.152)

In these circumstances, scapegoating of the victim would require measured argument if it were not to amount to outright denial of responsibility, a stance which might antagonise sentencers considering punishment. Nevertheless, the scapegoating of rape victims is an example of the frequently successful appeal to lay theories about the causes of sexual violence which implicate victims as provocateurs (Scully and Marolla 1984).

## **2. Excuses**

"Excuses are accounts in which one admits that the act in question is bad, wrong, or inappropriate but denies full responsibility."

(Scott and Lyman 1968, p.47)

Excuses appeal to circumstances such as accident or mistake, or to forces such as temporary incapacity or duress (Shapland 1981). Except in some extreme cases, such appeals do not challenge the presumption of personal accountability, but seek to reduce moral censure. Thus, they address themselves to the judgement of moral blameworthiness or culpability with which the sentencing court is concerned. They further allow for expressions of remorse, gestures of atonement and the acceptance of punishment: the specific "remedial work" with which the sentencing court is concerned. Excuses, therefore, are a less risky strategy in mitigation.

### **Characteristics of accounts**

Certain characteristics of accounts are subject to particular constraints in the context of courtroom mitigations: impression management; negotiation; intelligibility; and credibility.

#### **1. Impression management**

Scott and Lyman remark:

"Since individuals are aware that appearances may serve to credit or discredit accounts, efforts are understandably made to control these appearances through a vast repertoire of 'impression management' activities."

(Scott and Lyman 1968, p.54)

Above all, the offender must demonstrate the sincerity of his account, showing proper regard for the correctional process (Shapland 1981). For example, in apologising, the offender must show genuine distress caused by the victim's suffering (Shapland 1981). In the courtroom, the expectation of

sincerity extends to the defence solicitor proffering mitigation on the offender's behalf.

"That involves, above all, trying consistently with fair and proper means to reduce the level of punishment which may come to your client but, secondly, and this is important, assisting the court to arrive at what seems to be the least punishment consistent with justice. No-one will doubt that in seeking to persuade to the mitigation of punishment, the major requirement is to convince the court that you are there to assist, as indeed you are."

(Napley 1983, p.164)

Impression management is a complex task for defendants in the courtroom. Firstly, unfamiliarity with courtroom procedure and etiquette (McBarnett 1983; Carlen 1976; Parker, Casburn and Turnbull 1981), physical design features of the courtroom (Carlen 1976), and the offering of mitigation through a third party are disruptive situational influences on the display of behaviour which usually accompanies an account. Secondly, defendants experience multiple motivations connected with the court appearance itself: for example, to speed the processing of their case, to avoid publicity and to protect their employment (Bottoms and McClean 1976). Thus, motivation to atone for the offence itself, however sincere, is necessarily in competition with these situational motivations.

Furthermore, the offender's perspective on his offence may itself be influenced by features of the criminal justice process. For example, Schafer (1968) found that offenders' remorsefulness and wish to make reparation varied in relation, not only to features of their offences, but also to their anticipated sentence. Expectation of capital punishment was associated with intensified remorse and wish to make reparation. In respect of offenders facing imprisonment, however, Schafer observes:

"Their orientation was such that they could not understand their wrongdoing in terms of social relationships, not even in terms of the victim. Their understanding of incarceration seemed limited

to what they viewed as merely a normative wrong that has to be paid to the agencies of criminal justice, but to no one else. Their reluctance to go beyond this isolated and narrow attitude was not due to some deviant logic, but to a lack of understanding of the referent factors of their crime."

(Schafer 1968, p.83)

Bottoms and McClean (1976) suggest that much of the behaviour of defendants at court should be interpreted as impression management techniques for dealing with these situational aspects of the court appearance, rather than for accounting for the offence. They identify certain self-presentational styles, such as "the respectable first-timer", "the strategist", "the rights assertive" defendant, and the "passive respondent". The notable point about these self-presentational styles is that they are derived from recognisable roles in everyday life. Furthermore, they are selected to complement the type of person which the defendant perceives himself, or may be perceived by others, to be in everyday life. For example, the "respectable first-timer" may be either "a remorseful one-time loser", or a "mistakenly indicted citizen". But in either case, qualification for this self-presentational style requires an established identity in everyday life, thus excluding teenagers from attempting it (Bottoms and McClean 1976). The attitudinal research reviewed in Chapter Four might suggest that the offender's perspective on his offence may be influenced in the attempt to integrate his account with the self-presentational styles available to him in the courtroom.

## **2. Negotiation**

In everyday accounts, the offender is attempting to negotiate for himself absolution from, or reduction of censure. Negotiation in everyday accounts is generally implicit. It does not require assertion, since it is inherent in the rendering of the account itself.

Whilst negotiation is an intrinsic feature of the everyday account, a large part of negotiation in the courtroom is separated from the mitigation speech. Courtroom negotiations are frequently explicit, whether at a low key, consultative level between participants, as when solicitors confer with court clerks (Parker, Casburn and Turnbull 1981), or in the form of overt pressure to alter the course of the proceedings, as in plea bargaining (Baldwin and McConville 1977). This severance of negotiation from mitigation creates a paradoxical relationship between the necessary sincerity of the mitigation itself and communications outside it which reveal a distinctly pragmatic approach to the "true facts" of the case. For example,

"the decision to prosecute on a particular charge is much affected by the ability of the defendant to create organizational problems for the prosecution by taking the case to trial."

(Gusfield 1981, p.161)

It is to the offender's advantage to grasp this severance of negotiation from mitigation. For example, Baldwin and McConville, studying plea bargaining in the Crown Court, remark:

"Many of the defendants we interviewed, and particularly the recidivists among them, regard this kind of dealing as a standard, if somewhat underhand, method of administering justice and it is to some of them a much more realistic and acceptable way of proceeding than, say, taking their chance with a jury."

(Baldwin and McConville 1977, p.25)

However, negotiations to reduce judgements of responsibility and culpability may require a shift in the offender's perspective on the nature of his offending behaviour. For example, an offender offering mitigation based on an appeal to intoxicated impulsivity, however sincerely he may believe in that "cause" of his offence, may nevertheless discover that

success depends not merely on contrition, but on demonstrable reform. Mosher observes of American justice:

"Treatment strategies have begun to incorporate the criminal justice system into the treatment methods themselves. Providers view the coercive arm of the law as helpful to their work. The threat of criminal prosecution serves to encourage a breakdown of the 'denial' of the problem, generally considered the first step toward successful treatment. The criminal law actually encourages clients to admit to an alcohol problem which needs to be cured, for otherwise they may be found morally responsible for criminal behaviour."

(Mosher 1981, p.453)

### 3. Intelligibility

Scott and Lyman (1968) argue that successful accounts are adapted to the social circle within which they are offered. Acceptable "vocabularies of accounts" become routinised within cultures, subcultures and social groups, according to their established "background expectancies", or "those sets of taken-for-granted ideas that permit the interactants to interpret remarks as accounts in the first place" (Scott and Lyman 1968, p.53).

This argument suggests that successful accounts must be intelligible in the social context within which they are offered, rather than that in which the offence itself was committed. It further suggests that intelligibility is constrained by the availability and acceptability of alternative "vocabularies of accounts" within that social context. A clear relationship emerges here between everyday accounts and certain qualities of personal rationalisations for offences, as considered in Chapter Four.

In the courtroom, the immediate intelligibility of mitigation is vital. There is rarely time available to express novel or unusual explanations for behaviour. As was seen in Chapters Three and Four, offenders do not in any case possess special insights into crime causation and they develop personal



rationalisations which reflect cultural conceptual traditions and "vocabularies of motives". Furthermore, the stock of lay theories of intoxication provides conveniently rapid explanations of deviant behaviour. Thus, Critchlow (1985) found that whilst information about intoxication did not generally negate attributions of responsibility for offensive behaviour, it did have a significant impact on judgements of severely antisocial acts. Critchlow attributes this effect to the unavailability of conventional explanations for highly unusual behaviour.

"When judging an act that violates expectancies, an observer searching for reasons may seize upon alcohol intoxication as a cause of the behaviour, thereby reducing attributions of responsibility, blame, and causal role."

(Critchlow 1985, p.271)

Howard and Clark (1985) found similarly that courts were likely to favour an insanity verdict when crimes involved impetuous passion or lacked an obvious motive, thus defying conventional explanations of behaviour. Sommer, Burstein and Holman (1988) found that censure of the behaviour of mentally ill people was reduced when it appeared bizarre or self-destructive, as in cases of public obscenity or suicide. Thus, Best and Luckenbill remark that it is easier to attribute responsibility to an actor if he "announces or can be presumed to have motives consistent with conventional explanations for intentional action" (1982, p.216). Intoxication, like mental illness, offers a ready explanation for a range of extraordinary behaviours.

Mitigation requires causal thinking (Fitzmaurice and Pease 1986). Shaver's (1985) "working definition" of responsibility usefully makes this point. According to Shaver, responsibility is

"a judgement made about the moral accountability of a person of normal capacities, which judgement usually but not always involves a causal connection

between the person being judged and some morally disapproved action or event."

(Shaver 1985, p.66)

Information about an offender's history, personal circumstances, or state of mind, advanced in mitigation must appeal to readily intelligible plausible causes of crime. As Scott and Lyman (1968) point out, certain general explanations usefully provide plausible causes of a variety of specific behaviours and outcomes. For example, "having family problems" may explain criminality, heavy drinking, or depression.

"The person offering such an account may not himself regard it as a true one, but invoking it has certain interactional payoffs: since people cannot say they don't understand it - they are accounts that are part of our socially distributed knowledge of what 'everyone knows' - the inquiry can be cut short."

(Scott and Lyman 1968, p.53)

Thus, Napley suggests a useful appeal to lay versions of the undersocialisation theory of criminality.

"Many people, despite their age in years, have not, in fact, grown up; they have not faced up to the responsibilities of life and, if this is so and you can demonstrate it, you can make a plea in mitigation in a highly effective way; it is something which judges and experienced magistrates know and to which they will be receptive. Properly presented and cogently argued, they may accept it as an explanation."

(Napley 1983, p.166)

A further example of a general lay explanation invoked for specific behaviours derives from the ubiquitous metaphor of "sickness" noted in Chapter Two. Cook offers an excellent illustration of an account which appeals to this metaphor:

"For the hard core of skid row drinkers the Camberwell 'spike' can still represent the final downfall. As one hard-liner put it: 'I felt sick, really sick, sick from drink, sick from 'skippering', and sick of life. In fact I felt so

bad that I walked from the East End to the 'spike'.  
That was really admitting defeat.'"

(Cook 1975, p.131)

In this context, the flexibility of lay theories about alcohol's effects provides a range of plausible explanations for different behaviours. As Lang points out, in excuses for intoxicated conduct, "social acceptance of such drinking attributions is critical to the maintenance of their use" (1981, p.91). A special advantage of lay theories of intoxication derives from the readiness of individuals to attribute various "well known" effects of alcohol to others, despite having no personal experience of such results from drinking (Roizen 1981; Sharp and Lowe 1989a).

#### **4. Credibility**

Scott and Lyman (1968) suggest two reasons for the rejection of an account: illegitimacy, due to its inadequacy for a grave offence or its unacceptability in the group to which it is offered; and unreasonableness, due to its appeal to an unusual explanation beyond common theories of plausible causes. As has been seen, the intoxication excuse, by appeal to lay theories, provides a plausible explanation for a variety of behaviours. Its legitimacy, however, is linked to the gravity of the offence, the type of account being offered, and the frequency with which it is invoked by an individual. Examples of its circumscription by each of these factors may be given:

##### **a) Offence gravity**

McCaghy (1968) observes that some deviant behaviours are perceived to be so bizarre or despicable that no explanation which attempts to portray them as reasonable will be accepted. Intoxication, for example, is unlikely to succeed in mitigating sexual molestation of children if the appeal merely suggests that such behaviour falls into the "normal" range of pardonable disinhibited lapses from social decorum. Successful invocation of the intoxication excuse in these circumstances involves "deviance disavowal" (McCaghy 1968): repudiation of

the behaviour, and of other perpetrators of that behaviour, whilst asserting exceptional loss of control induced by intoxication in the offender's own case.

**b) Type of account**

Scully and Marolla (1984) found that convicted rapists offered one of two types of account: admission, in which the use of unacceptable force to obtain sex was acknowledged; or denial, in which either sexual contact with the victim was denied, or was acknowledged but not defined as rape. Appeals to intoxication varied according to the type of account. Admitters cited alcohol as a cause of their loss of sexual control. Deniers, however, used intoxication as a source of victim discreditation and scapegoating. They did not regard intoxication as having affected their own judgement or behaviour, since their denial required the assertion of self-control and ability to recall events accurately. These differences in the appeal to alcohol's effects occurred without noticeable evidence of differences between admitters and deniers in the actual use of alcohol prior to the offence.

**c) Frequency of invocation**

Repeated recourse to the intoxication excuse progressively weakens its credibility (Berglas 1987; Nusbaumer 1983). Turner remarks that

"because a deviant role is negatively valued and deviants are subjected to discriminatory treatment, disavowal of deviance is the usual response. But like all roles, a deviant role can sometimes be the lesser evil in a situation of limited choice."

(Turner 1972, p.313)

The appeal to alcohol's effects in these circumstances may shift from deviance *disavowal*, through invocation of episodic intoxicated loss of control, to deviance *avowal*, through embracement of an alcoholic identity. Thus, Nusbaumer explains:

"Ultimately, the illness model allows for greater reality negotiation on the part of deviant drinkers. They may choose to negotiate reality by openly avowing their deviance through self-labeling and adopting a repentant-deviant role that allows for the conditional acceptance of continued deviant behavior."

(Nusbaumer 1983, p.229)

Macandrew and Edgerton describe the extreme form of this as a shift from invocation of the "time out" excuse to the "ineligibility" excuse.

"Every society has come up with some version of Ineligibility in order to account for and to deal with certain of those classes of troublesome or potentially troublesome persons (the profoundly mentally retarded, for instance) who are considered chronically or permanently incapable of living up to their society's minimal standards of competence. Since it is presumed of these people that 'they know not what they do' or that they are incapable of doing otherwise than they do, the approach that we have termed Ineligibility consists in setting them off as a class apart and granting them one or another form of *long-term* or *permanent immunity* from the demands of their society's accountability system."

(Macandrew and Edgerton 1969, p.167)

At this point, however, it is pertinent to note a particular implication of these identified qualities of accounts in the special context of courtroom mitigation. The discussion of intelligibility identified a relationship to the conditions for rationalisation construction in terms of acceptability, availability and alternatives. Thus, mitigations based on the intoxication excuse resemble personal rationalisations which appeal to alcohol's effects. Personal rationalisations, however, were also observed to be intimately linked to self-concept.

In the courtroom, the contrivance of the intoxication excuse is revealed through the situational constraints on the general qualities of account rendering. Defendants' situational motivations, the constraints on impression management, the

severance of negotiation from mitigation, the need for rapid intelligibility, and the shifting criteria for credibility all convey a deep ambiguity to defendants' appeals to intoxication, despite the advantages. It does not necessarily follow that offenders do not at some level believe their appeals to alcohol's effects. They subscribe to the same stock of common sense wisdom about alcohol's effects as does their audience. More deeply, however, self-exculpatory rationalisations based on intoxication may have formed a crucial aspect of their defence of personal self-concept. In this respect, belief, however wilfully induced in the first instance, has played an important role in the success of personal rationalisations.

Thus, Cook (1975) draws attention to the genuine ambivalence of skid row drunks about their condition. The strategic appeal to a "full-blown medical model" (Cook 1975, p.117) in court is underpinned by a series of real personal rationalisations which derive from that model, as seen in Chapter Four. Similarly, Scully and Marolla, whilst observing that "rapists have learned the advantage to be gained from using alcohol and drugs as an account" (1984, p.539), also allude to their ambivalence. A successful appeal to some form of "sickness" absolves from public blame. Nevertheless, to believe in some temporary "sickness" at the time of the offence protects a non-deviant identity and predicts recovery of a normal condition. Thus,

"Admitters asserted a non-deviant identity despite their self-proclaimed disgust with what they had done. Although admitters were willing to assume the sick role, they did not view their problem as a chronic condition, not did they believe themselves to be insane or permanently impaired."

(Scully and Marolla 1984, p.540)

### **Summary**

Courtroom mitigation follows the conventions of everyday accounts of deviant behaviour, rooted in common sense

assumptions about cause, responsibility and moral culpability. In the courtroom context, justifications are higher risk strategies for mitigation than excuses, since they challenge the presumption of personal accountability. Certain characteristics of everyday accounts are constrained in the courtroom situation: impression management; negotiation; intelligibility; and credibility. Whilst courtroom mitigations resemble personal rationalisations in respect of their availability, acceptability, and alternatives, their contrivance in the courtroom situation may conflict with the protection of a non-deviant identity.

#### **MITIGATION: SPECIAL ASPECTS**

Shapland (1981) points out some basic differences between everyday accounts and courtroom mitigations. Everyday accounts usually involve some direct conversational exchange between two or more people, while mitigation is a speech delivered with little verbal interchange or response. Neither the victim nor the offender may be involved in the presentation or response to mitigation. The person who receives and responds to the mitigation is a third party, the sentencer, who represents, not the victim personally, but society. The offender's mitigation may be offered by a third party, whose own ideas about an appropriate account for the offence will influence the representation of the offender's original account. The offender's established legal responsibility for the offence precludes certain forms of complete justification. Punishment is inevitable; mitigation must therefore aim to achieve leniency rather than deliverance from punishment.

This last point generates the essential thrust of mitigation. Although the construction of accounts in mitigation follow the established rules governing those in everyday life, the essential aim of reducing punishment constrains their selection and presentation.

Mitigation seeks to achieve its purpose by changing the audience's perception either of the offence, or of the offender. It may be suggested, however, that a change in the perception of an offence in itself consequentially alters the perception of the offender, by modifying the judgement of his responsibility. Fitzmaurice and Pease argue:

"Mitigation or aggravation entail by necessity a re-estimation of the liability to be punished through a consideration of factors which are concerned with a more global assessment of the 'morality' of the accused..."

(Fitzmaurice and Pease 1986, p.125)

In the absence of interaction and exchange between the sentencer and the person offering mitigation, the latter may assume a need to challenge the most severe potential judgement of the offence and offender (Shapland 1981). Mitigation, therefore, attempts to shift the audience's perception from a hypothetical "worst case scenario", or cognitive schema of an offence type, towards a more moderate one by appealing to "special" information about the particular offender. Successful mitigation, then, attracts attention to special information about a case, thus reducing the audience's reliance on rigid cognitive schemata for types of offences, and "provoking mindfulness" (Palmerino, Langer and McGillis 1984; also Fiske and Neuberg) in respect of individual offenders.

There is some evidence to suggest that this may be an effective strategy. For example, Stalans and Diamond (1990) note that when asked general questions about crime and punishment, lay people suggest that the courts are too lenient, but when exposed to information about specific cases, they moderate their criticism of judicial sentencing. Ellsworth (1978) observes a similar incongruity between lay judgements about abstract issues and specific cases. When presented with a detailed case, substantially fewer subjects favoured capital punishment than when responding to an



abstract question about their support for that measure. Similarly, Austin, Walster and Utne (1976) cite evidence to suggest that jurors take a defendant's own suffering into account when considering punishment. The perception that an offender has himself suffered, either through the commission of the offence itself, or through other misfortunes appears to reduce severity. The latter authors suggest that such information increases feelings of liking for the offender.

There is, then, some evidence that increasing attention to the individuality of a case can reduce the harshness of general lay judgements of criminal responsibility. Sentencers appear to reach their decisions by constructing explanations of crime from which to infer the "moral quality" (Hogarth 1971) of a case. Successful mitigation manipulates this process by pointing out information which increases sentencers' attention to, and reasoning about the circumstances in which a particular offence has been committed.

However, this general principle for successful mitigation is not entirely straightforward in practice. Firstly, there may be instances when it is not to the intoxicated offender's advantage to increase attention to his case. For example, in a minor American court, Mileski found that the majority of offenders incarcerated for intoxication and breach of the peace were processed in batches, with very brief consideration of their case: "a trip to jail, then, very often is a result of one impersonal contact with the judge" (Mileski 1969, p.78). Nevertheless, Mileski also found that defendants charged with intoxication rarely focused attention upon themselves by proffering excuses. Those who did so in fact attracted more severe punishment. Mileski relates this finding to the pressure of time in a busy court, suggesting that "the court disproportionately uses the sanction of jail as a defense against the injection of extra information during the courtroom encounter" (1969, p.62).

Secondly, there are no clear rules governing the type of information to be advanced in mitigation (Shapland 1979). Shapland (1979) found considerable diversity in the mitigating factors advanced by different barristers in similar cases. This did not appear to be due to discrepant information, but to different techniques for its presentation. Shapland argues that mitigation speeches do not attempt to invoke the entire range of mitigating factors available in specific cases, but to select those which are considered to be most persuasive. Thus, selectivity may be the

"result of a particular structuring of the mitigation speech, whereby only a few important factors are given in some detail, rather than all possible mitigating factors being mentioned at least briefly, with more emphasis given or time spent on the more important ones."

(Shapland 1979, p.161)

Nevertheless,

"there is no general agreement on what is mitigating or what kind of character is mitigating, so that what may be mitigating in one case may be aggravating in another."

(Shapland 1981, p.82)

Some types of information, such as stupidity, unemployment or intoxication, are essentially ambiguous as to their mitigating or aggravating potential (Carroll and Payne 1977; Corbett 1987; Critchlow 1985; Ewart and Pennington 1987; Hawkins 1983; Shapland 1979, 1981), and therefore require strategic presentation in the context of other information to portray the offender's moral character in a certain light. Some evidence suggests that the particular interpretation of such ambiguous information is related to the type of offence (Carroll and Payne 1977) and to the range of sentences between which sentencers are choosing (Softley 1980). Here, the potential ambiguity of the intoxication excuse is aptly illustrated by Felker (1989), who suggests that information about a defendant's intoxication might influence all potential

purposes of sentencing. Felker suggests that by treating it as an aggravating factor, courts might seek to deter potential intoxicated offenders. Where an offender shows no sign of reducing his alcohol consumption and, thereby, his threat to public safety, incapacitation might appear appropriate. Punishment might be mitigated through evidence of intoxicated impulsivity, or aggravated through evidence of deliberate intoxication for Dutch courage. Rehabilitation might be invoked for the provision of treatment, or, alternatively, sentence length might be increased in cases of severe alcoholism in order to facilitate that treatment. The absence of conscious irony in Felker's analysis is remarkable. Felker apparently perceives no oddity in such manipulation of a single item of information to infer quite different judgements of moral culpability justifying alternative sentencing goals.

#### **Summary**

Mitigation generally seeks to achieve leniency by moderating the judgement of culpability through attracting attention to the individuality of cases. However, there are no clear rules governing the selection and presentation of information in mitigation. Some types of information, including intoxication, are ambiguous as to their mitigating or aggravating potential and may be interpreted in the context of other information about the offence or offender, and in relation to specific sentencing goals.

#### **CONCLUSIONS**

Courtroom mitigation follows the conventions for the construction of everyday accounts for deviance. Mitigation seeks to reduce sentencers' reliance on cognitive schemata of particular types of offence and to increase their attention to the individuality of particular cases. The intoxication excuse in mitigation has particular advantages in providing easily understood explanations for deviant conduct, and in being adaptable to a range of strategies, including, for example, victim discreditation, deviance disavowal and deviance avowal.

However, it is also an ambiguous excuse: firstly, because its apparent contrivance in the courtroom setting conflicts with its importance as a personal rationalisation protecting a non-deviant identity; and secondly, because it has both mitigating and aggravating potential.

**CHAPTER SIX**  
**THE EMPIRICAL STUDY:**  
**RESEARCH METHODOLOGY**

This chapter identifies some issues arising from the theoretical framework established in previous chapters and considers the opportunities for their empirical exploration through a study of sentencing practice in a magistrates' court. It explains the methods selected for this empirical enquiry.

**STUDYING THEORY IN PRACTICE**

One of the purposes of reviewing a body of theory and research relating to a particular phenomenon is to identify a conceptual framework within which to comprehend "real world" instances of it (Selltiz, Wrightsman and Cook 1976). Empirical studies undertaken to explore that conceptual framework may themselves then lead to new insights into the nature of the phenomenon in question (Selltiz, Wrightsman and Cook 1976). Burgess argues that in the empirical study of social phenomena,

"the theoretical framework is of paramount importance, as this will influence the questions that are posed and the data that are collected. For the data that is gathered by the field researcher is shaped by the themes that emerge during the investigation."

(Burgess 1982a, p.16)

Theoretical review and conceptualisation thus anchor and guide the process of empirical research. Several theoretical issues emerged in the foregoing chapters which might illuminate the "real world" judgements of responsibility and blameworthiness underpinning the decisions of a sentencing court.

In Chapter Two, judgements of responsibility were seen to be social processes, invoking lay theories which set out the general terms of reference for attributions of cause, effect

and personal responsibility. It was noted that attribution theory has been criticised for its concentration on individual judgements, neglecting the broader cultural and social framework within which the forms of those judgements are created. The methodologies employed in attribution research have similarly attracted criticism for reflecting this narrow focus (Fincham and Jaspars 1980; Lloyd-Bostock 1983). Dallos and Sapsford (1981) remark upon

"the pressure in recent psychological thought towards an emphasis on social perception, symbolized meaning and deliberate action rather than on the kind of research that stems from a deterministic model of man and looks for causes external to the person."

(Dallos and Sapsford 1981, p.434)

Thus, the "black box" approach to sentencing research, in which sentencers are regarded as repositories for information, independent of the social context in which they receive and act upon that information, has also been considered flawed.

The implications for research methodology of this recognition of judgements of responsibility and blameworthiness as social processes is explained by Douglas.

*"The only valid and reliable (or hard, scientific) evidence concerning socially meaningful phenomena we can possibly have is that based ultimately on systematic observations and analyses of everyday life. Anything else, certainly anything more abstract, can be valid and reliable only to the extent that it builds on the evidence provided by such studies of everyday life."*

(Douglas 1971, p.12)

This perspective suggests a rich vein for the study of sentencing decision making. Sentencing by lay magistrates in the English courts necessarily involves a collective decision making process, since the magistrates themselves do not sit alone but in groups, usually of three. Sentencing research has paid rather scant attention to this aspect of sentencing

decision making as a collective, and thereby necessarily social enterprise involving multiple decision makers, although more broadly based studies of magistrates' courts have recognised this issue and have explored its potential dynamics in general terms (e.g. Burney 1979).

More broadly, the theoretical perspective implies the importance of the total contribution of participants in the courtroom process to the "construction" (Dallos and Sapsford 1981) of judgements of responsibility and consequent decisions about punishment. Dallos and Sapsford explain:

"The individual is seen not as a passive recipient of experiences and as passively reacting to internal or external "forces", but as actively making sense of the world and taking action in order to discover it or to change it. Moreover, this "construction" of the world, which replaces the more passive concept of perception, is seen as an essentially *social* process - the social world is the most important part of our reality, and other people are our main source of information - so that this kind of psychology stresses very heavily the importance of *communication*."

(Dallos and Sapsford 1981, p.434)

Studies which contribute to this broader theoretical perspective on the social processes of courtroom decision making include, for example, examinations of different styles of interaction between courtroom personnel (e.g. Anderson 1978; Darbyshire 1984; Parker, Casburn and Turnbull 1981), of the influence of specific roles such as the clerk (e.g. Darbyshire 1984), and of the treatment of particular groups such as women offenders (e.g. Allen 1987; Eaton 1984; Edwards 1984).

However, the theoretical framework also suggests complex and indeterminate relationships between this situational decision making process and the more general beliefs and attitudes of the decision makers concerning social phenomena. Magistrates' general "frames of relevance" (Asquith 1977), guiding their

approach to information processing might include theories of crime, criminal justice and, in respect of alcohol-related offenders, intoxication and alcoholism. The holistic approach to sentencing research implied by the theoretical framework, therefore, points to the exploration both of these general theories and of specific sentencing decisions, with an attempt to comprehend the relationships between these general notions and the situational decision making process in specific cases.

The empirical study of the social process of decision making in a magistrates' court also affords an opportunity to explore the relationships between lay and professional theories, considered theoretically in Chapter Two. Of particular interest are the interactions between magistrates, as lay theorists of deviance, and probation officers, as professional theorists trained to intervene directly in real manifestations of deviance, in a setting within which the two are required to establish a *modus vivendi* which serves the purposes of the criminal justice system.

Shapland (1979, 1981) has studied the construction of mitigation speeches. However, the theoretical examination in Chapter Five suggested a view of mitigation as a social process which achieves its effect through engaging the audience's attention to and reasoning about the individuality of a specific case, thus moderating the perception of the blameworthiness of a particular offender. This process of mitigation involves more than the mitigation speech itself. For example, styles of impression management available to defendants might enhance or discredit the accounts offered in mitigation; negotiations between court personnel may establish the broad parameters within which the mitigation speech itself must achieve its impact.

The ambiguity of the intoxication excuse in mitigation has been noted. The theoretical discussions of lay theories in Chapter Two, and of alcohol expectancies in Chapter Four,



point to a hypothetical explanation for this ambiguity. It was suggested that lay theories about alcohol's effects are selectively applied to specific drinking situations. The selective invocation of such theories in the interpretation of specific crimes may have connotative implications for judgements of responsibility and blameworthiness.

These perspectives for the conceptual analysis of "real world" judgements of responsibility in the courtroom are derived from the theoretical discussion of the previous chapters. However, they are broad perspectives which do not confine empirical study within rigid conceptual constraints. To do so would risk repeating the kinds of errors of which the genre of narrow, individually focused attribution theory and research have been accused. Furthermore, the distortion of empirical reality by the imposition of an inflexible theoretical analysis was noted in Chapter Two, notably in relation to the study of alcohol itself, and in particular to the disease model of alcoholism (Faulkner, Sandage and Maguire 1988). The collection and assimilation of empirical data in an exploratory study may itself influence and refine theoretical study and abstraction (Becker and Geer 1960).

The theoretical perspective for empirical study described here in itself suggests one good reason for retaining analytical flexibility. As active and purposeful decision makers, the human subjects of study may themselves construct parts of the empirical reality to which the researcher will be exposed, on the basis of their perceptions and definitions of the nature and field of his or her enquiry (Geer 1964; McCall 1969; Vidich 1969). Recognition of this interrelationship between the researcher and the researched leads Burgess to qualify the earlier strong pronouncement on the paramountcy of theory.

"[I]t is important for researchers to define their projects and their roles as this will influence the

whole of the research process. However, these projects and field roles will often be redefined by those who are researched."

(Burgess 1982a, p.16)

Exploratory study, therefore, does not merely collect the data to which a pre-determined theoretical analysis will be applied, but tests and develops the formulation of the theory itself (Becker and Geer 1960; Selltiz, Wrightsman and Cook 1976). Research methodology should be planned in order to accommodate this interaction between theoretical development and empirical study.

"Whatever method is chosen, it must be used flexibly. As the initially vaguely defined problem is transformed into one with more precise meaning, frequent changes in the research procedure are necessary in order to provide for the gathering of data relevant to the emerging hypotheses."

(Selltiz, Wrightsman and Cook 1976, p.92)

#### **THE STUDY**

The empirical study began with the approval and agreement in principle to assist the project of the clerk to the justices at a magistrates' court and the chief probation officer of the area covered by the court. The provincial city in which the court was located has been given the title, simply, of "City", in order to preserve confidentiality. Data collection spanned the 2 years from July 1988 to August 1990. It should be noted here, however, that the research for this thesis was conducted on a part-time basis, and therefore these dates do not reflect the intensity of empirical study throughout the period. In fact, the most intensive period of data collection took place during the final 6 months, when I was granted sabbatical leave from my teaching duties.

There were 4 components to the research methodology: observation in the court itself; a survey of court files; extended interviews with magistrates and probation officers;

and brief focused post-sentence interviews with magistrates concerning specific cases.

### **Courtroom observation**

The study began with observation in the court. It commenced with a block period of 3 months involving daily attendance at City magistrates' court, during which observation extended over a wide field, facilitating a broad comprehension of the courtroom processes and of the interactions of court personnel. During this phase, observation covered proceedings in 2 types of court: the daily "plea" courts, in which decisions were taken across the range of the court's criminal business, including adjournments, bail, committals to the Crown Court, and sentencing; and a weekly sentencing court, which dealt with sentencing in the more complex cases in which Social Enquiry Reports (henceforth SERs) had been required. This initial phase was terminated by the start of the new academic teaching year, which curtailed the time available each week for study. Courtroom observation was then conducted on a weekly basis, covering the morning plea court and the afternoon sentencing court, until June 1989. At this stage, the court file survey was conducted. A break was then taken from empirical study in order to review the information yielded thus far and to plan the focus of future data collection.

Courtroom observation resumed in March 1990 with a 3 week block period in order to refresh my acquaintance with the court. It continued thereafter with attendance at the now (fortuitously) twice weekly sentencing courts until August 1990. This latter period of courtroom observation was undertaken following the agreement by the clerk to the justices and the magistrates to allow me to conduct post-sentence interviews concerning the cases heard during each sentencing court.

Notes were taken on a total of 252 cases during the combined periods of courtroom observation. The majority of these were cases in which sentence was passed by the magistrates. A small number, mostly recorded during the early, tentative phase of study, did not proceed as far as sentence, but were transferred to another court, discontinued, taken to trial and acquittal, or committed to Crown Court. The cases also included a number of sober cases. "Sober", here, should not be taken as an assertion of fact about an offence. A sober case was one in which there was no mention at any point in the proceedings of a defendant's alcoholism or intoxication at the time of his offence; it does not follow that he was in fact sober. The inclusion of unsentenced and sober cases in data collection, despite the study's focus on sentencing decision making in alcohol-related cases, stemmed from certain reasoning which informed note taking from the outset.

The decision to record proceedings verbatim was influenced by Shapland's (1981) study of the construction of mitigation speeches. In order to understand most fully the structured use of specific information about alcohol, I took the view that I needed to know not only the precise manner in which that information itself was offered, but also the context in which it arose. However, since I was interested, more broadly than Shapland, in the *process* of mitigation and decision making, this reasoning extended to the verbatim recording of all participants' contributions to the proceedings. I could not, therefore, wait until the end of a case to determine whether to record it, but had to commence immediately. Similarly, I could not wait until reference to alcohol was made in a case before starting to record.

This reasoning and its consequences resulted in particular advantages to the eventual analysis. By virtue of recording the majority of hearings observed, I gathered a range of information about the general conduct of court business which contextualised and facilitated the specific interpretation of

the sentencing process. I also gathered examples of decision making in sober cases with which to compare the treatment of alcohol-related cases. Furthermore, the methodology meant that I documented the accumulation of decisions prior to final sentence in several cases which proceeded through a series of adjournments for different reasons: for example, for legal consultation, preparation of SERs or psychiatric reports, or deferment of sentence. This ability subsequently to trace the progress of cases over what could turn out to be a substantial period of time was in fact an unanticipated, but valuable spin-off from the necessarily protracted period covered by the empirical study.

The arrangement of the field notes, when transcribed from the rapid verbatim note taking in court, followed the advice of Bickman (1976) and Burgess (1982b) in separating the factual account from interpretations, hypotheses or comments. This division of the page enabled me to make detailed notations concerning individual cases during the later analysis as I compared and grouped cases and refined the conceptual framework within which I was working (Becker and Geer 1960; Bickman 1976; McCall 1969; Vidich 1969).

My role as observer within the courtroom setting deserves comment, since it proved considerably more complex than is implied by verbatim recording of proceedings, or, indeed, than I had been led to anticipate from my readings of methodological texts (Becker and Geer 1960; Bickman 1976; Burgess 1982; Geer 1964; McCall 1969; Vidich 1969) and accounts of court based studies employing similar techniques (Eaton 1984; Parker, Casburn and Turnbull 1981; Parker, Sumner and Jarvis 1989; Shapland 1979, 1981). Although verbatim recording of formal proceedings, as the primary observational technique, implies passive spectatorship, I experienced a degree of difficulty in determining the boundary between passive and participant observation for which the neat classifications of the text books failed to prepare me. For

example, Bickman's reassuring advice proved too general for guidance in the specific situations in which I had to formulate responses.

"[P]assivity is not inherent in observational methodology. The observer should be able to modify the research setting without destroying its naturalness."

(Bickman 1976, p.253)

I was invited to sit at the desk occupied by the probation officers. In the intervals between formal proceedings, these officers willingly explained issues to me, showed me SERs and up-dated me about defendants I had seen in court with whom they were still in contact. By virtue of my position, I also witnessed many of the informal negotiations between the probation officers, solicitors and court clerks. In quiet intervals, I was also able to approach court clerks, solicitors, the court police officer and ushers for information and clarification. My increasing familiarity, obvious interest and the generally open style of courtroom interactions led to invitations to include myself in exchanges which, despite their cheerful informality, were bound up with the decision making process. To refuse all direct invitations to contribute to these discussions would have appeared quite hostile in these circumstances. It should also be acknowledged that this willingness to include me was naturally a pleasant experience, and appeals for my opinion were positively flattering. The seductiveness of this situation was, I suspect, exacerbated by the necessary speed and fragmentation of these interactions between court personnel during temporary absences from the courtroom of the magistrates, when all personnel were attempting to deal with a multiplicity of problems relating to different cases in which they involved.

Verbal techniques for responding adequately in these situations had to be devised and practiced on an *ad hoc* basis. Over time, I tried to discipline myself against volunteering

speech in exchanges in which I was included by implication only, and to cultivate the art of responding to direct invitations with another question, which would clarify an issue for me, but not influence the decisions others needed to take.

This, however, raised a further problem, which appeared to me to stem from a conundrum about the role of "naive" observer. How can a truly naive observer know that a question will be neutral in its effects on those to whom it is addressed? That is only ascertainable from the outcome of asking it.

#### **Example 6.1**

Given the aforementioned speed and fragmentation of interactions, I became accustomed to acquiring information opportunistically, seizing brief interludes when a court clerk, solicitor, probation or police officer, or usher was not actively engaged in the business of the day. On one occasion, I became increasingly perplexed during a case which the probation officer had told me involved a breach of a suspended sentence imposed at the Crown Court for serious violent offences. The defendant had already breached this suspended sentence twice. These offences were recorded on the prosecution solicitor's list of previous convictions, and were also described in detail in the SER. However, during the hearing, no mention was made of the suspended sentence by the prosecution solicitor, clerk or defence solicitor. Nor did the magistrates enquire about it after receiving the list of convictions and reading the reports. Baffled by this, but thinking there must be a technical explanation in view of the apparently blatant disregard by all participants, I appealed to the clerk after the magistrates had retired to discuss their decision.

**JR:** "I was expecting to hear about the suspended sentence."

**Clerk:** *(startled)* "What suspended sentence?"

The clerk consulted the defendant's previous convictions and looked at the prosecution solicitor.

**Clerk:** "Did you realise he was on a suspended sentence?"

**CPS:** "Yes. I've checked it. It's finished with. When he was up for the breach of the peace, the magistrates made no order and so it's finished."

**Clerk:** "It's dead, is it?"

**CPS:** "Yes. I made enquiries."

**Clerk:** "Well, did they make no order or take no action? It makes a difference."

The clerk consulted the legal manual, which appeared to support the view that the wording of the previous decision did make a difference to the current status of the suspended sentence. The clerk then went to take advice from other clerks. The prosecution solicitor explained to me:

"I haven't got the files because it wasn't supposed to be relevant. But the court police officer told me he attacked 3 police officers. One was a woman, and he ruptured the spleen of another."

The clerk returned with the news that the legal manual was misleading, and therefore the suspended sentence was "still alive". My mounting alarm now turned to horror, as the suggestion before the magistrates was to adjourn for enquiries into the availability of treatment for alcoholism. In the event, it appeared that the magistrates had moved so far in their determination to follow this course, that the revelation seemed to make little impression on them, particularly in the absence of prosecution details. The case was duly adjourned.

Afterwards, I apologised profusely to the clerk for my unwitting interference. The clerk, however, seemed quite pleased.

"It's cleared up an ambiguity in the law that I've been misreading for years. It saved me a lot of embarrassment because it was bound to be picked up by the next clerk when it comes back in 4 weeks time. And so whatever happens to the defendant then would have happened anyway."



There were other times when it seemed to me that to refuse to volunteer my involvement in some aspect of a case would have been uncivil and poor recompense indeed for the generous assistance of court personnel in solving my own problems. At a minor level, this led, for example, to my recording case results during probation officers' absences from the courtroom, and advising them if they were sought by a clerk, solicitor or defendant. On occasions when I witnessed the hearing of a case which was subsequently adjourned for SERs during the probation officer's absence, it would have been churlish not to offer an account of the proceedings, particularly when I obviously had verbatim notes to hand. This fact of having a lot of information at my disposal, obtained by virtue of my very role of observer, could lead to a potentially powerful ability to influence court proceedings. On a small number of occasions I chose to exercise this ability in a fairly modest way.

#### **Example 6.2**

The probation officer, called to a busy plea court, left the probation assistant to monitor events in the sentencing court. Reading through the reports prepared for the afternoon's business, I was struck by a contradiction between the assertion in one SER that a defendant was suitable for community service and the equally strong assertion in a separate report from the community service officer that he was unacceptable because he had failed more than one appointment for assessment. Realising that in the officer's absence the unwitting assistant would be challenged about this contradiction in open court once the case began, I passed the reports across, pointing to the conclusions. Alarmed, the probation assistant took the reports to show the officer, who subsequently returned to the courtroom and requested an adjournment, apologising for an apparent discrepancy between the conclusions of the report writer and community service officer and explaining that immediate clarification was impossible due to unavailability of both parties. The

magistrates responded quite mildly to this candid acknowledgement of inefficiency, which was perhaps more persuasive due its pre-emptive nature and because it therefore also saved time that afternoon.

My own view of this, and other less intrusive interventions, was that it would have been simply bad manners to allow my theoretically uninvolved role to reduce to a spectator sport in practice third party embarrassment or confusion, on the relatively few occasions when I could assist to prevent or displace it. Had the probation staff in the above example recognised a decision to withhold information which enabled them to deal with a practical difficulty rather than to be taken by surprise in the midst of a hearing, they might have been justifiably offended. As will become apparent in the following analysis, although these occasional interventions may have affected the decision making process, it was unlikely that this was to defendants' detriment, since disruptions to the smooth running of court business sometimes appeared to rebound upon them. Finally, occasions of my more active participation often concerned issues of little relevance to the study's central focus. Thus, in making these decisions about participation, I attempted to follow the advice of Vidich.

"The decision to assume standards and values or the degree to which participation is required is best made on the basis of the data to be collected and not on the basis of *standard* field practice."

(Vidich 1969, p.84)

### **Court file survey**

The court file survey involved examination of the files on all cases which I had recorded. This enabled me to check the accuracy of my recording of factual detail, collect full criminal histories, and read correspondence, notes and reports, including the brief police statement concerning the offence. It also enabled me to establish what had happened in

a case during periods in which I "lost sight" of its progress through the court, a particular problem during the months of only weekly attendance.

This exercise convinced me of the importance of understanding the sentencing *decision* in the context of the situational decision making *process*. The collection of factual information about each case was incapable alone of explaining the decisions which were taken, particularly when comparing cases which appeared factually similar but in which very different sentences were passed. Nor did I find perusal of detailed SERs, in isolation from the situational decision making context, particularly illuminating in this respect. Sentencing disparities between offences of apparently similar gravity have been repeatedly observed in the sentencing research (Ashworth, Genders, Mansfield, Peay and Player 1984; Hogarth 1971; Hood 1962; Parker, Casburn and Turnbull 1981; Parker, Sumner and Jarvis 1989; Tarling 1979). The experience of conducting the court file survey reinforced my subsequent efforts to comprehend situationally inspired variations within the overall sentencing traditions of City court (Bond and Lemon 1981; Pennington and Lloyd-Bostock 1987).

### **Interviews with magistrates and probation officers**

Semi-structured interviews were conducted with 20 magistrates and 15 probation officers. All interviews were conducted between May and July 1990.

#### **1. Magistrates**

The 20 magistrates (11 male and 9 female) comprised a sixth of the 120 strong bench. They were recruited for this part of the research, for the most part by the simple expedient of asking all magistrates who participated in post-sentence interviews whether they would be willing to undertake this extended, and more general interview. This tactic also helped to reduce the possibility of selective bias on my part. Towards the end of interviewing, when it was becoming difficult to find willing

magistrates who had not already been interviewed, I was assisted by one of the court's administrative staff, who introduced me to some I had not met. The gender balance was intended, but fortunately no special effort was actually required to achieve it.

The interview schedule (see Appendix A) was planned to take about an hour to administer, and on average this was achieved. Magistrates, however, quite often willingly extended this by taking more time than was strictly required of them to explain matters relating to court business or to explore their ideas about issues raised by the questions. Most interviews took place at the courthouse, in one of the retiring rooms, although some magistrates invited me to their homes and 2 to their place of work. The interviews were tape-recorded, although I also took brief notes, partly as back up in case of poor recording quality and partly to assist my own concentration. Subsequently, complete transcripts were made of all interviews. Magistrates were assured of complete confidentiality. They were fully aware of tape recording, as the machine was placed openly on the desk between us. However, when, as occasionally happened, magistrates revealed personal information which might result in recognition, I have tried to ensure that such material is not made explicit in the following chapters.

The broad aim of the interviews was to gain the "flavour" of City bench: the traditions and perspectives which appeared to bind a disparate group of people together and to guide their collective decision making. There were, however, 3 specific aims:-

a) I sought to draw out magistrates' views on the purposes and administration of justice. Although the examination of lay theories in Chapter Two warns against expectation of a fully coherent body of beliefs and attitudes, it does not follow that themes would not emerge which importantly guided

magistrates' approaches to the sentencing exercise. Moreover, themes which were expressed by numbers of magistrates might be thought to shape the overall pattern of sentencing in City court.

b) Given the recurrent perspective in criminal justice of alcohol-related offending as symptomatic of a problem requiring treatment, I was interested in the openness of City magistrates to this approach. This involved examining their attitudes towards the probation service, which provides access to treatment based sentencing options.

c) Through a sequence of questions asking magistrates for their explanations of hypothetical instances of alcohol-related deviance, I sought to identify some of the lay theories of intoxication, alcoholism and crime which underpinned their judgements of responsibility. This exercise does not purport to be an intensive or exhaustive study of a body of lay theories, or, indeed, of the theories entertained by this particular group of people. However, it does not necessarily need to be such, for the purposes of this investigation. As a series of rapid explanations of potentially very complex issues, these questions may have successfully elicited some of the simple "rule of thumb" explanations which magistrates invoked in situations requiring them to make swift judgements. In such pressured decision making situations, theories which draw on intuitively obvious, immediately accessible, "off the top of the head" explanations are potentially the most likely to be utilised to make sense of complex and ambiguous information.

Early in the interviewing process, I was uncomfortably aware that some subjects appeared discomfited by these questions on intoxicated deviance and responsibility. This was perhaps to be expected, given the nature of the questions. I was aware that successful interview schedules in qualitative research such as this are generally held to be those which enable

subjects to respond in terms of personal experience (Jupp 1989; McCall 1969). Broad abstract questions are difficult for subjects in an interview asking for rapid responses. In fact, as will be noted later, probation officers seemed more often disconcerted by these questions than magistrates. However, I decided that the exercise merited persistence, since differences between magistrates' and probation officers' responses began to emerge almost immediately. I then began to preface the sequence with a caution that interviewees might be a little surprised by the questions, and an assurance that I was genuinely interested in their "top of the head" responses. Magistrates seemed to accept this reassurance at face value, and quite often seemed to enjoy the invitation to express their theories on topics which they encountered frequently in the context of decision making, but rarely pondered in the abstract. Some remarked afterwards that it had been an interesting exercise.

## **2. Probation officers**

The 15 interviews with probation officers (8 males and 7 females) included the 3 senior and 12 main grade officers who were involved in the criminal work of the City probation team at the time of interviewing. Due to staff changes, more main grade officers were in fact involved in the study as a whole during the courtroom observation exercise. These interviews (see Appendix B) sought to clarify the professional theories which informed probation officers' decision making in the areas relevant to the study. All interviews were conducted at the probation office, except 2 which were performed at probation officers' homes. Interviews were recorded and transcribed, and confidentiality approached in the same way as for magistrates. Three areas of enquiry were pursued:-

a) Probation officers were exposed to the same sequence of questions on intoxicated deviance and responsibility as were magistrates. Although probation officers engaged in this exercise with good will, *more* seemed uncomfortable, and also

seemed actually *more uncomfortable* than was the case for magistrates. This was true despite the reassurances that appeared to be successful in enabling magistrates to relax and positively to enjoy themselves. This seems to me probably to arise from a combination of factors stemming from probation officers' professional status.

Firstly, some probation officers may have felt that this was a test of their professional expertise, and that I was matching their responses against the "correct" answers. Certainly, some officers did not appear to be convinced by my explanation that I was interested in comparing different kinds of responses and not in assessing individual knowledge. By contrast, the invitation to magistrates to express their "top of the head" ideas was consonant with their status as lay theorists in the field of crime; thus it posed no challenge to a professional identity.

Secondly, these questions may genuinely have been more difficult for probation officers, precisely *because* of their professional expertise. Even at this "off the cuff" level, probation officers produced more varied and more complex theories of intoxicated deviance than did magistrates. Had interviewees been able to reflect more deeply on their responses, I suspect that this difference would have become more, rather than less obvious. Furthermore, explanations of crime and responsibility were intimately connected with probation officers' "theories of office" (Drass and Spencer 1987): their perspectives on their own professional role and tasks, discussed in Chapter Two. Put simply: probation officers had more to think about than magistrates when responding to these questions.

b) Most of the remaining questions focused directly upon probation officers' "theories of office" (Drass and Spencer 1987), in relation to 2 spheres of their professional activity. Given the importance of SERs in the sentencing

exercise, particularly in relation to treatment based options for alcohol-related offenders, I sought to clarify probation officers' views on this task. Similarly, given the probation order as the primary tool for delivering treatment based services, I sought to understand how officers perceived probation supervision, which assumes especial importance in their theories of office since it is, quite literally, the activity by which they are defined as professionals in the criminal justice system.

c) I was interested to discover how the work entailed specifically by involvement with alcohol-related offenders related to these general perspectives on the professional role and tasks of probation officers. There was a danger here in becoming tedious by repeating questions which had already been asked in general terms with specific reference to alcohol-related offenders. Moreover, supplementary questions in this form rarely produced responses which were more informative than the initial, general observations. In the end, my purpose was best served simply by inviting officers to comment on what they liked and what they did not like about any aspect of their work with alcohol-related offenders.

#### **Post-sentence interviews**

In the light of the developing theoretical perspective, the necessity of considering magistrates' responses in the extended interviews in relation to their decisions in specific cases became clear during the review between the periods of observation. Furthermore, although magistrates often followed the recommendations in SERs, it was impossible to understand whether this was because they accepted probation officers' assessments, or because they reached the same conclusions as to sentence via different reasoning about the information presented. Parker, Sumner and Jarvis (1989) argue that magistrates regard SERs with suspicion as biased documents requiring re-analysis. If sentencers do indeed perform independent reasoning operations upon the data with which they



are presented, then we must wonder why concordance rates between SER recommendations and sentencing are generally found to be high (Bottoms and McWilliams 1986; Hine, McWilliams and Pease 1978; Konecni and Ebbeson 1982; Stanley and Murphy 1984). From magistrates' announcements of sentence in open court, I could learn nothing about the processes by which they reached their conclusions. Thus, it became increasingly important to the research to find some means of learning about magistrates' perceptions of the information which they received in individual cases (Ashworth 1987; Ewart and Pennington 1987; Konecni and Ebbeson 1982). Indeed, I would probably not have found it useful to undertake such an extended second phase of observation had the opportunity to study specific decisions in greater detail not become available.

Unsurprisingly, I had been advised by the clerk to the justices at the outset, and several magistrates commented when approached, that questions about specific cases in the extended interviews were unlikely to be productive. Recollection of specific cases was lost in the passage of time. Before embarking on the second observational period, I was emboldened to broach the possibility of post-sentence interviews by the evidence forthcoming in Parker, Sumner and Jarvis' (1989) study of magistrates' sentencing decisions that such an exercise was not necessarily prohibited. I was helped by the clerk to the justices, in consultation with the magistrate who chaired the bench as a whole at that time, to obtain the permission of magistrates by invitation to speak about my research at a bench meeting. This attracted magistrates' interest in the project, and enabled them to agree in principle to my request, given assurances that I had no intention of extracting sensitive disclosures about the tripartite discussions in the retiring room, or about individual magistrates, and that magistrates who did not wish to become involved in this aspect of the research were free simply to decline.

The interviews were conducted with any magistrates who were interested and willing. This meant that sometimes all 3 magistrates included themselves in the interview, while at other times one of their number took on the task of representing their combined views. Sometimes, I wondered whether this "composite" perspective offered by a single magistrate was an attempt to preserve the apparent unity of the ultimate decision in the face of real differences of opinion. This hypothesis arose on a very few occasions when I had difficulty in following the logic with which I was presented. However, mindful of my undertaking, I took care to do no more than ask for clarification in general terms, and to accept what I was then offered. In any case, given my explicit focus on theories of intoxicated crime and their relationship to sentencing decisions, it would have been impertinent to attempt to exploit an opportunity to indulge my curiosity about the detail of magisterial relationships.

Twenty-eight post-sentence interviews (see Appendix C) were conducted. Magistrates' responses were recorded in writing as they spoke. Questions were devised to prompt magistrates to talk about the case as fully as possible, covering, for example, their opinions on the seriousness of the offence, the offender, the information provided and their satisfaction with the outcome. I swiftly discovered that magistrates were keen to deliver their own account and usually pre-empted my questions. It seemed rather rude, but also unwise (McCall 1969) to block this spontaneity, and indeed, many of the most vivid and telling comments arose in these divulgements. I therefore adopted the practice of inviting magistrates to tell me about the case in their own words before proceeding with my questions, which helped to clarify and expand these accounts.

**CHAPTER SEVEN**  
**IN THE COURTROOM:**  
**SITUATIONAL INFLUENCES ON SENTENCING**

This chapter examines the sentencing pattern of City magistrates' court in the years since 1985 (the first year in which the Home Office published statistics showing the sentencing of individual petty sessional divisions). These statistics are considered in the light of situational factors influencing the perception of all personnel that City court had a stable tradition of non-custodial sentencing. Further situational influences on sentencing itself are then identified through consideration of the physical environment of the courthouse, the relationships between participants in the courtroom process, and the imposition of custodial sentences.

**SENTENCING IN CITY COURT**

It became apparent, during both informal conversations with people at court and structured interviews with magistrates and probation officers, that sentencing at City court was perceived to be generally non-punitive, and in particular to show a stable tradition of low use of custody. This tradition was largely attributed to the attitudes of the magistrates. I was often told that City had a "liberal", or "soft" bench, that the magistrates were reluctant to use custody, did not "like" custody, were a "push over" and "just didn't do it". Indeed, it will be shown later that the strong belief in a stable tradition of non-custodial sentencing could significantly influence the behaviour of court personnel towards the magistrates in sentencing hearings.

Home Office statistics for the years 1985 to 1990 reveal a more complex picture. Table 1 shows the level of custodial sentencing in respect of indictable offences for each of those years.

**Table 1:** Sentences to immediate custody\* for indictable offences as a proportion of total for sentence in City magistrates' court, compared with all magistrates' courts in England and Wales# (Home Office Criminal Statistics 1985-1990a, 1985-1990b).

YEAR	City Magistrates' Court		England and Wales	
	Total for sentence	Immediate custody (%)	%	Variation (%)
1985	1346	107 (8)	8	Not available
1986	1163	92 (8)	8	5-10
1987	1096	49 (4)	8	4-9
1988	985	63 (6)	7	4-9
1989	917	35 (4)	5	2-8
1990	1028	38 (4)	5	3-7

\*Partially suspended sentences are not included in the calculations, since numbers are negligible in magistrates' courts, both in City and in England and Wales as a whole.

#Figures include juveniles.

It can be seen that there was a decline in the absolute numbers of defendants receiving custody in City court between 1985 and 1989. This, however, reflects a decline in the total numbers of defendants being sentenced for indictable offences, in line with the trend for England and Wales as a whole (Home Office 1985, 1986, 1987, 1989). The slight increase in numbers of defendants receiving custody in 1990 reflects an increase in numbers being sentenced.

Table 1 also shows a decline in the proportionate use of custody for indictable offences in City court. Thus, the figures do not reflect a stable tradition of low custodial sentencing, but rather an evolving one. This declining proportionate use of custody also corresponds with a similar decline in magistrates' courts in England and Wales as a whole. Indeed, City court's proportionate use of custody is close to the figure for England and Wales for all years except 1987, which was in this respect, therefore, an unusual year. Furthermore, City court's proportionate use of custody generally reflects the middle of the range for magistrates' courts, suggesting an average, rather than considerably lower use of custody.

The absolute numbers of defendants receiving immediate custody in City court might be somewhat higher than these figures indicate, since they would include those so sentenced for imprisonable summary offences such as excess alcohol, or given immediate custody as an alternative to fine payment for non-imprisonable offences such as drunkenness. There was, however, no reliable means of establishing more detailed information about custodial sentencing from the court records.

The prevailing belief that City court had a well-established, stable tradition of low use of custody, therefore appears to overstate the case. City court was not excessive in its use of custody, but neither was it unusually sparing, when compared with the general picture for England and Wales. Furthermore,

its proportionate use of custody had not been stable over recent years, but had declined to its current level.

The strength of current belief in City court's tradition of "liberal" sentencing was encouraged by some complex factors which will emerge in later chapters. However, it may also have derived from some situational factors which may be identified at this point.

Firstly, the decline in absolute numbers receiving custody had reached a point at which custody was imposed at less than the rate of once per week. Among a bench of 120 strong, therefore, the experience of participation in a custodial sentence would indeed be rare for individual magistrates. Several magistrates in interview commented on the rarity of their personal experience of imposing custody. They attributed this, however, to a prevailing reluctance among their ranks to invoke this sanction. Similarly, other court personnel attributed the comparative rarity of imprisonment to the attitudes of the magistrates towards that sanction. Such an attitude, clearly, was for people at City court an intuitively obvious explanation for the absence of frequent imprisonment. The likelihood that it reflected in part a decline in numbers of defendants for sentence for indictable offences was less readily apparent to participants in the courtroom process. Indeed, people appeared to be unaware of this trend. Certainly it was never mentioned by any individual.

Secondly, to some extent, the sentencing figures belie a genuinely sparing approach to the use of custody by City magistrates, which is indicated in the observational data. Twenty-two defendants were observed who were sentenced to immediate custody. In these cases, magistrate did not routinely invoke the full extent of their powers. One defendant was sentenced to 7 months, one to 6 months, 4 to 3 months and 2 to 2 months. Fourteen defendants were sentenced to periods of 28 days or less. These custodial sentences

included a period of 21 days for each of 2 drug suppliers, and one of three months for a defendant convicted of 15 dishonesty offences and also of GBH. Six defendants were in breach of suspended sentences. In 2 of these, magistrates explored alternatives prior to sentence, and were unsuccessful due to the defendant's failure to co-operate. In one case the period of suspension was due to expire on the day following the court appearance and the sentence was not activated. In 2 further cases, the magistrates, in activating the sentence, reduced the period to be served. The observational data, therefore, suggest that City magistrates were parsimonious in their utilisation of custodial sanctions, even in cases reflecting the top of the range of seriousness in a magistrates' court.

Moreover, a number of sentences to immediate custody might be discounted as "not really custody" by participating magistrates and court staff. In 5 cases the imposition of custody made little or no difference to the defendants' circumstances. A sentence of 28 days, for theft and destruction of a motorcycle was imposed on a defendant who was already serving a longer sentence imposed at Crown Court. One defendant, who had been remanded in custody for psychiatric examination, was sentenced to a term ensuring his immediate release. A defendant who had stolen a bottle of alcohol from a hotel, although in breach of a suspended sentence, was sentenced to a nominal one day imprisonment, and was released at the close of court business. Three other defendants were also treated in this way for offences of theft, begging and drunkenness.

Thus, whilst in absolute terms the imposition of custody was a rare event in the experience of individuals compared to the time spent in court, participants in such cases not infrequently observed that its use was parsimonious. This direct experience of the manner in which custody was used probably contributed significantly to the belief in a tradition of non-custodial sentencing.

**Table 2: Sentences other than immediate custody\* for indictable offences in respect of offenders aged 17 and over in City magistrates' court. Percentage of total for sentence in brackets#. (Home Office Statistics 1985-1990).**

Year	S. Impt	CSO	PO	Fine	Disch	T.F.S
1985	27 (2)	77 (7)	96 (9)	684 (62)	104 (9)	1103
1986	21 (2)	68 (7)	92 (9)	614 (60)	128 (13)	1017
1987	19 (2)	73 (7)	85 (9)	624 (64)	114 (12)	974
1988	22 (2)	57 (6)	67 (8)	586 (66)	77 (9)	883
1989	10 (1)	41 (5)	59 (7)	576 (68)	107 (13)	846
1990	20 (2)	50 (5)	85 (9)	599 (62)	155 (16)	970

\*Abbreviations for some sentence names are used in the table, viz:-

S. Impt. - fully suspended sentence of imprisonment

CSO - community service order

PO - probation order

Disch - discharge, (includes both absolute and conditional)

T.F.S -Total for sentence

#Figures do not match totals for sentence because of omission of cases receiving immediate custody and otherwise dealt with.



A final observation about the perceived use of custody in fact relates to the non-custodial sentencing pattern of City court. Table 2 shows the use of sentences other than immediate custody over the same 6 year period. It can be seen that the options generally regarded as "higher tariff" - suspended sentences, community service and probation - remained relatively stable. The decline in the proportionate use of custody was complemented, not by a rise in these higher tariff options, but by increasing proportionate use of fines and discharges. Yet the frequency of appeals to magistrates, in mitigation addresses and SERs, to utilise "alternatives to custody" tended to give an impression that many defendants were at serious risk of incarceration. Were this the case, the displacement of custody might be expected to be perceived in the use of the high tariff "alternatives to custody". Instead, however, the perception of "liberal" sentencing appears to be encouraged by an exaggerated estimation of the extent to which custody would be used were it not for the availability of these direct alternatives.

It may not be unusual for court staff to consider their magistrates to be lenient, whatever their actual sentencing pattern (Burney 1979; Bankowski, Hutton and McManus 1987). However, in City court, this belief had some grounding in situational factors affecting the experience and thereby the perception of sentencing. The decline in absolute numbers of defendants sentenced to custody for indictable offences had reached a point where the imposition of custody was a comparatively rare experience for individual magistrates. Magistrates were parsimonious in their utilisation of custody, not routinely invoking the full extent of their powers. A proportion of custodial sentences may have been discounted by participants as "not really custody" since they made little or no difference to defendants' circumstances. Finally, it seemed that there was an overestimation of the extent to which high tariff alternatives were necessary to divert defendants from immediate custody.

## THE COURTHOUSE

The physical design of court houses and courtrooms receives attention in all observational studies of magistrates' courts (Anderson 1978; Burney 1979; Carlen 1976; Darbyshire 1984; Parker, Casburn and Turnbull 1981; Parker, Sumner and Jarvis 1989). To a large extent, these descriptions detail the specific situational features which are common to all courts, but also unique to their status as courts: for example, the spatial separation between key participants, and physical features such as desks, docks and witness boxes.

In other respects, however, there appears to emerge a subtle interrelationship between particular features of a court house or courtroom and the behaviour and role relationships enacted within it. This phenomenon possibly deserves more rigorous analysis than it has so far been accorded in the literature. On the one hand, the significant influence of physical situational features on behaviour, noted in Chapter Three, is as likely to apply in courts as in pubs. On the other hand, however, ideological or attitudinal positions, such as rehabilitation or punitiveness, might be expected to develop independently of physical constraints and even to rise above them. For example, a juvenile court in Parker, Casburn and Turnbull's (1981) study, conducted its business in a democratic style in two quite different buildings: one modern, comfortable and understating formality in its interior furnishings; the other older, austere and poorly resourced. Nevertheless, it does appear from descriptive accounts that the presence or absence of quite basic design features such as communal refreshment areas for defendants (Parker, Casburn and Turnbull 1981) or for magistrates (Parker, Sumner and Jarvis 1989) frequently complement the ideological orientation of the court itself. One possible factor in these impressionistic accounts, of course, could involve a tendency of observers to endow the physical environment with attributes complementary to the behaviours by which they are impressed, thus guiding the selection of descriptive terms. Nevertheless, this

complementary relationship between the physical environment, behaviour and the conduct of court business emerged in the study of City magistrates' court.

The courthouse itself was built, somewhat curiously, on the top of a multi-storey car park in the city centre. This inauspicious location, however, had been turned to considerable advantage by the degree of space and light which had been incorporated into the design. On entry, a large, tiled area contained the glass-fronted receptionist's and fine payment offices. Behind these, concealed from public view was the administration area. Also on this level, reached by separate access, were the police cells, stationed directly under the courtrooms, with flights of steps leading through wooden doors at the top directly into the docks which lined one side of each main courtroom.

From the entrance area a wide, carpeted staircase gave access to the second level, on which the courtrooms were situated. On this top level, a balustrade overlooked the reception area. There were large windows around the building's perimeter, providing full light throughout the day in the waiting area outside the courtrooms. This broad area was also thickly carpeted, had potted trees at intervals along its length, and fixed rows of seats constructed in light wood. At one end, part of this area was screened in light wood, to provide a cafeteria offering light refreshments which was serviced in the mornings by the WRVS. At the other end of the waiting area there were separate rooms for police, probation officers and solicitors. The court ushers also had a small partitioned room for their own use.

The public waiting area between these two ends of the building stretched across the entrances to the three main courtrooms. At either side of the entrance to each court was a small room, providing a total of five interviewing rooms for use by solicitors and probation officers and a sixth, containing a

low bunk, presumably for any person taken ill, although I never saw it in use.

Each of the three main courtrooms was a large, airy room, in which the light wood of the desks, docks, witness stands and magistrates' benches provided an unobtrusive formality. At either side of the entrance there were two fixed rows of upholstered seats for the public. Similar rows of seating behind the dock, which lined one side wall, the probation officers' desk, which lined the other, and the solicitors' benches in the central well of the court, provided a degree of comfort for all participants in the courtroom process, including the defendants. Clerks and magistrates were particularly fortunate in having large, well-upholstered armchairs from which to conduct the court's business.

Two more courtrooms were located in a different part of the building, towards the rear. These had been designed to serve as juvenile courts, and were smaller, with free-standing tables for solicitors, probation officers and clerks, and small benches for magistrates which were not elevated above the rest of the court. There were seats, but no docks, for defendants in the centres of these courtrooms, from which there was no direct access to the police cells. When no juvenile courts were running, these rooms could be brought into use for the overflow of business from the main courts, given a sufficiency of magistrates and court personnel to staff them.

At the rear of each of these five courtrooms, behind the magistrates bench was a door by which magistrates and clerks could enter and leave. These exits gave onto a central, square area, around the perimeter of which were ranged a series of retiring rooms for magistrates, and a larger, communal room with facilities for making tea. The centre of this area was bounded by glass, which partitioned a small "garden", with

potted trees and other plants, creating a rather curious effect somewhat like a modern day cloister.

The light, space, unoppressive formality and reasonable comfort of the physical environment not only complemented, but facilitated the low key, non-confrontational approach which generally characterised the conduct of court personnel towards defendants and those accompanying them. On quiet days, usually in the late afternoons after the main business had been dealt with, the atmosphere could be quite restful. Even on the busiest days, the degree of "press" and discomfort through crowding was unlikely to reach the stressful levels experienced in some other courts (e.g. Carlen 1976), and privacy between defendants and solicitors or probation officers was possible. The openness afforded by the balustrade overlooking the reception area reduced the claustrophobic potential of people massing together in the busiest part of the public waiting area.

Two incidents exemplify the facilitative relationship between the physical environment and the customary conduct of interactions between court personnel and the public.

#### **Example 7.1**

Outside the refreshment bar, and out of the line of sight of police officers in their office, an angry interchange developed between co-defendants who blamed each other for their predicament. Watched by a small group of supporters, huddled about them and a few uninvolved observers at a greater distance, the dispute escalated into pushing and appeared on the verge of real violence. One defendant then broke away and walked rapidly over to the main waiting area. The small group dispersed, to the cafeteria, toilets and other parts of the waiting area. Thus, a police officer attracted to the scene found, on arrival, nothing of concern.

This small incident illustrates the advantages of the spaciousness of the public waiting area in containing potential aggression simply by permitting disputants to put physical distance between themselves, reducing the need for overt surveillance and control by court personnel. Space also permitted observers to ignore or pass by the huddle of disputants, rather than drawing them into overt displays of attention, interest or participation.

### **Example 7.2**

Occasionally, the noise of disturbances in the public waiting area penetrated the courtroom, disrupting proceedings. On one such day, I left the court to see what was happening. It was a busy morning, with the seats fully occupied and other people standing or moving around. Among them, a young man was attempting to distance himself from the unwelcome attentions of a second man of about forty. The young man walked across to the notice board on which were posted the details of the day's business, and studied it, with a display of concentration which discouraged the other from further advances.

The older man wandered among the rows of seated waiting people. He approached three men who were joking together in overloud voices which, predictably, attracted his attention. He was unsteady on his feet as he stood over them, and his voice was indistinct. One of the three began to tell him to go away. He declined. This man then raised his voice to a near shout, and instructed the unwelcome visitor: "You go away over there", waving across the waiting area. The intruder protested: "I don't want to go over there". To this the man responded, still loudly, "You go away over there - *now* - or I'll call the police". Still failing to achieve the desired response, he announced: "I'll break your jaw". As the man began to move unsteadily away, the court police officer appeared: "Everything all right?" The seated man, lowering his voice, replied cheerfully: "Yes, it's all right now".

The police officer approached the drunken man, who was now standing by the notice board, greeted him with a cordial smile, and asked him if he was on the list to appear in court. He said he had merely come to the court in the hope of finding his solicitor. The police officer engaged him in conversation for several minutes, remarking how long it was since they had last met and asking after his family. Although swaying and speaking unclearly, the man responded warmly to this interest and eventually made his way unsteadily but peaceably out of the building.

The containment of aggression during this incident, which was protracted over some time, further illustrates the continuing advantages of space, given the numbers of people present and moving around in the waiting area. The low key intervention of the police officer appeared quite coincidental to the prior threatening interchanges, and to be a genuine expression of interest in a well known personality.

Although these two examples illustrate the advantages of a relatively unstressful physical environment in containing problematic incidents, and in facilitating a non-confrontational approach to their control, they also suggest that these situational factors provided a latitude to behaviour in which some transgressions might be unobserved or tolerated. Defendants and other people attending court seemed not only aware of this, but sometimes to exploit it for their own purposes.

### **Example 7.3**

One morning, before the start of proceedings, while I was the only customer in the cafeteria, two men entered and sat, unnecessarily, at the table next to mine. One produced a tobacco tin which, when opened on the table, turned out to contain, not tobacco, but drugs. The two men began, rather ostentatiously, to examine and count their supply. This behaviour, and the occasional glance in my direction, made me

feel acutely that they were enjoying the prospect of my potential curiosity, discomfiture, or even outrage. Although I decided against putting the hypothesis to the test, I surmised that any challenge would lead to a rapid demonstration of the legality of their possession of prescribed drugs, and that possibly the two men were inviting confrontation in order to enjoy this minor triumph.

The latitude to behaviour afforded by the unobtrusive approach to surveillance and control, enhanced by some of the attributes of physical design, had implications for the styles of impression management available to defendants which will be examined later. One specific feature of the physical environment is worth noting in this connection, however. At the top of the stairs to the waiting area, a notice at eye-level advertised the prohibition of alcohol on the court premises. Throughout the study period, I never once observed that rule enforced, although it seemed to be breached upon a number of occasions. The manner in which court personnel surveilled and controlled drinking and drunkenness, and the implications of their approach for defendants' behaviour and styles of impression management will be examined later.

#### **ROLE RELATIONSHIPS**

Gusfield observes:

"Sociologists of law have long made the point that the study of law as embodied in legislative acts and common law decisions yields a highly inaccurate description of what takes place in the behavior of police, the actions of attorneys, or the day-to-day events of courtrooms and primary-level judges. The law becomes a point in the negotiation between the different parties in the legal process, to be ignored or reinterpreted according to the organizational needs and specific interests of those involved in its implementation."

(Gusfield 1981, p.160)

Thus, the application of law is manipulated in a problem solving process which seeks to achieve the particular purposes



of the courtroom situation, whether these be conviction (McBarnet 1983), compensation (Lloyd-Bostock 1983), retribution (Burney 1985; Parker, Sumner and Jarvis 1989), reformation (Hogarth 1971), or simply the administration of the court's business (Mileski 1969). Furthermore, despite formal definitions and expectations of the roles of court personnel, courts vary markedly in their interpretation and enactment of these roles. Comparative studies of courtroom behaviour suggest that courts vary along the dimension of their relative democracy or autocracy (Anderson 1978; Darbyshire 1984; Parker, Casburn and Turnbull 1981).

Parker, Casburn and Turnbull's (1981) study of two juvenile courts illustrates how these approaches differentially guide the pursuit of common interests. In a democratic court, the routes to efficiency and time saving were perceived to include due process, legal representation, informal negotiation, civility to defendants and tariff sentencing. In an autocratic court, however, these aims were sought by "herding" defendants, rapid and impenetrable incantation of procedural requirements, refusal of legal aid and failure to explain sentencing decisions.

Some participants have a particularly powerful influence over the orientation of role relationships between personnel. For example, Darbyshire's (1984) study of magistrates' court clerks illustrates how the manner in which assistant clerks conducted courts reflected the attitudes and behaviour of the individual justice's clerk.

The broad orientation of courtroom ideologies and relationships constrains individual freedom in the enactment of professional roles. Thus, for example, Anderson (1978) found that a democratic, welfare-oriented juvenile court attributed greater importance to the role of social workers than to legal representation, whilst the reverse was true of an autocratic court with a more punitive sentencing tradition.

Anderson's observation, however, does not describe a necessary relationship between ideology and role relationships. Parker, Casburn and Turnbull (1981) found a high regard for legal representation in a democratic court with a non-punitive sentencing tradition. The question of how far sentencing ideologies establish the pattern of role relationships, and how far the established role relationships themselves create a sentencing tradition cannot be clearly answered from a review of the literature.

Observational studies reveal that the behaviour of participants in the courtroom process adapts to the prevailing ethos of the individual court, even when it contradicts professional ethics and values. Thus, for example, defence solicitors may be tentative and uncontroversial in their representation of defendants in courts which pursue a tradition antagonistic to their role. This has been observed in studies of both welfare-oriented (Anderson 1978) and punitive (Parker, Casburn and Turnbull 1981) juvenile courts, in which devaluation of defence solicitors' role stems from quite different perspectives. Similarly, probation officers may attach considerable importance to their "credibility" (McWilliams 1986; Rosecrance 1985), adapting their behaviour to the ethos of an antagonistic court, rather than risk controversy resulting in further devaluation (Ashworth, Genders, Mansfield, Peay and Player 1984; Carlen 1976; Darbyshire 1984; McWilliams 1986; Parker, Casburn and Turnbull 1981; Parker, Sumner and Jarvis 1989).

Professionals do articulate this tension between their professional values and their practice in antagonistic courts (Ashworth, Genders, Mansfield, Peay and Player 1984; Carlen 1976; Darbyshire 1984; McWilliams 1986; Parker, Casburn and Turnbull 1981). Nevertheless, these studies also suggest that, to some extent at least, professionals reconcile such conflict by adopting attitudes prevailing in the courtroom situation. Such a response would, indeed, be unsurprising in the light of

attitudinal research reviewed in Chapter Four. Rationalisations for behaviour conflicting with professional values also develop. For example, defence solicitors may perceive assertiveness to be prejudicial to the interests of their clients (Anderson 1978; Parker, Casburn and Turnbull 1981); probation officers may value the "realism" of their sentencing recommendations to courts (McWilliams 1986).

Role relationships in City court may be examined from two perspectives: the relationships between court personnel; and those between court personnel and the public, particularly defendants.

#### **Relationships between court personnel**

City court conducted its business in a predominantly democratic style, requiring mutually respectful public interactions in the courtroom. In general, the formal business of the court was conducted in a co-operative style favouring a problem solving approach achieved through negotiation and compromise, rather than on an openly adversarial basis (see e.g. Darbyshire 1984; Parker, Casburn and Turnbull 1981 for observational comparisons of these styles). This observation of the established pattern of relationships, however, is most sharply illustrated by an examination of incidents which ran counter to the general code. Such an examination, while concentrating on the comparatively unusual, nevertheless reveals how role relationships were regulated in order to maintain the established code of conduct; for "[m]embers of a workgroup reward and punish one another for cooperation or conflict" (Lipetz 1980, p.48; also Mileski 1969).

#### **Example 7.4**

Magistrates' challenges to the representations of other court personnel were customarily conveyed in a reasonable, non-antagonistic manner. On one notable occasion, however, this mutually respectful style of interaction was profoundly disrupted.

One morning, the clerk asked the magistrates to retire, after dealing with only one case, as there were no other cases ready to proceed. Two magistrates took the clerk angrily to task, declaring their dissatisfaction with the conduct of business, and an altercation developed.

**M:** "It's not good enough. Cases should be ready to go on at 10a.m."

**Clerk:** "I'm sorry, but I can't pluck cases out of the air."

The magistrates retired, still protesting. Later, when proceedings recommenced, the first two defence solicitors to appear with their cases were asked by the magistrate to explain why they had not been in court at 10a.m.. Neither were prepared for this interrogation, being unaware of the earlier complaint. The first solicitor stared at the bench in amazement for an appreciable moment before replying politely: "Of course. I was in another court at 10a.m.". The defendant in this case, a disqualified driver, was very heavily fined, despite strong mitigation concerning his financial problems. The second solicitor, nonplussed, concluded that a summons to court had not been passed on: "I was in the cells, interviewing my client. I didn't know another case of mine had been called". Seeing the meaningful expression on the clerk's face, the solicitor gave up the attempt at comprehension and sat down. The remainder of the morning's business was accomplished in a strained atmosphere.

The afternoon court, to which the same magistrates were returning, had been set aside for a complex sentencing hearing. The defendant, aged 23, had admitted several offences of burglary, ABH, public order, and criminal damage. He was in breach of a conditional discharge and a suspended sentence, and had now committed further offences during a period of deferment. He was represented by the second defence solicitor to have been publicly challenged by the magistrates.

Before court, the solicitor and clerk discussed the events of the morning, protesting about their treatment, and that of the disqualified driver. Then the solicitor complained to the prosecution solicitor about a new charge of criminal damage brought against the defendant. It seemed that a struggle with the police had resulted in the defendant bleeding, from cuts acquired prior to his arrest, onto an officer's shirt. The solicitors and clerk then considered their course of action. As proceedings started, the new charge was put to the defendant, a plea of not guilty was entered and a trial date fixed. This concluded the court's business. The magistrates retired. As they cleared up, the clerk told the solicitors: "I'm just listing it for the sentencing court".

On the due date, the prosecution withdrew its case in respect of the police officer's shirt, the sentencing hearing proceeded, and the defendant was sentenced to seven months' imprisonment. This outcome could hardly have been different, considering the superfluity of the contested charge and the defendant's history of breaching court orders. However, court personnel, not prepared to allow sentence to be decided against a background of acrimony, found the means to avoid it.

Alliances of diverse court personnel to correct behaviour which defied the expectation of mutually respectful, co-operative conduct was not confined to the control of errant magistrates. Once when an unfamiliar legal representative from another locality became hotly aggressive over delays in reaching a trial date, demanding that magistrates require the case to be reviewed by "someone in the Crown Prosecution Service competent in these matters", the closing of ranks was almost physical. At this implied insult to a familiar prosecution solicitor, startled glances were exchanged around the court, so noticeably that the offending solicitor hastily intercepted the magistrates' remonstrance: "Of course, I'm not suggesting that my friend here is incompetent". The damage, however, was irremediable. Magistrates granted the prosecution

applications in full. On a more muted occasion, to a solicitor who ventured a query about the conduct of a case, the magistrate responded mildly: "(This) is one of our senior clerks, you know". The reproof was not lost on the solicitor, who rapidly denied any imputation of incompetence.

In City court, there was no entrenched antagonism between particular groups. The principle at stake in these interchanges was not the perpetuation of any specific antagonistic relationship, but of the democratic, mutually respectful code of conduct.

#### **Example 7.5**

Three young men were to be sentenced for a ludicrously incompetent burglary. On the due date, only one defendant appeared, answering his bail. The others were not produced from custody, where they were serving sentences for other offences. The magistrates agreed to hear the single defendant's case in order that he should not be penalised by a delay not of his making.

The defendants, very drunk, had broken into a shop. This defendant, climbing through the window, passed out to his friends what he took to be a television and some jars. They left the jars and "television", which proved to be a video monitoring screen, in a garden. The group made off home, eating the contents of the jars which turned out to be monkey nuts, discarding along the way the shells, and most of the nuts as they were rotten. Police searching for the culprits had only to follow the trail.

Blaming alcohol and bad company for the offence, the defence solicitor pointed to a subsequent improvement in the defendant's circumstances, but endorsed the probation officer's recommendation for a probation order on the grounds of his continuing vulnerability. During the magistrates' retirement, the defence solicitor commented with amusement on

the SER, which had been prepared in a different locality and suggested probation as an alternative to custody: "I can just see (his local) bench potting him for this. With these, not a chance". A probation order was made.

On the following week, the same solicitor represented one of the co-defendants. The mitigation address, later reiterated by the second solicitor, stressed the triviality of the offence and urged magistrates to impose a concurrent custodial sentence which would not interfere with the defendant's existing release date. Remembering that the defendant was still a young offender, the defence solicitor then jocularly referred magistrates to the "Ways and Means Act", meaning the Criminal Justice Act 1988, specifying the justifications for custody:

"Perhaps I could suggest the criterion that the offence is so serious that no alternative is possible as one which you might like to hang your hat on."

The magistrates retired without comment. During their absence there was some hilarity in the courtroom about the defence solicitor's wry tactics.

JR: "Why didn't you suggest a conditional discharge, if the offence was trivial?"

DS: "He doesn't want anything hanging over his head when he comes out. They could give him two months and he would still keep his current release date."

Of particular interest here was the fact that the bench was chaired by the same magistrate who had officiated in the sentencing of the first defendant. This magistrate was effectively being asked to preside over a blatant contradiction of a previous decision.

Both defendants received a conditional discharge. Here, the magistrates apparently displayed greater regard for the proper application of law than the legal representatives. However, their decision may also have reflected a more immediate concern about role relationships: that they, as magistrates,

should not be invited to conspire to manipulate the law in blatant contradiction to a prior decision, for the convenience of defendants. This decision was an assertion of magisterial independence, directed at court personnel.

This incident is also of interest for the light which it sheds on underlying assumptions of court personnel about "their" magistrates. Sentencing research has found magistrates willing and able to find their own justifications for passing harsh sentences, and to manipulate the law in the process (Burney 1985; Parker, Sumner and Jarvis 1989). Even without familiarity with such research, overtly to invite magistrates to pass inflated sentences might strike defence solicitors as a dangerous precedent to set, unless there was a degree of complacency about the customary leniency of the bench to which such an invitation was proffered. This suggests that these defence solicitors did not expect City magistrates' traditional tolerance to be disturbed by the manufacture of a harsh sentence in special circumstances.

The democratic, mutually respectful code of conduct extended to the probation service, which enjoyed a recognition as a professional participant in courtroom proceedings which is denied to it in some courts (Darbyshire 1984). This recognition was explicitly conveyed in a curious small ceremony, called "presenting the reports", which was an idiosyncratic feature of City court's operation. In sentencing hearings for which SERs had been prepared, the clerk would ask for the reports to be "formally presented" by the probation officer at the appropriate point in proceedings, between prosecution and mitigation. The task minimally required the officer to address the bench with the words: "I am presenting Social Enquiry Reports prepared on the defendant by (my colleague)".

Probation officers new to City court were unfailingly caught at a loss when first asked to present reports, finding the



request incomprehensible, and would complain that the ritual was unnecessary and embarrassing in its superfluity. However, the routine soon became a "scripted" activity to which they gave no thought; so much so, that it did not seem to occur to established officers to give new colleagues prior warning of the practice. Furthermore, established officers learned that this superficial task enabled them to proffer additional comments or advice, simply by providing them with a formal opportunity to speak. This ceremony could become a powerful tool for a probation officer wishing to influence proceedings, particularly given the sensitivity of its timing between prosecution and mitigation addresses, and the willingness of the court to receive their professional interventions.

#### **Example 7.6**

A defendant, aged 28, had committed several offences of theft and deception and was in breach of both a community service order and a probation order requiring his attendance at a groupwork programme. The probation officer was now recommending a probation order with a requirement of attendance at a day centre (known locally, after the reference in the Criminal Justice Act 1982, as a "4B order"). The probation officer, presenting the reports, requested the opportunity to clarify some points.

**PO:** "Regarding the intake of alcohol - that information was taken in error from a previous report. The defendant tells me his intake is now considerably less. I would also like to say on his behalf that he was co-operating extremely well on his probation order up to the time of the breaches and it was a great surprise to me that he dropped out of contact."

**M:** "How much of the community service order has been completed?"

**PO:** "38 hours."

**M:** "What is the nature of the 4B programme?"

The probation officer explained the intensive and demanding nature of the day centre programme. After the mitigation address, the magistrates retired, then returned to query the

defendant's failure to comply with the community service order and to ask for further information about the 4B programme.

**PO:** "The community service order, if I may say, started adequately, but the defendant hasn't worked at all since he left for London. Otherwise, no doubt he would have completed it satisfactorily. It was not entirely the defendant's fault that the order was not completed satisfactorily as he had produced sick notes on some occasions. The 4B order is a rigorous order. It is in some ways similar to the order he is already on, which requires group attendance, but much more intensive. The factors confronted would be for example his drinking and offending behaviour. It is all designed to give him more insight and enable him to make better decisions in the future. For example, the defendant doesn't know why he breached the probation order. This would confront that."

When following the probation officer's recommendation, the magistrate remarked to the defendant:

"There was a time during our retirement when we had decided to send you to prison. But after we came back we decided to do this instead. But I want the probation service to know that we expect any breach of this order to be dealt with immediately and we do not expect a recommendation that he stay out of prison. There is no question that if he comes back there will be a custodial sentence. Let's be quite clear about that."

This illustrates the latitude granted to probation officers to intervene in proceedings. In allowing themselves to <sup>be</sup> persuaded<sup>x</sup> to pass a further non-custodial sentence on a defendant already in breach of two, these magistrates - albeit within the required terms of respectful courtroom interaction - nevertheless let it be known that this probation officer's protestations were overzealous. Their remarks in sentencing were a message, less to the defendant than to the probation officer, and an assertion of the independence of their decision.

#### **Relationships between court personnel and the public**

Reference has already been made to the low key, non-confrontational approach to interactions between court staff and the public in the waiting area. Some examination should

also be made here of interactions with the public inside the courtroom, since the nature of these had implications for the styles of impression management available to defendants.

**Example 7.7**

One afternoon, the sentencing court was continuing after all others had finished their business. The first defendant, a female, to be called was absent. Her solicitor explained to the court that, following the car accident which had resulted in the present charges, the defendant had been unwell. But she then missed several court appearances without notification to her solicitor, who had now lost track of her. On the date of the last scheduled appearance a man, apparently her partner, had come to court and told the solicitor that the defendant was too ill and depressed to come to court and had gone away to recuperate. The solicitor complained: "He was very rude to me. I've known this defendant many years and I'm sure if I could see her we could get this sorted out, but she's under the influence of this man." The magistrates decided that they had no option but to issue a warrant not backed for bail.

As another case began, it became apparent that the aforementioned man had arrived at court, bearing a sheaf of sick notes. During a retirement, the clerk went out, explained to him what had happened, and subsequently reported to the magistrates that he had asked to address the court. The clerk informed them also that the sick notes were for Social Security purposes and did not state that the defendant was too unwell to attend court. It had been explained to the man that he had no standing in court and the magistrates did not have to grant his request for an audience. The magistrates agreed to hear him after the conclusion of the present case. The clerk explained this to the man, commenting afterwards: "He's working himself up into a rage. I think we might have some shouting".

The man was invited to sit near the front of the court. The clerk rehearsed the history of the proceedings, and further gave details of the sick notes just received, commenting, "I'm bound to say they do not adequately cover the dates of the court appearances or state that she is unable to attend court".

**M:** "What would you like to say?"

**Man:** "I want to tell you what it's like for (the defendant) at the moment. She's very depressed -"

**M:** "It's very important that she attend court. A warrant has been issued."

**Man:** (*raising voice*) "I've come here to explain. Have you got any idea what it's like living with someone who's eyes are dead, who says nothing all day? Her jaw's been strapped up -"

**M:** "The best help you could give (the defendant) is to ensure she comes to court and gets this matter over with."

**Man:** (*shouting*) "How can I ensure she attends court? She's not at home, she's gone to Wales! You people, you're all the same! There's bills coming through the door and no money from the Social, and the poll tax. And I go down to try to talk them all and they just shout regulations at me and you're all the same! You've no heart!"

The magistrate, who maintained a quiet voice and moderate tone throughout, remonstrated again. The man cried: "Oh, you're hopeless!". He turned to go. As he reached the rear of court, he turned and declaimed furiously on his plight, with waving arms. Then, pointing at the magistrate, he cried: "I'll sort you out then! If you come round to my house with a warrant, then I'll come round and sort you out!" After some further unfocused abuse, he stormed from the court.

**Clerk:** (*mildly*) "Well, that was contempt of court, your worships, and you would be within your rights to order his arrest, but I suggest it would serve no purpose."

People in court, which was empty at this late stage in the afternoon apart from the magistrates, clerk, probation officer, usher and myself, began to relax. The clerk telephoned to the police cells to warn of possible trouble, but there was no reply. Suddenly the man burst back into court, hurling incoherent abuse at the bench. The clerk

pressed the panic button, to sound an alarm in the cells. The usher scuttled to the dock, trying unsuccessfully to open the door to give the police access. This was the only response to the renewed outburst, so startled was everyone. The man departed again, ire apparently spent. The usher ran to lock the courtroom door to prevent any further dramatic entrances. The clerk explained to the magistrates that the police had apparently left court already. (Later it transpired that a police officer unfamiliar with the court had been in the cell area, looked at the flashing light and wondered what it was for.)

Later, the magistrate spoke to me in a post-sentence interview concerning another case:

"I was against imprisonment long before the Home Office decided they shouldn't send anyone to prison. People who come before the court have appalling problems and lead miserable lives. The whole paraphernalia of the courtroom hearing is simply intimidating and confusing to such people. They don't understand what's happening and rarely get the opportunity to participate. I try to think of questions to ask them directly so that they can join in, even if they've got a solicitor."

This magistrate's undeniable sincerity cast a deep irony on the remark of the probation officer, observing this courtroom interaction: "I don't like that magistrate - so officious". At the time, this diagnosis merely appeared overstated. Following the post-sentence interview, however, it appeared to reflect a real constraint deriving from the magisterial role. What else, after all, could the magistrate have said, within the terms appropriate to that role?

This magistrate was not, in fact, behaving *officiously*, but *officially*, while attempting to induce some constructive change in the dismal process of this case within the real constraints imposed by the magisterial role (Atkinson and Drew 1979). The only real option would have been to deny the man an audience.

As the clerk subsequently remarked:

"It serves me right for encouraging them to let him speak. I was trying to be generous, but we didn't have to let him speak at all."

Unfortunately, to the perceiver, particularly one already distressed, the distinction between officious and official behaviour may not be obvious.

**Example 7.8**

The frequency of court appearances by drunks had diminished in recent years following the introduction of a police cautioning system. Court personnel, however, were familiar with the "regulars": the core of deteriorated, destitute alcoholics who inhabited the city centre by day. The behaviour of these people at court, as indeed in public, varied quite widely according to their degree of intoxication, impatience to resume drinking, sense of grievance and general irritability or tranquillity. Court personnel, and particularly the ushers and police who generally had the most contact with them during their attendances at court, seemed to deal with this unpredictability on a "treat as you find" basis, responding to the mood and behaviour with which they were immediately presented, rather than by storing up anticipation of and defensiveness against possible trouble. On one occasion I saw jocular exchanges between the court police officer and a man who only one week previously had brought proceedings to a standstill with an alarming display of aggression in the courtroom, necessitating his ejection. Indeed, the police officer defused the man's periodic irritation on at least two occasions during that morning by some cordial intervention.

When such defendants, alone or with supportive company, entered the courtroom to sit at the rear awaiting their turn in the dock, their restiveness could become distracting. At these times, the police officer would walk over and stand beside them, occasionally leaning to whisper advice to remain

calm. Thus, the low key, non-confrontational approach to surveillance and control was continued in the courtroom.

Not always successfully. Once, when this routine signally failed to maintain disturbance at a tolerably muted level, the clerk, losing patience, asked the police officer to take the man downstairs to the cells. The police officer led the protesting man to the dock and through the door, assisted by the usher, who instructed him, like a bothersome child: "Off you go now". The man slept off the worst of his intoxication and was produced in the afternoon, when, for theft of a bottle of wine, he was sentenced to spend one day in police custody, thus to be released at the close of court business.

The prosecution solicitor, exchanging some humour about the manner of this defendant's removal, nevertheless observed: "But what was the basis really for taking him into custody? Contempt of court? I know he was a problem, but as a matter of civil liberties, it's not too good, is it?"

One answer to this question may derive from the assumption that swift removal was the easiest way, in the long run, to preserve the non-confrontational approach to social control in the courthouse, given the inflamed responses of the defendant to mild attempts at reason. A further element in the rationale for such behaviour, which will emerge fully in later discussion, derived from the fundamental belief that such people were incapable of regulating their own behaviour, coupled with the paternalistic notion that responsible decisions should therefore be taken on their behalf.

#### **Example 7.9**

Towards the end of the observation period, I attempted to clarify the lack of overt enforcement of the "No Alcohol" rule, by remarking to the usher that a defendant was nipping from a bottle concealed in his coat whilst sat in the dock waiting for his case to begin. (I was, by this time, confident

that no real detriment would accrue to the defendant through such an intervention, for reasons which will become increasingly clear.) The usher looked across, watched until the defendant took another nip, then moved slightly closer to him. The defendant returned the bottle to his coat. The usher continued to watch, evidently hesitant to intervene directly. Within a few minutes the decision was rendered unnecessary by the arrival of the magistrates. In this incident it became clear that the usher's decision involved more than the necessity of witnessing rule transgression directly in order to enforce it. The real dilemma concerned the potential sacrifice of the defendant's relative tranquillity through confrontation over a rule.

#### **Example 7.10**

I found myself included in an exchange of pleasantries between an usher and a boisterous young defendant. Afterwards, the usher remarked: "I can't see a reason to be too formal with the defendants. There but for the grace of God, I say". The topic moved to one of the regular drunks, who knew the court so well that during his attendances he would "settle in" and participate in its routines.

**Usher:** "Well, I don't put up with nonsense. I heard him the other day asking the WRVS ladies for two cups of water. I went up and I told him: 'Oh, no. You get tea or coffee here and you pay for it'."

**JR:** "He drinks water?"

**Usher:** "Oh, no. He would have thrown the water away and put his alcohol in the cups, so we can't tell. He's got a poacher's pocket inside his coat. I've reached into it once or twice and whipped out the bottle, and I keep it till he's ready to leave."

Thus it became clear that court personnel had unobtrusive methods of controlling drinking and drunkenness which they preferred to a reliance on confrontation. Some latitude was available to members of the public in their behaviour even in the courtroom. As will be seen, this latitude could be exploited by defendants pursuing particular styles of impression management.



## **CUSTODIAL SENTENCING**

The decision to impose an immediate custodial sentence, being the gravest penalty available, might be expected to depend on a clear judgement, derived from the objective facts of a case, that the defendant was fully culpable. Research, however, has repeatedly revealed inconsistency between sentencing decisions concerning objectively similar cases between different courts (Burney 1979; Hood 1962; Parker, Casburn and Turnbull 1981; Parker, Sumner and Jarvis 1989; Tarling 1979), within the same court (Parker, Sumner and Jarvis 1989), and by individual sentencers (Ashworth, Genders, Mansfield, Peay and Player 1984). In postulating reasons for this phenomenon, commentators have concentrated on sentencers' attitudes towards and interpretations of the objective facts of cases, tending to overlook the potential role of immediate situational factors within the courtroom process itself, beyond, perhaps, the appearance and demeanour of the defendant (Mileski 1969). Such factors are unrelated, in any objective sense, to the gravity of the offence under consideration, yet may powerfully influence the judgement formed of it.

In City court, as in the research noted above, it became apparent that there were no obvious "hard facts" regarding offence gravity which consistently resulted in a sentence to custody. For example: although 6 defendants who were in breach of a suspended sentence received immediate custody, a further 8 did not; although 2 defendants were sentenced to custody for supplying cannabis, another, whose involvement had been sustained over a longer period, was not. The bases of such inconsistent judgements of offence gravity will be considered further in the following chapter. However, an examination of the 22 cases in which immediate custody was imposed suggested that some situational factors could be influential in the production of this outcome. Four factors which recurred in these cases concerned the composition of the bench of the day, mitigation, SERs and "outsider" status of the defendant or defence solicitor.

### **Composition of the bench of the day**

Some individual magistrates who participated in decisions to impose custody which were justified on the grounds of the absolute seriousness of a particular type of offence, were involved on other occasions in non-custodial sentencing for the same offence. It appeared that the coincidence of three "like-minded" magistrates, or a strong opinion pressed by an individual, could influence the degree to which a "serious" offence might be regarded as "sufficiently serious to warrant custody on this occasion".

### **Mitigation**

Magistrates' courts are criticised in some research for their hostility to legal representation (Darbyshire 1984; Parker, Casburn and Turnbull 1981). In City court, clerks and magistrates were careful to satisfy themselves that a defendant's decision to proceed without legal representation was not taken out of ignorance or as a response to the stress of appearing in court. Unrepresented defendants who appeared uncertain or ignorant of their position, or who offered a legal defence in mitigation were "stood down" for consultation with the duty solicitor. In such cases, the case might further be adjourned to give the defendant an opportunity to instruct the solicitor of his choice. Only 2 defendants in the study who did not have legal representation were sentenced to custody. These were chronic alcoholics who were sentenced to a nominal one day, and released at the close of business. Lack of legal representation therefore, did not appear to be a factor in the imposition of custody in these cases.

The manner in which legal representation was conducted, however, did appear significant on occasion. In 3 cases, the defence solicitor explicitly prompted the magistrates to impose custody: in 2 of these custody was said to be "inevitable", and mitigation sought the "shortest sentence possible"; in the third, it was suggested that the defendant had already "paid the penalty" by being remanded in custody

for psychiatric assessment. In a further 3 cases, the defence solicitor appeared to antagonise the magistrates by the inadequacy of the mitigation address.

### **Social Enquiry Reports**

In 9 cases, there was no SER prepared on the defendant. Four of these defendants were sentenced to a nominal one day. One defendant was already serving a longer sentence imposed at the Crown court. One defendant was sentenced to a term ensuring his immediate release following a remand in custody for psychiatric assessment. One defendant, sentenced to 7 days, was a chronic alcoholic and vagrant. It is difficult to see that the production of a SER in any of these cases could have served any useful purpose. In the remaining 2 cases the decision to proceed without SERs appeared more questionable, since one defendant had not previously been to prison and the other was said to have complex family problems. Both of these defendants, however, were in breach of suspended sentences.

The 13 cases in which SERs were present in fact appear of greater interest. In 2 cases the report was unfavourable to the defendant, and in one of these the writer offered no alternative to custody. In 4 cases the defendant had exhausted all the available alternatives, and with them, apparently, the tolerance of the probation officer. In the remaining cases, it appeared that the report writer, whilst attempting to be supportive of the defendant, made an error of judgement, by failing to acknowledge the seriousness of the offence, or by describing personal difficulties which did not counter a prevailing impression of a persistent or deliberate offender.

### **"Outsider" status**

In 4 cases the defendant was not a City resident, but had offended whilst passing through, visiting, or living there temporarily. In 4 cases also the defendant was represented by a solicitor unknown to City court. The impact of this "outsider" status of either or both the defendant or solicitor

could not be assessed with clarity. In cases of destitute alcoholic vagrants, for example, magistrates may have regarded a short custodial sentence as the simplest, or even the most humane course. It also seemed possible that these offending visitors or unfamiliar solicitors failed to engage magistrates' sympathies, as if geographical and "affective" distance were linked. It was in 2 cases in which both defendants and defence solicitors were strangers to City that magistrates declined to consider SERs prior to sentence.

These situational factors may not individually have accounted for a significant impact on the sentencing decision. Certainly it could not be claimed that they were uniquely present in cases resulting in custody. However, among the 22 cases in which immediate custody was imposed, 18 involved several of these factors in combination. The remaining 4 cases concerned nominal one day sentences imposed on chronic alcoholics as an expedient means of dispensing with these defendants. Where combinations of these situational factors were present in the more complex cases, it seemed that the distractions to the main task which they provided became "collapsed" into the single judgement of "offence seriousness".

#### **Example 7.11**

The defendant, aged 41, admitted theft and deception, asking for 6 further offences of deception to be taken into consideration. He was in breach of a 6 month suspended sentence imposed 3 months earlier at a different court for offences of deception. He had 12 previous convictions, recorded in various parts of the region, involving for the most part offences of deception and attracting some custodial sentences. The defendant, having committed the offences whilst temporarily resident in the locality, had since moved to a different area, where he had engaged legal representation.

Following the taking of pleas, the prosecution solicitor, instead of furnishing the full details of the offences, merely

proffered the lists of previous convictions and offences to be taken into consideration, remarking: "My friend has an application for reports. The defendant is in breach of a suspended sentence for what appear to be similar offences". This move to pre-empt magisterial decision making met with resistance. The prosecuting solicitor was required to deliver the details of the case, in which it was alleged that the defendant obtained credit from various shops on the basis of "sob stories about his mother being very ill, his son being ill, he was changing jobs and was very short of money, etc.". On departure from the area he had taken a carpet and stepladder from the caravan he had been renting. There was no information available about the offences which had led to the suspended sentence.

The defence solicitor then applied for an adjournment to obtain SERs, arguing that some of the offences apparently pre-dated the imposition of the suspended sentence, that the defendant was in "dire financial circumstances", and had committed the offences whilst living in a caravan with his family without the support of Social Services. His circumstances had since changed: "the Social Services are very closely involved and also the Education Welfare. He is endeavouring to make the accommodation more permanent...In addition, he is hoping to find employment". The solicitor also alluded to the lack of information about the offences relating to the suspended sentence.

**M:** "We do know the date. It seems this offence took place just a month after it was imposed."

**DS:** "But we don't know what the offence involved. It's not the most serious offence of theft. When there are social workers involved, it's my submission that they should be asked for their views before reaching a decision."

The bench retired to consider this application.

**M:** "Considering what you have said, we are minded to deal with the matter to-day and not to ask for reports. Is there anything further you want to say?"

DS: "I had not begun to mitigate. I would like 15 minutes to take further instructions."

M: "All right."

On return, the solicitor enlarged on the defendant's family circumstances, stressing chronic housing problems, poverty and ill health:

"He told various...traders what have been described as "sob stories". The sad fact is that those stories have almost inevitably been true...He was at pains to say to the police 'the offences I have committed at least kept my family together'."

After retiring, the magistrate announced sentence in the following way:

"We've heard the details of your situation and we accept you've been going through a rough time for one reason or another. But we have to take into account other matters, that is your antecedents and the breach of a suspended sentence. With regard to the present matters, in relation to the theft we intend to impose one month imprisonment, and for the other matter one month imprisonment, but that will be concurrent. And because of your circumstances, we're going to activate the suspended sentence, but we're going to substitute a period of 3 months for the period of 6 months, consecutive. So we've taken into account all your circumstances. Do you understand?"

This show of firmness tempered with mercy appears to have arisen from a particular combination of factors. The magistrates' insistence on due process exposed the inadequacy of the defence solicitor's preparation. It will be seen later that pre-emptive requests for SERs were common in City court and in this respect the behaviour of the prosecution and defence solicitors was not unusual. However, the attempt to circumvent magisterial decision making, and the subsequent revelation of the defence solicitor's inadequate preparation may have appeared to the magistrates particularly presumptuous coming from someone unfamiliar to City court. Although the magistrates demonstrated a sympathy with the defendant's personal difficulties which was customary in City court, these offences nevertheless had connotations of an "outsider" preying on the kindness of local folk, aggravated by the

implication from his previous convictions that such behaviour was not unusual.

**Example 7.12**

The defendants, aged 18 and 21, were jointly charged with possessing cannabis with intent to supply, and also with supplying it. The 18 year old had a previous conviction for a minor offence.

Following the recital of the details of their arrest and admissions to supplying cannabis, the defence solicitor addressed the magistrates on their powers of punishment. It was explained that the magistrates at the previous hearing had assumed jurisdiction, rather than commit the case to the Crown court, after receiving representations that the defendants were of good character, involved only in small time dealing, and admitted to dealing during questioning about the fact of possession. The defendants had not been observed dealing in drugs, nor was there any evidence of profit. The solicitor quoted extracts from the police interviews in which the police themselves assured the defendants that they were not assumed to be big time dealers.

"These are young men who got way outside what their real life and background was. They were experimenters with the drug. These were the arguments put forward when you assumed jurisdiction. Even so custody must be in your minds."

The magistrates at this point retired to read the SERs. In their absence, the defence solicitor angrily complained to the clerk that the reports were "totally unrealistic", and that community service, as an alternative to custody, had not been canvassed by the writer.

On the magistrates' return, the defence solicitor corrected "a few minor errors of detail" in the report concerning the younger defendant. In particular, it was pointed out that "his mother was in fact a registered drug addict, not a minor

abuser at all". In contrast to the earlier denunciation of the reports, however, the solicitor proceeded to attempt to explain the curious logic of the recommendations for financial penalties.

"These reports disregard the alternatives normally associated with alternatives to custody. The reasoning seems to be that this was a youthful flirtation over a limited period of time, without profit. The probation officer therefore seems to accept this and not to deal with the options which you have to look at if you are thinking of custody, because they are young offenders...Here (are people) who don't immediately seem to be able to benefit from the probation service. (They have) no employment problems, no accommodation problems."

The solicitor then submitted employers' references and addressed the criteria for custody for young offenders, usefully ignoring the adulthood of one defendant.

"You need to disqualify all other forms of sentence. You can't suspend a custodial sentence. Neither are in a situation where other forms of sentence have been tried, so you would need to say custody is necessary because of the seriousness of the offence. I suggest this is not so. But they are under no illusions and never have expected to avoid custody."

After a lengthy retirement, the magistrates announced sentences of 21 days for both defendants.

"We feel a non-custodial sentence cannot be justified, having regard to the seriousness of the offence. Supplying drugs to anybody places their lives in jeopardy, however small a quantity."

During a post-sentence interview, several issues emerged. The view was expressed that

"We had to make the point that these crimes will be stamped on. We couldn't give fines because it doesn't mean anything to them. Community service wasn't assessed. We thought about 5 days, but the minimum sentence for a young offender is 21 days, so we knew with remission they would do 10, and we wanted to treat them both the same, so that's what we did."



Such reasoning concerning the length of an allegedly deterrent sentence ("I regret the absence of the press.") was curious, although the magistrate explained it in exactly the same terms twice. The assertion of the need for exemplary sentencing itself was also of interest in this case, since one of these magistrates had participated some weeks previously in the imposition of a community service order on a defendant whose involvement in cannabis dealing had been more substantial than that perpetrated by these two. Later, when asked directly about the seriousness of the offence, the magistrate said: "We talked a lot about this". One of their number "felt very strongly" about drugs offences. It is worthy of note in this respect, that the SER observed of one defendant: "His offence does not appear to have endangered the general public if what (he) says is to be believed".

The magistrate remarked: "It was an odd report - took the defence solicitor by surprise I think". Subsequently, it was observed of one defendant: "He's quoted in the report as saying he thinks he ought to give it up for the time being - or words to that effect!" Indeed, the SER did contain the ambiguous assertion: "(The defendant) has stated he has no wish to continue to supply drugs and at the present time his wish is sincere. He is, however, into the drug culture, knowing the venues, language and people who are involved".

In this case, an otherwise strong mitigation eschewed overt confrontation with the probation service over the inadequacies of the reports. Ambiguities in the SERs were interpreted by the magistrates to the detriment of the defendants. Some of the writer's remarks may have been inflammatory to a magistrate with strong objections to the offences under consideration. Whilst the magistrates were in general agreement that this was a serious type of offence, the participation of a strongly opinionated person probably significantly influenced the final outcome.

### Example 7.13

The defendant, aged 29, was charged with driving with excess alcohol and whilst disqualified. He was also charged, with a co-defendant, with a separate offence of ABH. He had several previous convictions, some of which had resulted in custody. He had been disqualified from driving for 3 years after a prior excess alcohol offence.

The assault arose while the defendants were standing in the street. A resident complained to them about the noise emanating from a nearby house. This defendant, aggrieved at being wrongly blamed, became aggressive. After an exchange of blows, the victim went back inside his house, but was pursued by the defendant, who assaulted him. His co-defendant, arming himself with a baseball bat, followed and struck the victim with it.

The defendants were both represented by counsel, who acknowledged that little mitigation was available for the offences. However, on the defendant's behalf, it was stated that he had not originally intended to drive after drinking, but rather "events overtook him", that he too had suffered bruises during the fight, and that after the violence had ceased all 3 men shook hands: "to all intents and purposes the incident was over". The recommendation for probation in the SER was endorsed:

"It is right to say he feels rejected by society. Perhaps a probation order would help to restore his trust. His last violent offence occurred in 1987, and prior to that, no violence for some time. I note that probation has never been tried with this defendant. He has some goals and aspirations and a probation officer may help with this. He has a family with young children who would suffer if he was imprisoned."

The magistrates were in retirement for a full hour before announcing concurrent sentences of 3 months imprisonment and ordering compensation to the victim of the assault of £200, to be paid after release. It later emerged that the lengthy

retirement was due, not to ambivalence about the decision to impose custody on this defendant, but to difficulties in fixing the financial penalties for the co-defendant's numerous road traffic offences. This co-defendant, despite having wielded the weapon, was sentenced to community service for the assault, leniency being extended to him as a first offender.

In a post-sentence interview involving all 3 magistrates, it became clear that they unanimously endorsed the seriousness of these offences. In effect, there had been no dissenting, or cautionary perspective, the magistrates being in full agreement that "[y]ou can't feel satisfied if you've sent someone down, but it was a necessary sentence". Drink-driving should be dealt with severely: "We've got to play a part in shifting social attitudes". This vehement view was of particular interest because I had observed 2 of these magistrates, sitting in different combinations with others, participate in non-custodial decisions in respect of similar offences.

The magistrates had taken note of the information in the SER about the defendant's "childhood in which he was rejected, humiliated, and subjected to violence". The probation officer recounted that "due to his disturbed upbringing he feels that he has been on his own all his life". Furthermore, as a black person, the defendant claimed that he was harassed by police because of his previous convictions, and had been told that he was on a "hit list". The magistrates inclined to the view that he protested too much.

"He feels the world's against him. From the report, he had an unfortunate early life. We were all concerned he's the product of a rotten childhood and as a result he feels the world's against him. But lots of people have rotten experiences and don't turn out that way. People take responsibility."

The writer of this report, disappointed with the result, subsequently asked my opinion whether a recommendation for community service would have swayed the magistrates. The

probation officer was uncomfortably aware of ambiguities in the information which could convey the impression that childhood deprivation was being invoked as an excuse. In particular, the defendant's expressed wish that his claims of police harassment be included in the report led to a feeling of obligation to do so against the probation officer's better judgement.

It is doubtful that the nature of the recommendation in itself had a great significance in this outcome. A coincidence of like-minded magistrates meant that the decision to imprison was not contentious in this case. The magistrates interpreted information in the SER in a manner supportive to their decision. The magistrates placed great emphasis on the SER in their explanation of their decision, ignoring the weak representations of an unfamiliar legal representative.

#### **CONCLUSIONS**

City court was neither unusually excessive nor unusually sparing in its use of custody, when compared with the picture for England and Wales as a whole. Among people at court there was an exaggerated belief in a stable tradition of non-custodial sentencing, which was attributed to reluctance on the part of magistrates to use it. This was an intuitively more obvious reason for the comparatively rare experience of custodial sentences than the decline in the numbers of defendants being sentenced, or the reflection of a decline in the proportionate use of custody throughout England and Wales. Certain situational factors could be identified which encouraged this belief: the comparative rarity of individual experience of custodial sentencing due to the decline in absolute numbers so sentenced; the parsimony of magistrates in their utilisation of custody itself; the discounting of some custodial sentences as "not really custody"; and an overestimation of the extent to which high tariff alternatives were needed to divert defendants from custody.

City court favoured a democratic style of conducting court business, involving problem solving by negotiation and requiring mutual respect in public interactions. City court personnel also favoured a low key, non-confrontational approach to the surveillance and control of behaviour of members of the public. This approach permitted a latitude to behaviour which could be exploited, particularly by defendants in establishing styles of impression management. Within this framework of relationships, certain situational factors could be identified which, in combination, seemed to be influential in the production of custodial sentencing. The composition of the bench of the day, weaknesses in mitigation or SERs and "outsider" status of defendants or defence solicitors, were situational factors in the sentencing process which could become "collapsed" into the single judgement of offence seriousness.

**CHAPTER EIGHT**  
**SENTENCING DECISION MAKING:**  
**GOAL STRUCTURE AND PROCESS**

This chapter examines two aspects of sentencing decision making in City court: its goal structure and its process. These issues are not in themselves special to the treatment of alcohol-related cases, but provide a vital background to a full understanding of the role of mitigation and the utilisation of the intoxication excuse in City court.

**GOAL STRUCTURE**

This phrase, suggested by Furnham, Jaspers and Fincham (1983), is useful here because it implies the potential co-existence of multiple, disparate, but nevertheless interrelated goals. The goals which were weaved into the decision making process in City court originated in diverse sources and were not entirely mutually complementary.

There are three levels at which the goal structure of the courtroom may influence decision making: the prescriptive; the local; and the individual.

**The prescriptive level**

Variations in sentencing traditions should not obscure the universality of some rules in decision making, beyond the strictly legal, despite local differences in interpretation. A principle which guides the choices of all courtroom decision makers is that decisions should be defensible (Fitzmaurice and Pease 1986; Holstein 1985), although the favoured grounds for demonstrating defensibility may vary between courts. The principle that the defensibility of sentencing decisions should be subject to test is, of course, embodied in the institution of the Court of Appeal. Sentencers' general recognition of a need to establish decision defensibility is suggested by observations of the frequency with which multiple and complex reasons are spontaneously advanced in support of

sentencing decisions (Ashworth, Genders, Mansfield, Peay and Player 1984; Bankowski, Hutton and McManus 1987; Fitzmaurice and Pease 1986; Holstein 1985; Konecni and Ebbesen 1982; Lawrence 1984; Parker, Sumner and Jarvis 1989). Since these same studies often apparently expose these stated reasons as logically irrelevant to decisions made actually on simple "rules of thumb", they are frequently treated only as evidence of the general principle that decision makers do not know the "real" reasons for their behaviour (Fitzmaurice and Pease 1986; LLOYD-Bostock 1988; Konecni and Ebbesen 1982; Nisbett and Wilson 1977). Nevertheless, in the context of decisions with significant consequential implications for those affected by them, defensibility appears to be a laudable principle. Sentencers might reasonably be expected to demonstrate the defensible bases of their decisions in such circumstances (Fitzmaurice and Pease 1986).

The manner in which a generally prescribed, ideological purpose may inform the activity of all courts in relation to particular aspects of sentencing has been most clearly observed in the work of the juvenile courts, where it has been possible to study the impact of the specific injunction upon sentencers to have regard for the welfare of the offender. For example, Horwitz and Wasserman argue that the sentencing practice of American juvenile courts is guided by "a model of substantive decision-making oriented toward the character and social environment of offenders" (1980, p.411). They suggest that this particular orientation explains why decisions in the juvenile courts in their study showed little relationship to the legal (e.g. offence seriousness, prior convictions), or to the extra-legal (e.g. race, class) factors commonly found to be influential in the adult courts. Instead, juvenile court decisions were significantly related to the identification of family or school problems in the personal circumstances of offenders.

The sentencing of adults has not been the subject of specific injunctions of this nature, but has been required to address multiple aims, described in the classic principles of retribution, deterrence, prevention and rehabilitation (Hines 1982). Essentially, what is required of sentencers is that their decisions be defensible within the terms of these classical principles. City magistrates frequently remarked upon the difference they perceived between juvenile and adult sentencing.

"Juvenile work...That at the moment is what I find most interesting...Largely because you're dealing with people with their interests in mind...more with their interests and development, thinking of ways of developing them and changing their pattern of behaviour."

"Juvenile court...Because on the whole I think you have more constructive results. You can actually feel very often...that you're helping to sort somebody out into a different and possibly better way of life."

While many magistrates declared a personal preference for juvenile work because of the explicit interest in defendants' welfare, it was also evident that they did not simply carry this ideology into the adult court in undiluted fashion. Whatever their personal preference, such a "pure" approach to adult sentencing was not legitimised by any prescriptive ideology.

Magistrates were, however, notably conscious of increasing external pressures upon them to avoid the use of custody. But they perceived in this, not an ideological stance, but pragmatism. This was reflected in a degree of mild irony in their remarks.

"I think we're softer. I think that's been brought about by these strange intellectual exercises we have to go through if we ever want to send anybody to prison these days."

"Bending over even more backwards not to send people to prison, because the prisons are overcrowded. And I think there has been a change over the thoughts about the usefulness of prison for certain crimes, and we've been



exhorted by the powers that be to really look very carefully at this and I agree with them."

"We're much more encouraged from on high to cut out prison wherever possible...much more emphasis now on trying to find non-custodial sentences."

Although magistrates were generally supportive of the principle of using "alternatives to custody", they were also sceptical of its validity in reality. Their reservations were sometimes related to the availability of resources.

"I'm still pretty cynical about all that stuff...about keeping the 17 to 21s particularly out of prison. When asked a direct question (the officials) had *no idea* where the resources to fund the non-custodial alternatives were going to come from. We all thought: 'Oh, there we are again'. You *cannot* create all these plans that they want to produce based on probation and all the rest of it...you can't do it without money. It will be dreadful and wasteful and thoroughly negative if the whole thing founders on that."

Other magistrates simply did not accept that the non-custodial disposals were capable of representing the severity of a custodial sanction.

"Community service is supposed to be an alternative to custody. But, to me, I would have thought it bore no comparison to being shut up in a prison...O.K., for some undisciplined people perhaps it is a hardship to get up at 8a.m. on Saturday morning and do a day's work for nothing, but I don't think it's as tough as prison."

Thus, while sentencing in adult courts is not constrained by specific prescriptive ideologies, City magistrates were conscious of pragmatic injunctions to avoid unnecessary use of custody. They were not opposed to this in principle, although they were sceptical of the reality of alternatives to custody.

### **The local level**

Different courts establish their individual commitments to the different philosophies of sentencing. For example, the marked variation in the emphasis which different juvenile courts accord to the punishment or welfare of offenders leads to

significant differences in approaches to information processing and decision making (Anderson 1978; Parker, Casburn and Turnbull 1981).

However, it is not always a simple matter to distinguish between a coherent philosophy and a collection of lesser principles, beliefs and practices, combining to produce a local sentencing tradition. Sentencing may be "deeply rooted in tradition, custom and practice and not easily open to examination or change" (Morris and Giller 1987, p.203). This point became clear in the attempt to determine whether a coherent, consensual philosophy existed among City magistrates, which influenced their use of custody. Three significant issues emerged: magistrates' personal philosophies of sentencing; their personal antipathy to prison; and their "working reality" of custody.

#### **1. Personal philosophies of sentencing**

A question about magistrates' "primary aim" of sentencing failed to elicit a consensual philosophy which could be identified in the classic academic principles.

Thirteen magistrates defined a primary aim of sentencing. Seven of these invoked classical terms: 5 mentioned punishment, one deterrence, and one rehabilitation. However, when they explained their aims, they attributed meanings to these terms from which the definitional distinctions of the textbooks were notably absent. It appeared that magistrates conceptualised their aims in a flexible manner to embrace combinations of the classical principles.

"Rehabilitation. To stop it happening again."

"It's to deter the person from not doing it again (*sic*). That's got to be paramount. In other words, rehabilitation I suppose it comes down to."

"There is no doubt in my mind that sentencing is punishing. Initially. But then it goes beyond that. One doesn't mean by punishment that they go and sit in a cell

and they have bread and water. There must be an element of rehabilitation."

"One has a mixture of reasons for imposing punishment. Mainly to deter this person and others."

"I do think that people if they do wrong should be punished for it, because in the long run that is the best thing for them. It's not because I get any satisfaction out of it. A child who does something wrong should be punished so that they actually learn from that. In the long run, hopefully, they won't do it again...I sadly think that society has allowed young people to do their own thing so much that punishment is a dirty word. People must be made to feel responsible for their own actions."

Six magistrates used lay language to describe their primary aim. No attempt is made here to translate these aims into academic equivalents. The flexible use of the academic terms themselves suggests the need for caution in such translation. Literal translations from lay to apparent academic equivalents would inaccurately represent magistrates' conceptualisations, by constraining them within closed text book definitions.

"To be fair. That's the primary aim."

"First of all, I think it's terribly important that one sentences in relation to the offence. That one sentences sensibly and impartially, without trying to put one's own feelings or opinions so much to the fore that one tries to impart a message to society or the community. I think that is wrong."

"To persuade the person not to do it again."

"They don't return to court. And that means that they're leading a straight and narrow life, perhaps. That is the aim."

"To draw the defendant up and make him think about what he's done and hope that he won't do it again."

"To have society kept in balance...the well being of society."

Seven magistrates declined to nominate a primary aim. Five mentioned 2, 3, or 4 aims as of equal merit: 3 mentioned deterrence; 2 mentioned punishment; one mentioned retribution; 3 mentioned the protection of society or the public; one

mentioned rehabilitation; and 3 mentioned some means of influencing the defendant's future behaviour.

"There are a number of things of equal importance, really. One is to educate the defendant and hope to direct their energies in another direction. Secondly, it must be in the form of a deterrent...Thirdly must be the protection of the public. And fourthly, I believe in many cases the victim has a right to expect and to see that some punishment has been given to the defendant."

"Two in my book. One is in the eyes of the public such that they see somebody who has offended against - I know this sounds very pious - the law of the land, that there should be some form of retribution. And the other one is that you must make the offender realise that he has broken the law and he must in some way pay for that."

Two magistrates thought that sentencing was always a mixture of aims which could not be specified *a priori*.

"I don't think there is a primary aim, because it's a combination of things and I think it depends on the offences. With some offences there is no doubt that you are trying to dissuade other people from doing it. With some your primary aim is definitely punishment because you're outraged by what the person has done. Then with others it's very much a mixture that you want to punish but you also want to try and set them on the right track for the future."

"I don't think I could say there's a primary aim. I think it's always a balance of aims. Something to mark the offence. A crime has been committed, it has to be marked in some way because that's the law. Protection of the public, or individual. Trying to ensure that whoever has done it doesn't do it again. I don't think I would have a particular order for those. Marking the offence may be a purely technical thing if it's a traffic offence. Or it might be that somebody has to be punished or make reparation."

The discussion in Chapter Two concerning the indeterminateness of the relationships between lay theories and behaviour would caution against any expectation of a straightforward link between responses to abstract questions about aims and responses in specific instances. Examination of magistrates' explanatory remarks suggest that there were in effect 2 substantive aims in sentencing. Firstly, magistrates thought

that they should represent the interests of society. Secondly, they thought that they should prevent future crime, by which was usually meant re-offending by the defendant, although it could extend to the deterrence of other potential offenders.

These findings complement the findings of other research (Hogarth 1971). Furthermore, City magistrates' personal philosophies were expressed in similar terms to those used by sentencers themselves who have written about the aims of sentencing.

"[I]n my view the main function of the magistrates' court is to absorb the anger and anxiety of society."

(Acres 1987, p.61)

"The aim of the criminal law, and hence the first concern of the sentencer, is to protect and preserve society, and to promote good order and discipline within it, that is, to protect the public by the prevention of crime."

(Cooke 1987, p.57)

Goals such as these, however, are in themselves non-directive as to the manner in which they should be achieved. In Chapter Two it was argued that abstract theories or attitudes guide and filter the processing of information, but do not determine decisions in specific instances. City magistrates perceived in their public office duties to represent the interests of society and to prevent future offending. The practical means to the achievement of these aims was not specified in their personal philosophies of sentencing.

## **2. Personal antipathy to prison**

Magistrates' personal philosophies of sentencing did not reveal an unambiguous commitment to avoid the use of custody. Nevertheless, the attribution to magistrates of reluctance to imprison by court personnel, noted in Chapter Seven, was not inaccurate. This collective magisterial aversion to imprisonment emerged in the course of asking their views on

City court's use of custody. Most appeared complacent about the possibility that they were more parsimonious in their use of custody than some other courts.

"I'm pleased about that. That's a certain degree of enlightenment."

"We're always thought of as a soft bench. I remember going to a training exercise fairly early on and one of the stipendiaries was full of contempt for the soft approach of the (City) magistrates."

"That's interesting. Perhaps the nature of crimes in this area are slightly different from those in larger conurbations, or more deprived areas? That's news to me. I didn't know that. I can't believe that we as magistrates are any softer than any others."

Complacency, however, did not simply reflect the unconcern about the sentencing traditions of other courts which is remarked upon in the research literature (Parker, Sumner and Jarvis 1989; Tarling 1979). Almost all magistrates, during interview, spontaneously deplored imprisonment, although no question directly invited an expression of opinion on the prison system. Indeed, this was the one issue about which magistrates appeared confident of the representativeness of their views.

"I'm all for keeping them out of prison. Prison's going to do them nothing but harm."

"The more I know about prison, particularly the lack of rehabilitation, the less I want to send people to prison."

"The very vast majority of us feel that custody is the most negative thing of all from everybody's point of view. It achieves nothing other than taking somebody out of circulation for a bit."

"I would do anything rather than send somebody to prison, if there's a hope of something else being more effective. I can't speak for the bench as a whole but I think that would be shared by quite a number of people."

"(Our former clerk) was very strong on this, that we should never deprive a person of their liberty unless there just was no other way. To deprive a person of their liberty was the worst thing you could do to them. You

mustn't do it unless there just was nothing else to do. I was trained by him and so I suppose I've gone along with that view."

### 3. The "working reality" of custody

Given their comparatively inexcessive use of custody, and the extent of magistrates' personal antipathy to it, the frequency with which they referred to it in interview was puzzling. Magistrates frequently referred to imprisonment as a real, even regular, sentencing consideration.

One magistrate revealed some of the ambivalences which may underlie a superficially straightforward opinion:

M: (*smiling*) "We're too lenient aren't we!"

JR: "Are you saying that tongue in cheek, or because you think that?"

M: "I think we are too lenient sometimes...Yes, I do think on occasions we're too lenient. Drinking and driving, anything that involves drinking and driving car accidents, I think we are too lenient. I think far more should go inside. And by doing that you're not only showing that person, but you're showing the wider public that that is unacceptable. Unless you (do that) you won't get them to change."

JR: "The thing you said you found rewarding about being a magistrate was pulling people back (from harsh sentences) -"

M: "I think I've done that as many times as I've sent people inside. I don't think there's any conflict there, not with me anyway. Certain offences, in my opinion, don't warrant going inside, even if they've got a list as long as your arm. Because it's obvious if you send them in they're going to be in again, so what are you gaining?"

One magistrate explained at length a problem in the law regulating juvenile custody:

"The law says that a male juvenile may be sent to a custodial sentence for any length of time, but a female may only be given a custodial sentence that is for more than 4 months. We consider that discriminatory. We consider that there should be the same option for male or female. And the local branch, county branch and the national Magistrates' Association approved the recommendation that there should be no discrimination whatever. The same rules should apply to male or female. The response from the Home Office was the whole object of

the exercise was to keep females out of custody. Our response to that is that it's a pointless operation in that any juvenile females that are sentenced will be sentenced for a longer period than males."

Another complained that the increase in juvenile cautioning rebounded on those finally reaching the courts:

"So we only now see very extreme juvenile cases. And I think the problem now with the juvenile panel is that because we think - this is our perception - that most kids have been cautioned at least 6 times before we see them, we now assume that we only get the hard types so we really treat them quite harshly."

City magistrates had not sent a female juvenile into custody at least since 1985, when sentencing statistics for Petty Sessional Divisions began to be published by the Home Office. City magistrates' use of custody for juvenile males over that period had in fact been rather unstable, with 16 (8 per cent of all juveniles) so sentenced in 1985, 14 (11 per cent) in 1986, 5 (5 per cent) in 1987, 11 (12 per cent) in 1988, none in 1989, and 3 (5 per cent) in 1990 (Home Office Criminal Statistics 1985b-1990b). These figures, however, do not obviously support the view that the sentencing of juveniles was becoming increasingly harsh.

Magistrates clearly believed, as it was earlier observed that many of the court staff appeared to believe, that many of the sentences they passed were direct alternatives to custody.

"I always make quite sure in my court that if somebody gets community service it is recorded that it is definitely an alternative to imprisonment. I don't make community service as a sentence in its own right. You're saying to the person: 'As far as we're concerned you should be in prison, but we're prepared to give you community service if you behave yourself and do the work'."

"We've got a good probation service in this area and I think the probation service is now convincing us that their higher tariff ways of dealing with offenders are really punitive and not afraid to say so."



One magistrate, during a post-sentence interview, remarked impatiently on the frequency of discussion about a sanction which was not willingly invoked:

"When we have meetings and we talk about custody, I say: 'Well, when was the last time any of you sent someone to prison?' And they all look round and they can't remember. We don't do it. Then people come round and spend 45 minutes telling us not to send people to prison and why we shouldn't do that and I'm thinking: 'We're already doing this, what are they lecturing us for?'"

Magistrates' pre-occupation with custody begins to become explicable in the light of comments such as the following:

"I think we're always going to put people inside, because that is the only alternative left. Even at juvenile level there are some that you say: 'No, it's got to stop, and it's going to stop now, and it's going to stop here. We've tried, we've leant over backwards with you, you're not listening, you've got to go'."

"I do remember being upset on one occasion, but I really was able to accept that we had done everything to avoid this and that if we didn't do it then we were going to look very foolish."

"I don't think the bench is saying: 'Well, the prison service has got a problem so we won't'. That is not my concern. If he or she needs to go then he goes."

"Paperwork coming from everywhere saying do not send everybody to prison. But nevertheless, that must be the sanction at the end of the day, providing it's there as a punishment, in some cases. And if there are magistrates who refuse to consider imprisonment...then that is entirely wrong, because when you are appointed as a magistrate you have got to agree to be fair and open minded and to proceed with the law as it is. Imprisonment is one of the punishments available."

"In any bench of our size - about 100 - there will be perhaps 20 who take it seriously, in the sense that they take a deeper interest in it. It's not just in here once a week or fortnight, going home and forgetting all about it. They're genuinely interested in how the judicial system works at our level, and indeed at Crown Court level. People who read about it, people who follow it as I do...There's a number of other people - a big majority it may be said - who perhaps tend to see this as another contribution to their community, but don't look at it in that sort of depth. And I do think that because of that we don't grasp the nettle sometimes."

Comments such as these are vital clues to City magistrates' utilisation of custody. They suggest that custody was a part of these magistrates' "working reality". The fact that imprisonment was a real option in their sentencing repertoire, the consequent potential for its use, and the belief that their public duty conferred certain obligations upon them created conditions in which custodial sentencing was an ever present hypothetical possibility. Therefore, they could not permit their personal antipathy to prison to alter its status as the most significant sanction in their working reality as magistrates.

### **The individual level**

Decisions in individual cases may be influenced by specific goals which they themselves generate. Thus, for example, information about an offence or an offender may be interpreted as indicating the particular relevance of retribution or of rehabilitation to the attributes of the case (Hogarth 1971). Research suggests that the view that the goals of sentencing emerge from the facts of individual cases is endorsed by sentencers, who favour a case by case approach to decision making (Ashworth, Genders, Mansfield, Peay and Player 1984; Konecni and Ebbesen 1982; Parker, Sumner and Jarvis 1989). It has been seen that some City magistrates advocated this perspective in their discussion of their sentencing aims.

It was suggested in Chapter Two that lay theories are flexible belief systems, influenced by the perception of specific situations and actors. Because sentencing was guided neither by a unitary prescriptive ideology, nor by unambiguous personal philosophies, and because there was a tension between their personal antipathy to prison and their working reality of custody, magistrates' judgements in individual cases were vulnerable to the influences of situational factors (Burney 1979), as was seen in Chapter Seven. They were also susceptible to moral inferences which were powerfully conveyed in the information presented to them. This resulted in

inconsistent decisions in cases involving objectively similar offences or offenders.

#### **Example 8.1**

The defendant, aged 19, admitted two offences of ABH and a public order offence. He had challenged an older youth, rightly as it transpired, for burgling his girlfriend's house. A fight broke out, in which the male victim was punched in the face, as was also his sister, attempting to intervene. The two victims retreated, but the fight broke out again later, during which time the defendant wielded a brick and a lump of wood, claiming afterwards that he believed that his male adversary had armed himself with a knife in the interim. The defendant had no previous convictions.

The magistrates reproved the defence solicitor for failure to acknowledge the likelihood of custody. The defence solicitor further suggested that the defendant thought that a community service order would be burdensome in the event of his getting a job. The SER detailed the defendant's expulsion from school for poor attendance and work, and recent temporary eviction from home after giving up his latest job. It revealed that he considered that the male victim deserved the attack (thus identifying the defendant with the high risk strategy of victim denial noted in Chapter Five). The defendant was not considered a suitable candidate for probation, and a community service order or fines were suggested. The community service officer, in a separate report, agreed that the defendant was suitable for an order, but suggested that he had been sarcastic in interview and was likely to be unco-operative.

Sentencing the defendant to 28 days detention in a young offender institution, the magistrate said:

"These offences are appalling...[T]he offences are so serious that a non-custodial sentence cannot be justified and the reason for that is that you went about these offences in such a way that we have to make it clear to

you and to other people that such behaviour will not be tolerated."

### **Example 8.2**

The defendant, aged 21, admitted three offences of ABH which had arisen on the return trip of a coach outing to a brewery. During a stop at a pub, the defendant was questioned by police about a theft, of which he was innocent. Blaming another male in the party for falsely incriminating him, he challenged him later on the coach. He was, by this time, very drunk and aggressive, and eventually his opponent got off the coach with his girlfriend. The defendant pursued them and assaulted them both. A third male, intervening, was struck to the ground and kicked in the stomach. The defendant had two previous convictions for dishonesty.

The defence solicitor pointed to the irresponsibility of the organisers of putting two separate parties of young people together on a trip involving considerable alcohol consumption. The defendant had lost control and committed "reckless", rather than intentional, assaults. He had, since the offences, been reconciled with his girlfriend and baby, was working, and had saved £300 towards compensation. Custody would be a "purely negative punishment at a time when he has tried hard to make amends".

The SER described a disrupted and violent family background, as a result of which the defendant was very insecure, found it hard to trust his girlfriend and had no friends. He now accepted a need for counselling and had approached a voluntary agency. Probation therefore seemed unnecessary and community service was recommended.

The defendant was sentenced to 28 day's imprisonment, suspended for a year for the attack on the male who was kicked on the ground. He was fined £100 for the other two assaults, and ordered to pay compensation to each victim totalling £200.

The magistrate concluded:

"[I]t appears that you are making some effort to sort yourself out and we hope you take the advice of (the counselling agency) or wherever it is to get yourself on an even keel."

These two cases show a striking similarity in the basic facts of the offences: the assaults were prompted by a grudge; they extended to those who attempted to intervene; they involved both male and female victims. In the second case, however, there were more victims, including one who was further attacked when already defenceless. It was particularly remarkable that these cases were dealt with, one immediately after the other, in the order in which they are described here, on the same day, by the same magistrates, involving the same prosecution and defence solicitors. The magistrate's remarks to the first defendant were contradicted by the decision in the case immediately following.

The second defendant may have benefitted from the magistrates' disapproval of the pitch of the mitigation address in the first case, providing a cue to an improved performance on his behalf by the defence solicitor. It may also be possible that, given the comparative rarity of individual magistrates' participation in custodial sentencing, these had little stomach for 2 in a row. Such a possibility is not altogether remote. It was hardly likely that these magistrates were entirely unaware of the implications of their decision in a case immediately preceding for the treatment of this one. It was noted in Chapter Two that lay judgments of responsibility are influenced by anticipation of their consequences, and by the motivation of the perceiver. In this case, the magistrates may have been influenced by the immediate motivation to avoid a second custodial sentence, and were therefore particularly susceptible to the moral inferences conveyed in the information presented to them to justify a non-custodial sentence. Whether or not this process occurred, however, in these cases it seems that the magistrates responded more

strongly to the imputations of character contained in the mitigation addresses and SERs than to the objective facts of the offences.

### **Example 8.3**

The defendant, aged 45, admitted three thefts. In one case, he had stolen the wallet of a man who had bought him a drink in a pub. The other two offences involved shoplifting of a few foodstuffs and a bottle of vodka. The defendant's previous convictions dated back nearly 30 years, involving, for the most part, offences of shoplifting and drunkenness. He was in breach of a probation order imposed two months earlier.

The SER detailed a disrupted background, noting in particular the breakdown of a long standing relationship and the subsequent loss of contact with his children. The defendant's history since that time had been characterised by homelessness, alcoholism and periodic imprisonment. His offending was "inextricably linked with his use of alcohol". Requesting the revocation of the current probation order, the writer concluded:

"His alcohol abuse contributes to a chaotic lifestyle in which he is unable to follow through appointments or sustain often good intentions and this in the past has led to further frustration and disappointment in himself and a tendency to blame others for his problems, in particular helping agencies."

The defence solicitor found "nothing to gainsay the probation officer's comment about revoking that order":

"The offences are part of a long standing cycle. The current offences ought to be looked at, not as offences committed to fuel a drinking problem, but out of desperation because of social security problems. Why does he offend? He finds himself in a state of crisis, that leads him to drink and that leads to his committing offences. I invite you to make the inevitable prison sentence as short as possible so that he can get out and start to try to sort his problems out."

The defendant was sentenced to a month's imprisonment concurrently for each of the thefts, and a further consecutive month as a consequence of revocation of the probation order.

**Example 8.4**

The defendant, aged 40, admitted the theft of a book from a bookshop. His previous convictions, dating back nearly 20 years, almost entirely concerned shoplifting. He was in breach of a conditional discharge, a suspended sentence and a probation order, all imposed for similar offences.

The SER described a successful educational and academic career, disrupted through the defendant's drug addiction. It detailed the loss, after long illnesses, of both parents, and the breakdown of a relationship, with subsequent, and continuing, problems in sustaining contact with the children. The offence was committed after his mother's death, which had been followed by acrimonious family arguments. Recommending a community service order, the writer pointed to the defendant's shame and remorse, his use of supervision "to discuss his difficulties with frankness and insight", and "his determined efforts to address his difficulties and rebuild his future". The defence solicitor endorsed and enlarged upon these comments, claiming to know the defendant better than the probation officer. The defendant was made the subject of a community service order.

The histories of these defendants were essentially similar, at least in the details presented as significant: the disruption of long term relationships, with consequent unhappiness and unsettlement; and long offence histories attributed to chronic substance abuse. The difference between them lay in their apparent responses to these personal problems. The first defendant stole "items he thinks he needs and cannot afford" (SER); the second defendant's offending was an irrational expression of drunken despair. The first blamed external problems for his predicament; the second was ashamed and

remorseful. The first defendant was unreliable and demanding on probation; the second was co-operative. These characterisations were conveyed to the court through the mitigation addresses and SERs, reinforced by the unanimous defeat of the defence solicitor and probation officer in the first case, and their equally unanimous optimism in the second. In particular, this optimism led to the discovery of an alternative to custody for a defendant who was, in fact, already in breach of more "alternatives to custody" than his imprisoned counterpart.

Sentencing research suggests that case information serves a vital function in facilitating a judgement of "moral quality" (Hogarth 1971). This implies the generation of a wholistic image of the offender's culpability, rather than the mathematical balancing of separate items of information which many judges apparently believe themselves to perform (Ashworth, Genders, Mansfield, Peay, and Player 1984; Fitzmaurice and Pease 1986). Hogarth found that

"most magistrates consider the 'moral quality' of the criminal act to be more important than the actual harm incurred by the victim. Nearly two out of three magistrates considered information about planning and premeditation or culpability in other respects, to be essential. In contrast, only about one in four considered the degree of personal injury or violence or the damage or loss to property to be essential."

(Hogarth 1971, p.233)

Hogarth also argues:

"With respect to the offender, the majority of magistrates considered family background, criminal record and employment record as 'essential'. It is interesting that family background was picked more often than any other factor. It is a very broad category and one that is difficult to assess. Moreover, it is very difficult to know what to do with this information once it is received. Factors related to the family life of the offender are not generally good predictors of whether the offender will commit a further offence. Perhaps this



information is not used for prediction, but rather as an assessment of the offender as a person. Information of this type can be used to determine whether the offender 'needs' treatment or it can be used to determine whether the offender 'deserves' punishment."

(Hogarth 1971, p.232)

Other research has also found that sentencers' decisions are influenced by a moral characterisation of the offender (Ashworth, Genders, Mansfield, Peay and Player 1984; Parker, Sumner and Jarvis 1989). Indeed, sentencers appear to take some pride in themselves as intuitive judges of character (Parker, Sumner and Jarvis 1989). Parker, Sumner and Jarvis (1989) place considerable emphasis on the role of such moral characterisations in their analysis of magistrates' sentencing decisions. They argue that magistrates, suspecting bias in the information of third parties, construct their moral characterisations of defendants by selectively re-interpreting the information provided by solicitors and probation officers.

These case comparisons illustrate the potential for markedly different responses to essentially similar information. In each case, a central judgement about the offender's character infused the perception of his offending and of the available or appropriate sentencing options. In the context of this study, however, Parker, Sumner and Jarvis' analysis appears insufficient. Firstly, it overlooks the point, established in Chapter Two, that economy through selectivity is a vital aspect of the otherwise impossible task of information processing. In this respect, magistrates are behaving no differently from any other human decision maker. Secondly, these examples reveal the dependence of City magistrates on the cues to the "moral flavour" of individual cases provided in the presentation of information by third parties. The outcomes in each of these cases accorded with the moral inferences conveyed in mitigation and SERs. It seemed that the magistrates, far from performing an active re-interpretation

of information borne out of suspicion of its reliability, were highly susceptible to the "moral flavour" of that information. Again, in the time available to process and respond to a mass of complex information, such susceptibility might be an unsurprising discovery.

Qualitative judgements of objective fact are not a unique phenomenon in courtroom decision making. Whilst, in the courtroom context, such judgements are primarily moralistic in nature, the tendency to generate qualitative, impressionistic, rather than objective, factual judgements about events may be a general feature of information processing. As Carroll and Payne point out,

"[i]t is a general principle of person perception that behavior is not simply judged by its objective components. Instead, behavior is always an interpretation on the part of the observer, a set of inferences that partly ignore and partly go beyond whatever 'act' has been performed."

(Carroll and Payne 1976, p.16)

In this sense, courtroom judgements of responsibility, like all moral attributions, are qualitative, and indeed emotional, interpretations of the available information. Forgas argues:

"[I]t strongly appears that in thinking about interaction episodes, and particularly, in comparing episodes with each other, we tend to think nearly exclusively about how we feel about an episode in relation to other episodes, and not about what that episode is really like in terms of setting, actors, props, goals, etc. Of course, this finding reinforces numerous other findings in social perception research where it turned out that affective reactions dominate impressions."

(Forgas 1981, p.171)

### **Summary**

In Chapter Two, lay theories were seen to be mutually contradictory and indeterminate of responses in specific instances. Here, it begins to become possible to disentangle the contradictory assertions of magistrates in discussing

their theories about sentencing, and to understand how the resultant tensions contribute to inconsistent decisions in objectively similar cases.

The contradictions in magistrates' theories about, and attitudes towards sentencing, and in particular, imprisonment, are not logical inconsistencies. It is not logically impossible personally to abhor imprisonment, while simultaneously doubting official sincerity in promulgating the non-custodial sanctions and believing that a public office confers an obligation on the holder to set aside personal feeling. The problems for City magistrates' sentencing practice did not derive from illogicality, but from the tensions between these different beliefs.

City magistrates perceived the absence of a unitary, prescriptive ideology directing their approach to sentencing. Pragmatic official exhortations to save prison spaces do not carry the emotive force of ideology, even when they coincide with the personal preferences of sentencers. Moreover, since personal preferences were inappropriate bases for the enactment of public duty, City magistrates were obliged to work with the reality of custodial sanctions as the most powerful tools in their sentencing repertoire.

Accordingly, magistrates' abstract personal sentencing philosophies embraced 2 substantive aims which were non-directive as to the manner in which they should be achieved in specific cases: the representation of public interest and the prevention of offending. The tensions between magistrates' beliefs and attitudes concerning sentencing, and the non-directiveness of their sentencing philosophies, rendered their judgements in specific cases vulnerable to the influence of situational factors and powerful moral characterisations implied in the case information. The "appropriate" sentencing goal emerged from the strength of emotional responses to the "moral flavour" of case presentations, possibly aggravated by

the distractions of situational factors unrelated to the case information *per se*. There was little time available for pondering logical consistencies or disparities between cases.

## **PROCESS**

Although this study could not attempt an exhaustive examination of all decision making processes, certain general features emerged which are of relevance to a full understanding of the role of mitigation in sentencing at City court. These features concern the emphasis on structured decision making, magistrates' pursuit of the fullest information, the expression of opinion, and magistrates' sentencing rationales.

### **Structured decision making**

The response of the justices' clerk, whose views I sought on City magistrates' apparently reluctant use of custody was forthright:

"It isn't a matter of being inclined or disinclined to use custody, it's a simple fact that they are currently being told to use it as a last resort. That's the current state of the law and that's what they're here to carry out. They have to leave their prejudices outside the door - whatever their prejudices are."

The vehemence with which this assertion was made was striking. Whatever this justices' clerk's personal "prejudice" about imprisonment might have been, the intention to ensure that magistrates followed the prescribed decision making procedures was clear.

If the level of awareness among magistrates of these procedures is an indication of success, then the clerk seemed to be enjoying some measure. In interview, magistrates frequently referred in general to the increasing training provided for them, and in particular to the structured decision making procedures they were required to follow in individual cases.

"We have structured decision making here - ho-ho, I don't think we do really - but you are supposed to think of the offence first, how serious is it on 0 to 10, and having made that decision, are there mitigating factors that can be taken into account from the point of view of the offender. And do it in a structured way."

"We're required to think very much more than we were in my early days. To think constructively, to think logically, and perhaps sequentially, which I find good. One sees the sentencing process as a series of steps and having reached one conclusion you then progress to the next. This is what I mean by thinking sequentially. There's no room for intuitive process. It's not to say that you may not have a very strong feeling one way or another, but that reflects a personal view. And I think one has to be very careful that doesn't become the dominant thing. Sentencing process, to me, ought to be a gradual progression from point A to the objective."

"We've had this extra training where we must look at the offence. I think we've had a series of training where we mustn't make a quick judgement, we must always look at the offence first...and now there's the question of being asked not to take their previous record into account."

"There's guidelines for magistrates called structured decision making...First of all you look at the offence and then you look at the offender. There are certain questions you ask yourself. Whether the offence is particularly serious of its kind, whether it's one that is particularly prevalent in the area, or something this particular individual has done before, what's the mitigation. And then you've got to look at the offender and ask how many times he's done it before, what his home circumstances are, his income, whether he shows any contrition. Everything relating to the offence and offender...We're encouraged to think about it all."

This awareness, and endorsement, of the structured approach to sentencing decisions among City magistrates contrasts strongly with some other observations of sentencers' behaviour (Ashworth 1987; Burney 1985; Parker, Sumner and Jarvis 1989). Parker, Sumner and Jarvis remark:

"Rather than determining the sentencing process, the legal framework operates as a resource for the achievement of other objectives...and thus, conversely, on occasion as a handicap which has to be overcome in order for those objectives to be met."

(Parker, Sumner and Jarvis 1989, p.84)

It would be naive to suggest that City magistrates did not consider the application of law in the light of their own preferences in individual cases. Nor is it claimed here that City magistrates diligently followed the procedural rules in all cases. Indeed, it has already been argued that magistrates' decisions were vulnerable to situational factors and to the moral flavour of case presentations. Nevertheless, the inference in Parker, Sumner and Jarvis' comment that magistrates in the pursuit of their own objectives were antagonistic towards the proper application of sentencing law does not appear to apply to City court.

### **The pursuit of the fullest information**

It was noted in Chapter Two that decision makers' confidence increases with greater quantities of information, despite its redundancy and its possibly deleterious effects on the quality of the outcome. Carroll and Payne remark that

"decision makers need to feel confidence or validity in their decisions and tend to search for information that is likely to increase perceived validity. In terms of interrelationships among cues, this implies that highly redundant or correlated sources of information are preferred."

(Carroll and Payne 1976, p.25)

City magistrates' enthusiasm for information was most evident in their remarks about SERs.

"I always like to have SERs. We're very often very much discouraged from asking for them because it delays matters and people would rather get things dealt with and I can quite see that. But having done most of my early work on the juvenile bench where we used to have SERs as a matter of course - though that stopped - I just feel very hamstrung if there aren't reports and I don't know anything about the person and I'm just having to guess whether he is somebody who's really inadequate or whether he's somebody who is never going to appear again. It's very difficult sometimes to deduce that from what you hear."

"If possible we need to have reports so that we are able to deal with it in the right way and not find out afterwards what was the cause of the problem."

"They're our right hand, the probation service. They do the ground work, we read the report. They get closer to the client than we do. It would be silly just to throw it out."

Such remarks help to explain a notable discrepancy between an apparent passivity in aspects of magistrates' courtroom behaviour and their emergence in interviews as confident, opinionated people. The ready acquiescence of magistrates to solicitors' applications for SERs at an early stage in hearings was striking. It was common practice for defence solicitors to agree the desirability of reports with the probation officer and to communicate their intention to the prosecution solicitor and clerk before a case was called. This frequently led, after a guilty plea was entered, to an announcement by the prosecution that an application for reports was to be made, and a disclaimer of necessity to enlarge on the minimal facts provided at the stage of deciding mode of trial. There then followed a brief application by the defence solicitor.

The brevity of these prosecution and defence addresses stemmed from the expectation, usually justified, of the ready compliance of magistrates who had no opportunity to form an independent view of the case. Indeed, challenges by magistrates to solicitors' opinions of the relevance of reports seemed to be received with surprise and even annoyance. This annoyance stemmed in part from impatience at magistrates' apparent inability to perceive the "obvious" relevance of reports to the case. For magistrates, however, relevance may well not have been obvious, because they had not been provided with information in a form which would expose that obviousness readily to them. Occasionally, the inadequacy of magistrates' preparation for the decision they were taking became unfortunately apparent.

#### **Example 8.5**

At the start of proceedings against two youths charged with several offences of taking cars without consent, the

prosecuting solicitor alerted the magistrates to the expected application for reports, gave approval to this course and suggested no further information was necessary at that stage. The magistrates were invited to adjourn to a sentencing court and order SERs.

M: "Why?"

CPS: (*surprised*) "I know my friends are applying for reports, and I think that would be a sensible course. These are complicated matters, a number of charges and several thousand pounds worth of compensation is being claimed. These defendants had virtually clean records previously and these offences arose very suddenly and so there's a big change there, which will need to be examined. So I think it would be a sensible course to hear the matters in a sentencing court when there is sufficient time to go through them and reports available."

The defence solicitors then intervened. They were primarily concerned about the compensation being claimed. One admitted to having had no strong intention to apply for reports, but felt it would be useful to avoid further delays to have them ready at the adjourned hearing. The other had agreed the suitability of the case for reports with the probation officer.

M: "Yes, I don't think we would like to sentence without reports in this case, so we'll adjourn to a sentencing court and ask for reports. In the meantime, perhaps something could be agreed about compensation?"

CPS: (*perplexed*) "I hardly think we'll agree. The claim runs into thousands."

M: "But I don't see that we're particularly involved in that."

CPS: (*impatiently*) "Well, that's why I thought it should go to a sentencing court because there will have to be decisions made about the awards of compensation and it will take a long time to go through it."

At this point the magistrate acquiesced.

PO: "Would you also want community service assessments, in view of the nature of the charges?"

M: "Well, we won't be the sentencing bench, but of course it would give that bench another option, so yes."



Surprise at the query about a presumed uncontentious application for reports resulted in the prosecuting solicitor essentially making the application on behalf of the defence solicitors. The magistrates had not grasped the difficulties surrounding the compensation claim. Although community service was intended as an alternative to custody, the magistrate's response to the probation officer's interjection indicated that no thought had yet been given to the sentencing possibilities.

For prosecution and defence solicitors, the practice of asking for reports at an early stage in proceedings was almost certainly prompted by the incentive to save time. It would be naive to suggest that magistrates did not experience a similar motivation, at least on occasion.

**Example 8.6**

The court was running very late into the early evening. The magistrates were presented with a report on a defendant and invited by the defence solicitor to read the final paragraph, in which recommendation was made for assessment in a probation hostel, confirming that a place was immediately available. The magistrates acted upon this recommendation, despite having heard neither the prosecution case, nor mitigation. Nor had they read the full SER, which was in fact very ambivalent in its assessment and recommendation.

Nevertheless, as will be seen, all magistrates in interview clearly spelled out their reasons for obtaining reports, apparently confident of the independence of these decisions, since not one referred to the practice of circumventing strict procedure. The general explanation for magistrates' acquiescence appears to lie in their pursuit of the fullest information. The advantages conferred on defendants by this will be illustrated in subsequent chapters. Nevertheless, it is also to be noted that the pursuit of the fullest information could result in adjournments for reports which

were incapable of contributing significantly or constructively to the ultimate sentencing decision.

#### **Example 8.7**

The defendant, aged 23, admitted offences of driving a stolen vehicle with excess alcohol, whilst disqualified and without insurance. His criminal history included offences of taking a vehicle without authority, drunk driving, drugs possession and criminal damage. Reports were requested from services in an adjacent county, where the defendant had moved to be near his parents. A SER and a report from a drug counselling agency described abuse of cannabis, amphetamines and hallucinogens. At the suggestion of the writers of these reports that the defendant should seek treatment at a therapeutic community for drug dependent people, magistrates deferred sentence to review his progress. The defendant, however, was asked to leave the community after 6 weeks, for persistently breaking the rules, although he did abstain from drugs. He was returned to court, where the defence solicitor asked the magistrates to order SERs again, with a view to making a probation order. The clerk asked the magistrates to consider how much further forward this would take them. Initially, the magistrates declined to order SERs, but after hearing from a mature relation of the defendant that he did not cope well when he did not feel safe and that he needed support, possibly psychiatric, to deal with his problems, they changed their minds.

There was some confusion about the defendant's whereabouts, since he was constantly moving between City and his parents' locality. Eventually, a new SER was prepared by a City probation officer who had known the defendant over several years. This officer professed to be "shocked at his deterioration": "he behaved in a bizarre and uncommunicative fashion, making meaningful discussion impossible". Unable to determine whether this behaviour reflected drug intoxication or psychosis, the probation officer suggested psychiatric assessment. However, the officer cautioned: "a fresh Probation

Order would serve very little purpose, since he seems unaware of the necessity for change, or of the commitment that such an Order would demand". The magistrates requested a psychiatric assessment.

An outpatient psychiatric assessment was inconclusive, but indicated possible schizophrenia. The magistrates followed the suggestion to use their powers under mental health legislation to order inpatient assessment. The subsequent report indicated that the defendant had behaved normally throughout the 4 weeks in hospital. The defence solicitor continued to favour a probation order, in the face of resistance from the probation service on the grounds that the defendant was constantly on the move, making supervision impossible. The magistrates imposed fines totalling £500 and disqualified the defendant from driving for 3 years.

This case took a total of 8 months to process, with a final result which was hardly different from that which would have been dictated by a just deserts approach in the first instance. The magistrates repeatedly pursued information relating to the defendant's drug abuse and mental condition, although such information could not alter the issues which determined sentence and which were known from an early stage: the defendant was rootless, was not amenable to supervision in the community, and could not be coerced into treatment. Notably, among the volume of information amassed over these months there was no attention paid to the real nature of this defendant's offences, which were neither drug induced nor the product of a psychosis, but alcohol-related driving matters similar to those of previous convictions.

### **The expression of opinion**

Individual magistrates bring a variety of background experiences, attitudes and common sense theories of crime and justice to the sentencing exercise (Lawrence and Homel 1986). However, since sentencing in the British lay magistrates'

courts requires consensus between several decision makers, strongly divergent perspectives would seriously impair the necessary speed of the proceedings. Candidates for the lay magistracy tend to be gregarious people, widely involved in their community, and thereby experienced in the skills of negotiating group consensus, with perspectives and attitudes reflecting those prevailing among members of the particular bench to which they are elected (Bankowski, Hutton and McManus 1987; Burney 1979; Bond and Lemon 1979; Hogarth 1971). This occurs despite an apparently sincere pre-occupation with establishing cross-representation of public opinion among the magistracy (Burney 1979). In the background to courtroom practice, therefore, there is a process of selection which reduces the potential range and diversity of the lay theories and attitudes of the key decision makers.

However, the presence of broad homogeneity should not obscure the important point that, among the lay magistracy, collective decisions are negotiated *after* the presentation of information in individual cases, allowing for divergent individual interpretations to occur in the first instance. The extent to which diversity is permitted to manifest itself in the retiring room seems to vary between courts (Burney 1979).

Among City magistrates there was a high regard for the expression of opinion in the retiring room, which was exemplified in the practice of seeking the view of the least experienced magistrate first. This practice has been found in other magistrates' courts (Burney 1979), but its potential significance has not been fully explored. In empirical terms, such exploration is problematic, because of the inaccessibility to researchers of retiring room discussions. Nevertheless, some hypotheses about its consequences may be drawn.

Magistrates remembered vividly the discomfort of their initiation into magisterial decision making by being asked

directly for an opinion in the absence of any clues to the views of their seniors. None, however, disapproved of the practice, which appeared to serve two purposes. Firstly, it confirmed the importance attached to the expression of opinion.

"(The clerk) said this: 'You are appointed because you're opinionated people'. And therefore there's no point in being a magistrate and being a shrinking violet...I've always been encouraged to tell what I honestly think, and I have to accept that I can be wrong sometimes and have it explained to me by a senior magistrate who's got that much more experience."

"When I did my original training I deliberately went and did Part 2 (elsewhere), just in order to come across another group of people and attitudes. And I was appalled how much less enlightened (it) was. A lot of new magistrates there complained that new magistrates were meant to be seen and not heard. I found it dreadful. (Here) we're expected - and encouraged - to express your view from the start. In the retiring room we start off always by asking the least experienced magistrate first for his or her views. Some of the more irrepressible ones try and burst in straight away with what they think, but that is the way we approach things. So that people shouldn't be overawed by what more experienced people feel."

Secondly, it may be hypothesised that the practice provided a platform for the socialisation of new magistrates through teaching them to think about cases in the manner of their colleagues. Magistrates described a process by which their naive opinions might be modified through a series of questions and suggestions.

"I was a bit worried about it at first, but then when you realise that there are the 3 of you, and they're only trying to help you, as well as the 3, to get an opinion - a new opinion perhaps. You can be in a situation sometimes when the people have been on the bench so long that they take it automatically that that's the decision. They always give you the opportunity and say: 'OK, you're a new (person), have a go, and then we'll explain why'. 'Do you think this?' And then you come round and think well, yes."

This process of persuading new magistrates to attend to those cues to which significance was customarily attached and to

consider them in the manner of their experienced colleagues might thus provide a highly effective means of transmitting and reinforcing the traditions of the bench.

However, a potential drawback of the encouragement of diversity lies in the hindrance to decision making which it may pose, highlighting the importance of recruitment as a strategy for simplifying courtroom decisions. Frequent divergence in the interpretations of case information by individuals required to reach a consensus would introduce a significant obstacle to a task constrained by pressure of time. Such differences may be particularly difficult to resolve, since "a perceiver who has combined all of the[se] elements in an idiosyncratic fashion has not so obviously made a mistake" (Shaver 1985, p.173). Holstein (1985), studying juror discussions, demonstrated the considerable impediment to consensus decision making posed by highly discrepant interpretations among the participants. Furthermore, the quality of decision making in these circumstances was not improved, and even appeared to deteriorate, with protracted deliberation. Certainly, it appeared that City magistrates could spend a great deal of time in retirement over cases for which, in reality, the sentencing options were limited. One probation officer remarked, in interview: "Sometimes I've got to say I do wonder what they go and deliberate about for (so long). I'd have locked them up within 5 minutes quite often!"

However, one magistrate eloquently described some of the concerns which could encourage this heavy investment in discussion:

M: "It gives me a lot of pain, sometimes."

JR: "Why do you say pain?"

M: "You get people in court - and I think this is the one thing Joe Public doesn't realise - the bench only hear the facts that they hear in court...You only can make a judgement on what is presented to you, and there's some times when it's (difficult). It gives me cause for concern at times, great concern...The power that 3 people have got, the greatest power you've got these days, because there's no capital punishment, is to take

somebody's liberty away. You can't really get any higher than that, can you? That's a tremendous power. And if you're a strong chair(person) you can influence your 2 sides people, there's no doubt about that. So one single person has tremendous power. Now if he or she don't (*sic*) exercise that power correctly - and when you have to come to a conclusion about sentencing people to a custodial sentence you really do think about it...I always put myself through the hoop on that one."

### **Sentencing rationales**

Sentencers' tendencies to justify their decisions as constructive responses to the needs of individual cases, and in particular those of the defendants, are remarked upon throughout the sentencing research (Ashworth, Genders, Mansfield, Peay and Player 1984; Bankowski, Hutton and McManus 1987; Fitzmaurice and Pease 1986; Hogarth 1971; Konecni and Ebbesen 1982). Hogarth, more sympathetically than most, points out that sentencers, required to make vital decisions rapidly and to announce them with conviction, "are under enormous psychological pressure to believe in the efficacy of the penal measures they apply" (1971, p.75).

It is not the intention here to add to this body of literature by a general examination of the sentencing rationales of City magistrates, but to identify one aspect in which they appeared to be distinctive. It has been observed in the afore-mentioned research that sentencers' rationales extend to the justification of incarceration as a constructive approach to meeting offenders' needs for rehabilitation. The personal antipathy which many City magistrates felt for imprisonment conflicted with their working reality of custody as the most important element in their sentencing repertoire. This might suggest that they would resolve the "dissonance" (Festinger 1957) between their feelings and behaviour, when imposing custody, in the manner suggested in Chapter Four, by shifting their perspective to accord with their action. Hogarth found evidence to suggest that this process occurred among Canadian magistrates.

"A magistrate who believes in reformation is caught in a classical dissonance situation. He has a concept of self as a treatment-oriented magistrate. ...[H]e also sees offenders as needing treatment. But he is faced with a prison system that many people claim to be basically harsh and punitive, and the constraints of the situation demand that he send at least some offenders to prison. He could change his image of offenders, seeing them as 'evil' people deserving punishment, but he would have to change his concept of self to that of a punitive magistrate. The easiest way out of the dilemma is to see prisons as therapeutic institutions."

(Hogarth 1971, p.77)

City magistrates, however, seemed to have little or no access to such comforting rationales for incarceration. When discussing their theories of sentencing in general terms, magistrates usually portrayed imprisonment as a negative option. Imprisonment seemed rarely to be envisaged as fulfilling either of their substantive aims: it was not generally in the public interest and it did not prevent offending.

"There's nothing in prison to keep them from re-offending, except the sheer squalor of living in those conditions."

"We all know that sending someone inside doesn't do any good. All it does is to contain and take them out of society for so many months. That's all it does. Prison governors will tell you that."

"It also comes from a conviction that I hold that prison is very unlikely to reform anybody. Although I accept that in certain circumstances society demands, and I think I as part of society would demand that certain people have to be sent to prison, I would do anything rather than send somebody to prison if there's a hope of something else being more effective."

"Having been round the prisons, nobody could think they were doing anybody any good. They're undermanned. If you thought somebody was going there to learn something useful it would be a different matter, but if they're going there to learn new tricks and be exposed to the dangers of AIDS with needles being passed round...And also the workshops aren't manned."



There were 3 cases in which a custodial sentence was followed by a post-sentence interview. In none of these cases did magistrates suggest that the experience of custody would in itself be helpful to the defendant. Rather, they appeared to appeal to some form of "damage limitation". The curious reasoning by which an allegedly deterrent sentence of only 21 days was calculated (Example 7.12) has already been remarked upon. In the case of a defendant imprisoned for offences of drunk driving, disqualified driving and ABH (Example 7.13), the magistrates repeatedly stressed to me their (almost certainly unrealistic) hope that the probation service would help him with his problems during and after the custodial term. The third case concerned a defendant sentenced to 3 months imprisonment for a total of 16 offences, including shoplifting, theft of drugs from a doctor's surgery and GBH. The most important consideration for the magistrates was "to try and get him off his addictions". This, however, was not to be achieved by imprisonment, but by the prospect of the defendant's admission to a therapeutic community after release.

"We deliberately tailored the sentence to make it as short as we possibly could, given the more serious ones, to enable him to go to the clinic. Basically the public's protection came first, and so the clinic came first and we tried to ensure that he could go there as soon as possible."

During post-sentence interviews concerning defendants given non-custodial sentences, magistrates frequently related reasons for rejecting the custodial option. These reasons fell into 3 general categories, with some cases attracting more than one categorisation:-

#### **1. Custody unwarranted**

In 6 cases, custody was rejected because the offence was not regarded as sufficiently serious, the defendant was a first offender, a young offender, or had helped the police and could pay a heavy fine.

## **2. Custody pointless**

In 7 cases, magistrates thought that a custodial sentence would have no impact on the defendant. In 2 cases, this observation took the form of a straightforward observation about custody.

"We're not going to make any progress with fines or with custody."

"There's no point putting him inside because he would just carry on back to square one."

In the remainder, custody was compared to the more influential non-custodial options.

"He's been in custody once before. We thought he was the type to find going inside once again a soft option. This groupwork programme is going to be far more tiresome."

"The point was made in mitigation that he had had everything and it did no good, and the 4B attachment at least made an opportunity. The one road which hadn't yet been taken...and we were told that the 4B has a good record for non-reoffending as opposed to custody."

"He rather shelved his responsibilities and had a breathing space in prison, it's almost a way out. Whereas with probation and its conditions he's got something to face up to."

## **3. Custody harmful**

In 4 cases, it was thought that the imposition of a custodial sentence would harm the defendant's prospects for reform.

"If we'd looked at any sort of prohibitive sentence like custody, we might have torn him apart mentally."

"He ought to have been punished more severely I suppose, but as a drug abuser it would have destroyed him."

"Everything said we had to activate the suspended sentence unless it was unjust...the SER said he had got on top of the problem, these were not drink-related and he had a job. If we did send him to prison everything he had been building up would be dismantled, he would lose everything and probably go back on the drink. We're taught to regard community service as an alternative to custody - what does that mean if it's not equivalent to prison?"

Such arguments in specific cases accord with the personal antipathy to prison which magistrates expressed in general terms, and explains the parsimonious use of their powers of imprisonment noted in Chapter Seven.

### **Summary**

These features of decision making are crucial to an understanding of the role of mitigation in the sentencing process. They suggest a general approach to sentencing in which rapid, intuitive judgements were discouraged, details of individual cases received attention and the range of potentially constructive responses to their needs did not include incarceration. It is not claimed here that each case was subject to rigorous examination leading to independent decisions; indeed, the susceptibility of magistrates to the influence of situational factors and to implied moral characterisations has been observed. Nevertheless, as general features of the approach to decision making, these elements suggest a receptiveness to the influence of mitigation, which, it was argued in Chapter Five, would succeed through an appeal to the individuality of a case. Hogarth observes:

"[P]unitiveness in attitudes and beliefs is associated with a fairly simple (concrete) way of organizing information in the process of judgement. The thought processes of punitive magistrates appear to be characterized by stereotyped or compartmentalized thinking. Individual bits of information are organized in a relatively fixed way with little or no integration. In contrast, non-punitive magistrates appear to use information in a more complex and subtle way. Their thought processes are characterised by flexibility, autonomy and creativity. Their tolerance for conflict and ambiguity are higher, and their capacity for abstract thought or conceptualisation is enhanced. They appear to be much more involved in the sentencing process and find it a more difficult and demanding task."

(Hogarth 1971, p.319)

In Chapter Five, it was suggested that attitude change, in the direction of leniency, would be achieved by increasing

attention to the circumstances of individual offences and offenders. The features of decision making noted in City court discourage responses based on general, or stereotypical beliefs about, or attitudes towards, particular kinds of crime or criminal. The structured, discursive approach, favouring personalised information about defendants, permits the sympathetic identification with the plight of individual offenders. Furthermore, City magistrates would find the non-custodial options more attractive as constructive responses to defendants' needs, since they had little access to such justifications for the use of custody.

These general features of decision making could lead to unnecessarily laboured decision making in some cases. Certainly court personnel often complained about superfluous requests for reports or lengthy retirements in what, to them, appeared straightforward cases. In other cases, however, these aspects of the decision making process could permit successful mitigation through a personalised focus upon individual defendants.

## **CONCLUSIONS**

City magistrates' personal philosophies of sentencing embraced 2 substantive aims: the representation of the public interest and the prevention of offending. These aims are in themselves non-directive as to the manner in which they should be achieved in specific cases. Magistrates perceived the absence of a unitary, prescriptive ideology directing their approach to adult sentencing, and were sceptical of pragmatic official advice to avoid unnecessary use of custody, although this complemented their own antipathy to imprisonment. They recognised in their public office a duty to work with the reality of custody as the most powerful sanction in their sentencing repertoire. The tensions between magistrates' beliefs and attitudes concerning sentencing, and the non-directiveness of their sentencing philosophies, rendered their judgements in specific cases vulnerable to the influence of

immediate situational factors and to moral inferences in the presentation of information.

Four features of the sentencing decision making process in City court have been identified: the structured approach; the pursuit of the fullest information; the encouragement of the expression of opinion; and the lack of constructive rationales for imprisonment. These general features of decision making could result in unnecessarily protracted deliberation in some cases. However, they also provide a basis for successful mitigation, by encouraging receptivity to personalised information about individual offenders.

**CHAPTER NINE**  
**SENTENCING DECISION MAKING:**  
**SIMPLE SCHEMATA, OFFENDER CHARACTERISATIONS**  
**AND**  
**THE INTOXICATION EXCUSE**

This chapter examines strategies for simplifying the information processing task in the courtroom. Some simplifying strategies which played a vital part in sentencing decision making in City court are identified: simple schemata and offender characterisations. The use of information about the involvement of alcohol in an offence to enhance these simplifying strategies is demonstrated. The utility of offender characterisations, not only for explaining offences, but for formulating and justifying responses is also shown.

**THE RESORT TO SIMPLIFICATION**

Fitzmaurice and Pease (1986) identify four considerations in the judgement of responsibility: the act; the actor; the target or victim; and the environment in which the act occurs. However, the potential quantity of information which these four elements may yield is vast. The difficulty of processing this mass of information is exacerbated by features of courtroom procedure. For example, the quality of the information itself may be poor (Hogarth 1971); the formal sequence of its presentation disrupts efficient processing (Hogarth 1971; Shapland 1987); and there is pressure of time (Pennington and Lloyd-Bostock 1987). In this context, decision makers develop "simplifying choice heuristics in an effort to reduce cognitive strain" (Carroll and Payne 1976, p.24; also Eiser and Van Der Pligt 1988; Van Duyne 1987; Lawrence and Homel 1986).

This is not a random process. It is guided by the requirements of the information processing task. Formal judgements of responsibility are influenced, not only by the elements of the situations in which the acts under judgement are committed,

but also by the situations in which those judgements themselves are made (Lloyd-Bostock 1983). These situations define the purposes, consequences, and thereby the form of those judgements (Lloyd-Bostock 1983).

The need for decision defensibility, identified in Chapter Eight, requires sentencers to furnish generally understood and acceptable reasons for their choice of sanction in individual cases. Defensibility, therefore, appeals both to general principles and to case specific information. In these circumstances, sentencers' decisions appear to be guided both by "general frames of reference or perspectives" (Lawrence 1984, p.321; also Asquith 1977), providing an orientation to the task, and by specific strategies for processing information in individual cases (Lawrence 1984; also Carroll and Payne 1977, and Hawkins 1983 on parole decisions). This analysis of the information processing techniques of sentencers is highly reminiscent of the relationship between general lay theories and concrete cognitive scripts or schemata suggested in Chapter Two.

Important aspects of City magistrates' "general frames of reference" were considered in Chapter Eight. The difficulty of the information processing task confronting them in individual cases when cues to rapid interpretation were slight or absent may be illustrated.

#### **Example 9.1**

Two defendants, aged 17 and 18, were jointly charged with theft of a motorcycle.

**CPS:** "The loser of the motorcycle, at 7.30p.m. on 29th April, put it in his shed at his home, but didn't lock it. He noticed it missing at 10.45a.m. the next day. The cycle had already been spotted by an observant passer-by, driving along, when he saw 2 youths near a cycle, lying down in the grass. He stopped and saw them go back to it and start taking parts off it. He took the number of one of the cycles they were riding. Next day he again passed the lay-by and noticed that someone was continuing to strip the cycle. He contacted the police, who located the

owner, to identify it. The owner estimated the value of the cycle at about £900, but the insurance company have paid him and there is no claim for compensation to-day. The defendants were traced through the number taken of the cycle. (The first defendant's) immediate reaction was "I didn't do it", and (the second defendant's) reaction was very much the same. They were interviewed by the police and ultimately there were admissions. (One defendant) wanted some bits for his motorcycle and (the other) entered into this scheme to steal a motorcycle, secrete it away and appropriate the bits wanted by one of them."

This oblique approach to describing the offence commission, through a discussion of the behaviour of non-offending parties rather than that of the defendants, was quite common in more serious, and complex cases. Magistrates exposed to information in such a manner would have to work hard to form a judgement of defendants' culpability.

In this context, an observation may be made about the use of SERs in complex cases. Not infrequently, magistrates were given SERs to read prior to the formal commencement of the sentencing court. Occasionally this also happened during a normal court session, when there were interruptions and delays in the processing of cases. The intention behind this practice, innocently enough, was to save time. The manner in which this purpose was achieved, however, might have surprised probation officers, or given court personnel cause for concern about the protection of due process, had they considered it. In a post-sentence interview, following the imprisonment of a defendant, I was told:

"The report told us about the background, but also about the incident. It's a good thing that reports do that more these days. We had the reports before the court and this saved everyone a lot of time. It makes for more efficiency with such complicated information. We didn't have to rely on a recital of facts and it wasn't slanted in any way. It was a straightforward account of what happened."



In the absence of clear guidance from solicitors or probation officers, magistrates had to find their own explanations for criminal conduct.

#### **Example 9.2**

The defendant, aged 28, admitted causing an affray. The prosecution solicitor told the magistrates that the incident escalated out of "a rather ludicrous row", over the allegation that a coin had been stolen from the defendant's son by a neighbour's child. This defendant had some prior convictions, which did not include serious violence, and of which the most recent had occurred 8 years previously. While recounting in detail somewhat conflicting versions of the offence, neither the prosecution nor the defence solicitor offered a persuasive explanation as to why the defendant had armed himself with an axe for the conduct of this neighbourly dispute, and had lost his temper in an unnerving manner out of all proportion to his grievance.

The defendant was black, wore his hair in dreadlocks, and, being legally represented, did not speak during the proceedings. It appeared that the magistrate had found an explanation for his disproportionate aggression, when imposing a fine of £100 with the unwarranted advice: "There is no need in this country to go round armed with an axe and deal with situations in this way".

#### **SIMPLE SCHEMATA**

In Chapter Two, concrete "cognitive schemata" in lay theorising were identified as means of information processing and decision making about new situations in terms of everyday events. Decision making research suggests that "schemata" (Holstein 1985; Mandler 1984), are established early, as information emerges, providing "initial characterisation" (Fiske and Neuberg 1989), or "preliminary" (Scheff 1966) or "working hypotheses" (Lloyd-Bostock 1988), to guide the

selection and organisation of subsequent data (similarly Carroll and Payne 1976; Hawkins 1983).

In City court, in cases which were relatively non-serious and unproblematic for sentencing, the prosecution solicitor sometimes opened with the reassurance that "[t]his is a straightforward case", or "[t]he defendant has no previous convictions". Alternatively, magistrates could be offered cues to suitable schemata by the prosecution solicitor's opening remarks. These cues suggested obvious explanations of the offence under consideration which simplified the information processing task for magistrates. No other item of information could rival the success of intoxication in the provision of simple schemata. Indeed, in a search of 50 sober cases, only 2 simple schemata could be identified. In a case involving 4 shamefaced youths who had climbed up flagpoles to appropriate the flags while out for a drive, the prosecution solicitor announced: "This appears to be a jaunt". This diagnosis was confirmed by the defence solicitor's reference to "a jolly night out". Of criminal damage to a car perpetrated by a 43 year old first offender, the prosecution solicitor remarked that it was "a revenge attack" aimed at his ex-wife's new boyfriend.

These simple schemata are derived from information specific to the offences and offenders. Although readily understood as explanations for these particular offences, they are not applicable to a generality of cases. Intoxication, however, is widely available as a simple, intuitively obvious explanation for offending because of the range of behaviours and moods with which it is associated in lay theory. Moreover, this information rapidly conjures a vivid picture, conveying the moral flavour of the case in question. These illustrations of opening remarks by prosecution solicitors quite literally "speak for themselves":

"At about midnight, the defendants were going in a group to a party, already having been drinking. They were high-

spirited, and they decided to run across the roofs of cars for some reason."

"This arose from an argument between the landlord at the (pub) and the defendant, who didn't want to give up his drink at closing time."

"The defendant was walking past the window of (a department store) at 5 to 1a.m., with friends. They had been drinking and the defendant described himself as "merry". For some reason he picked up a bin and threw it through the window."

"This case can be dealt with very simply by using the defendant's own words: 'I was in a pub and bought them. They were nicked'."

"At mid-day the defendant was found asleep beside an empty beer can by a police constable."

"The defendant is charged with theft of handbags. He was seen by a shop manager in the shopping centre, who saw a drunk sitting there. He opened his coat to a female drunk, showing her 4 handbags."

Occasionally the prosecution solicitor would open with oblique references to intoxication, which were nonetheless intuitively obvious to the listener. A brief indication of the moral flavour of the offence would suffice to prepare for the emergent picture of intoxicated disinhibition.

"At 9p.m., in the city centre, a police officer saw the defendant lying propped against a pillar. He heard him say to 2 young ladies: 'What are you fucking looking at?'"

"It seems appropriate to start with the comments of (one defendant), who said to the police after the event: 'I was walking down (the) street with my mum and there were insults shouted at us and things got out of hand'. It 11.30p.m. on a Friday night. Things got so out of hand that 8 police officers and a dog handler were called to the scene."

"To begin by an explanation, really an apology, that I am going to have to use certain abusive language, which is really what brought this to court. At a quarter to one in the morning..."

In cases such as these, the defence solicitor often confirmed the simple schema suggested by the prosecution.

"This was 2 young men, the worse for drink, swearing themselves into arrest. They were warned and they continued, because of the drink."

An opening announcement by the defence solicitor of the fact of intoxication could immediately impose a vivid schema upon information blandly recited in the prosecution address, even for such relatively serious offences as burglary.

"My client describes this offence as 'plain stupidity', and his 2 co-defendants agree wholeheartedly with that view. All had been out that night drinking - and drinking heavily."

The utility of statements about intoxication for constructing simple schemata becomes even more evident when compared with mental disorder as an explanation for offences. References to defendants' psychiatric problems were severely constrained by the delicacy of the subject, which demanded a tact and diplomacy quite unnecessary in the treatment of intoxicated offenders.

### **Example 9.3**

The defendant, aged 22, admitted 2 thefts from a bookshop and asked for a similar offence to be taken into consideration. He had no previous convictions.

**CPS:** "This is not quite the typical theft of books...What happened was that he went into (the shop) with some books and swapped them for books on the shelves. In interview he explained he had come to (City) to go to the library and also to exchange some books he had with him for books of a similar value in (the bookshop). He was effectively using (the shop) as a library. He also admitted to a theft from another bookshop that day and 2 books from (the same shop) previously, which is the offence to be taken into consideration."

The prosecuting solicitor's opening remark alerted magistrates to unusual features of a common offence without providing an explanation. The defence solicitor explained that the defendant, finding that he had earlier bought study books which he did not need, "could not bring himself to go into the shop and approach an assistant and actually barter for the

exchange". Letters from the defendant's doctor and psychiatrist, however, revealed a chronic physical complaint which had provoked severe depression, now being treated through psychotherapy. The defendant was conditionally discharged with an expression of magisterial sympathy.

References to a defendant's mental disorder, notwithstanding the potential vastly to simplify a case, could be politely oblique to the point of virtual obscurity.

#### **Example 9.4**

The defendant, aged 38, was charged with 3 shoplifting offences, with 3 more to be taken into consideration. Guilty pleas were taken with some difficulty, with many interruptions by the defendant, who eventually threw up his hands and cried: "Oh! I've just had so much!". He bowed to the bench: "I'm sorry, it's your court, there'll be no more". He then sat quietly through most of the hearing.

**CPS:** "The defendant is a noticeable man. He was seen in (a chemist's shop), and next day he was approached by a police officer, who said he believed he had taken some pills. The defendant gave him some pills, saying: 'I took them for experimenting on myself'. He also said: 'I've taken some books too'. The books were found at his house -"

**D:** (*interrupting*) "I showed them where they were."

**CPS:** (*resuming patiently*) "I think you all know this defendant has a habit of stealing books, and has had that habit for years..."

The defence solicitor similarly appealed to magistrates' long familiarity with the defendant.

"His problems are well known to the bench. Because of his problems he is a persistent offender, but they are more nuisance offences, at the lower end of the scale. He did co-operate with the police. You know his problems. He has his ups and downs..."

The magistrates decided upon financial penalties while the defendant held up his hands in a prayer-like attitude.

This defendant liked the more outrageous fashions. He was missing an eye as a result of self-mutilation during an extreme psychosis some years earlier. His recurrent mania was exacerbated by chronic substance abuse. His interest in the occult informed his choice of misappropriated literature. Yet, had these magistrates been unfamiliar with the defendant, these veiled references to his "noticeability" and "ups and downs" might have been unintelligible. They glanced frequently in his direction as they listened, as if to confirm the implications of some of the solicitors' remarks. To-day however, the defendant was soberly dressed in a grey jersey and jeans. His dark glasses, though inappropriate to the occasion, concealed his disfigurement. His demeanour during most of the hearing was submissive. Only his early interruptions, his prayer-like posture as sentence was considered and later protestations about the size of his unpaid fines provided clues to his capacity for bizarre behaviour. These actions, however, were ambiguous: they could have been taken for mockery of the court.

The unrivalled power of intoxication schemata, by contrast, derived from free and explicit use, unrestricted by the rules of decency and social restraint which constrained references to tragic facts about defendants' mental disorder.

#### **OFFENDER CHARACTERISATIONS**

"Processes of characterisation are central to human judgements about the world, and are at the heart of decisions made in the criminal process from the policeman on the street onwards. Characterisation is a means of endowing individuals with attributes to make sense of them and to place them; it creates and organises expectations since it embodies a description and a prediction."

(Hawkins 1983, p.119)

Tajfel and Forgas explain that individuals "tend to judge other individuals in terms of their pre-existing category system of the 'types' of people known to them" (1981, p.126).

Lloyd-Bostock (1988), however, describes sentencing as a "skill-based" decision, involving learning to classify novel information as belonging to a certain type of phenomenon, meriting particular responses. This analysis suggests a similarity between sentencing and professional decision making, as described in Chapter Two. Perhaps, then, sentencers develop an implicit typology of cases through their combination of lay wisdom and direct courtroom experience.

Thus, sentencers may utilise lay conceptualisations of deviance in ways which simplify the processing of cases. While these lay conceptualisations will involve common sense notions with wide familiarity, different courts may rely more heavily on different lay theories. For example, Parker, Casburn and Turnbull (1981) found that magistrates in a punitive juvenile court appealed frequently to the concept of "criminal families" in their explanations of juvenile delinquency. Such a theory of deviance is widely understood in everyday life, and, indeed, has received a measure of academic attention. It is unlikely that City magistrates were unaware of this common sense theory, but it was not one upon which they appeared to be reliant in their case characterisations.

Similarly, the basic offender characterisations which enabled City court to process complex cases appeal to recognisable common sense notions of deviance. Four characterisations which had particular relevance to the use of information about intoxication or alcoholism could be identified: those concerning young adult offenders aged 17 to 20; those concerning young men aged between 21 and 25; the category of "tragic" offenders; and the category of "sick" offenders.

**Young adult offenders: the vulnerable and the undisciplined**  
The widespread ambivalence in conceptualisations of, and attitudes towards, youthful crime is reflected in criminal justice policy itself (Rumgay 1990). For example, the co-existence of rehabilitative borstal training and punitive

detention centre regimes characterised British responses to young offenders for more than 30 years. While there may be general agreement that young offenders "may be at a turning point which decides whether they will become recidivists or responsible citizens" (Home Office 1980), opinion fluctuates as to the means to achieving the latter outcome.

At the heart of this dilemma lies the question whether youthful crime is a symptom of maturational vulnerability or of indiscipline. In City court, however, both of these explanations were true. There was no need for a choice in the theoretical abstract between the competing explanations for youthful crime. The choice between them was made at the level of assessments of individual offenders.

#### **Example 9.5**

The defendant, aged 18, admitted offences of burglary, taking a vehicle without consent, theft of petrol, and allowing himself to be carried in a stolen vehicle. He had been hitch-hiking from Scotland to London with a friend. They were offered a lift by 2 youths who, it transpired, were juvenile runaways driving a stolen car. This gradually dawned upon the defendant, as the prosecution solicitor observed, "yet his wish to get to London over-rode his scruples". Indeed, after a while, "[i]t seems his wish to get to London had rather faded", as he became involved in further offences. He had one previous conviction for assault.

The defence solicitor produced the conviction records of the juveniles, "as it is part of my mitigation that one of them is a sophisticated car thief". The offences were portrayed as the response of a naive youth to the persuasions of a unique set of circumstances.

"The defendant was unsophisticated, in a situation where they couldn't get lifts, and were picked up by 2 sophisticated car thieves, albeit young ones. He has hitch-hiked regularly, but only in these circumstances was he encouraged on this path."



The defendant was "a sensitive, articulate young man, with a bad start". His potential strength of character was suggested by his conscientious compliance with the court proceedings.

"He has had to appear in court on 4 or 5 occasions and, coming from Edinburgh, has always been here punctually. That says a lot about him when you know some young people in (City) find difficulty in getting to court on time."

The SER substantiated this characterisation of a youth without criminal intentions falling prey to the vicissitudes of an unstable life-style. The defendant's adolescence had been disrupted by the death of his mother, rejection by his step-father, and educational failure. Poor accommodation and employment opportunities encouraged repeated, but always unsuccessful, forays to England to try to improve his prospects. In this context, his acquaintance with his co-defendants "was the result of ill-luck and even worse judgement".

"His unsettled, rootless background has obviously developed considerable self-reliance, but he is aware of a need for adult advice and guidance to help him settle into a more responsible life-style. Despite his chequered career, he is clearly not an habitual offender and is extremely anxious to make a new start."

#### **Example 9.6**

The defendant, aged 18, admitted wounding, theft and failure to surrender to his bail. He had 3 previous convictions for dishonesty. The assault was the result of a grievance against the male victim, who had stolen and damaged his bicycle. Encountering the victim by chance, the defendant demanded money in compensation and punched him, breaking his nose. The thefts involved the persuasion of a female shop assistant by the defendant and another male to pass them some clothing.

The defence solicitor argued that the suggestion to the shop assistant had initially been intended as a joke: "They were in fact quite taken aback when she complied". For the assault, however, it was acknowledged that little mitigation was

possible, although "[i]t was a culmination of the frustration he felt as to how he had been robbed". The breach of bail had arisen because the defendant had been ordered to appear on different, but consecutive days for the different offences. He missed the first appearance while looking for employment, volunteered this information to the court next day and was told a warrant had been issued for his arrest. The defence solicitor countered a complaint in the SER that the defendant had missed an appointment with the probation officer with the claim that he had informed the probation service of a prior arrangement to play football in Holland.

The writer of the SER recounted that the defendant had been expelled from school, and cautioned by police, for striking another pupil. This appeared to be the basis for the subsequent observation that "he has a history of violent acts when he perceives he has been wronged". The defendant had left various jobs through stealing, boredom and disputes with supervisors. The probation officer remarked:

"(The defendant) presents as a casual young man. This is reflected in his failure to surrender to bail and perhaps in his first missed appointment with me. His attitude is further reflected by his opening a bank account...after leaving school and issued (*sic*) cheques which could not be honoured...[T]he bank recovered the money from his mother...It is perhaps this attitude which led (him) to act in such an ill considered way on these occasions, with little thought for the consequences."

Compensation to the victim of the assault was recommended, because, since the defendant considered "he had some justification in his actions such an award would have a salutary effect". In addition, a probation order, with a condition of attendance at a groupwork programme, would "address the issues central to (his) offending". The magistrates followed the recommendation on the grounds, explained in a post-sentence interview, that this would be "a greater punishment" for "this horrible young man" than custody.

Both of these defendants were placed on probation. This may owe much, in the latter case, to City magistrates' preference for the non-custodial options and to a mitigation address which succeeded in moderating some of the moral inferences in the SER without undermining the credibility of the recommendation.

These 2 cases illustrate the kinds of information upon which the assessment of young adult offenders was based. Notably, the ambivalence between views of this group as either vulnerable or undisciplined is reflected in the ambiguity of the information deemed pertinent to the assessment. The characterisation of young adults as vulnerable or undisciplined relied upon essentially similar information in each case. The information itself appealed to 3 common sense beliefs about the causes and nature of youthful crime:-

### **1. Impulsivity**

The notion of the impulsivity of youth, to which, as was seen in Chapter Three, academics and offenders may subscribe, is most strongly invoked in Example 9.6, in which the defendant acted upon feelings of grievance evoked by a chance encounter. Mitigation addresses frequently appealed to this theme.

"This seems to have been a flash of temper, the over-reaction of an immature young man."

"We are under a duty to co-operate with the police, however unreasonable their behaviour may be. But you can understand that you are a young man, perhaps not as imbued with law-abiding instincts as others, you are stopped in what you think is an unreasonable manner and you react."

SERs also invoked this notion.

"(Probation) will aim to promote the defendant into thinking more carefully about his behaviour and to try and act in a more responsible and mature fashion."

One magistrate graphically described the impulsivity of youth in a post-sentence interview:

"None of this was done with any criminal intent. He acted out of impulse, not planning to bash her face or drive the car at her."

## 2. Contamination

The notion that young people are susceptible to the evil influences of others is heavily invoked in Example 9.5. Defence solicitors used this theme as a means of imputing blame to others without the connotations of evasion of personal responsibility by the offender himself which such a strategy could have.

"The defendant has no previous convictions...[C]ertain items...were deposited in his room by others and he was told not to touch them."

"During the early part of this year, my client appeared to get into a bad lot. He was in a group of youths who were in trouble, and may still be. He has since left that group..."

SERs, as in Example 9.5, could contextualise offending within a problematic period in the defendant's life which rendered him especially susceptible to the promptings of others.

"(The defendant) had argued with his girlfriend, and feels he was in such a state of mind that he was easily led astray."

"Since coming to (City) he has not been particularly selective about the company he has kept and recognises that he needs to choose his friends more carefully."

Magistrates, in post-sentence interviews, expressed their views on contamination in the following ways:

"He seemed to be easily led, but on the other hand he must have known something about crime because he had a cousin who had all those other offences...He's from a culture where taking cars is a way of life. To him it probably isn't a terrible thing to do at all."

"Our thoughts were directed at whether he was involved in the drugs scene, because people of that age wouldn't need to arm themselves (with a carving knife)."

### 3. Turbulence

The investigation of heavy drinking and offending in young adulthood, noted in Chapter Three, are aspects of a wider academic interest in adolescent turbulence. This was an extraordinarily useful concept in the explanation of youthful crime.

Firstly, young adults were still sufficiently close to their childhood for the effects of early trauma to be perceived in their present plight. Example 9.5 illustrates this approach. One magistrate, in a post-sentence interview, expressed the theory in the following remarks:

"He'd had a most unfortunate early life...I think immaturity is an important word here...His age and lack of guidance. He's lacked that most of his life. Very immature, due in part to a very disrupted life from the age of 2."

Secondly, a turbulent phase in a defendant's personal circumstances could explain his susceptibility to criminal temptation or contamination. This was a common theme in mitigation addresses.

"The offences were committed at a time when he had had to leave his parents and was living rough."

"[H]e was short of money. Perhaps, at a deeper level, the offences were committed at a phase when he was leading an unsettled life. Particularly, he was in difficulties with his family and particularly his step-father, which persuaded him to leave home and adopt this unsettled way of life in (City)."

In an SER, a probation officer identified turbulence in a manner which reflected well on the defendant's sense of personal responsibility:

"He offered no excuses nor (*sic*) reason for his behaviour, and only when I pushed the point did he say that all the offences had occurred after he had been asked to leave his mother's home."

These concepts of impulsivity, contamination and turbulence, often in combination, richly informed the characterisation of young adult offenders. It was noted in Chapter Eight that objectively similar information could evoke different responses and moral judgements in individual cases. In respect of young adult offenders, the moral ambiguity of even well-developed and complex theories of criminality was striking.

The age-related patterns of heavy drinking and offending, considered in Chapter Three, might encourage expectation of very frequent invocation of the intoxication excuse in this age group. However, about half of the young adult defendants in the study were classified as "sober" offenders: there was no reference to alcohol in the proceedings. This even balance could reflect the complex and well-developed theories of youthful criminality on which characterisations were founded, reducing potential reliance on explanatory information about defendants' use of alcohol. Certainly, it seemed that in many of the alcohol-related cases, this information was less important than social information pertinent to the identification of impulsivity, contamination and turbulence. Direct reference to intoxication thus often took the form of a minimal statement which, by implication, illuminated the claim that an offence was impulsive, a response to peer influence, or part of a turbulent phase. Thus, SERs contained information such as the following:

"[F]ollowing an argument with his father he left home and whilst in a distraught state committed an offence of criminal damage. I understand that (he) had consumed a considerable amount of alcohol."

"[H]e advised me that he met his co-accused through a friend of a friend. He suggested that they had been drinking and simply went around car parks in (City), breaking into cars and stealing the contents...There are two particular areas of concern - being offending behaviour and family and relationships, that (he) could well do with looking at in some depth. I am also concerned for one so young to be rootless and without any guidance."

Information about defendants' alcohol use could on occasion contribute heavily to characterisation. However, the contradictory lay beliefs about motivations for drinking and alcohol's effects, examined in Chapter Four could exacerbate the ambiguities inherent in the characterisations themselves.

**Example 9.7**

The defendant, aged 19, was sentenced for offences of theft, handling, breach of the peace and 2 offences of criminal damage. He had served a custodial sentence for his first, sexual, offence, and had been twice subsequently convicted for less serious offences.

The SER noted the onset of heavy drinking following the defendant's release from custody, when "he was shunned by the local community and all of his friends bar one". Later, a long relationship with a girlfriend broke down, after which "his alcohol consumption rose again and he committed the offences currently before the court". Against this background, the SER detailed the offences.

One offence of criminal damage was committed while the defendant was "light headed" after drinking, and was "rather bored and still angry about his recent breakup with his girlfriend". The defendant fell asleep in his car beside the wall on which he had spray painted graffiti: "He did not own up to the offence as he thought that he could get away with it." The second criminal damage offence involved throwing a beer mug through a car windscreen. This followed a drinking session with other youths during which "conversation deteriorated and eventually verbal abuse was exchanged", culminating in the driving of a car into the defendant's path by another of the group. The public order offence also followed a drinking session, when the defendant slapped his drunken sister "to bring her to her senses", and punched a man who remonstrated. Dishonesty offences involved stage passes and a crate of beer stolen at a music festival.

These detailed accounts of drunken loutishness overwhelmed the original suggestion that drinking reflected unhappiness and rejection. The writer concluded that the defendant was easily influenced by peers and "lacked the self control and the sound judgement to deal with situations more appropriately especially having consumed a lot of alcohol". Despite the lengthy attention to the detail of the offences, including the number of pints consumed on each occasion, the writer thought the defendant had not been "entirely honest" with him. Accordingly, it was argued that "he would neither respond to the exacting supervised structure of a Probation Order, nor would he positively address his previous offending behaviour individually or in a group setting".

This conclusion as to the defendant's unreliability was curiously at odds with the information that he had held stable employment for 2 years, had nearly paid off a £400 fine, had become almost teetotal in deference to a new girlfriend, and "expressed feelings of guilt and embarrassment about his offending". He was fined £750, and told: "You really are in deep trouble".

Skilful use of information about a young defendant's drinking could enhance a clear characterisation.

#### **Example 9.8**

The defendant, aged 20, was jointly charged with an older man with telephoning police with a hoax warning of a bomb at a local factory. His only previous conviction, for burglary, had occurred 4 years earlier.

The writer of the SER reported that the defendant was "at a complete loss" to explain the offence, the more so since he had spoiled a chance of employment at the factory. Having been drinking beforehand, the defendant had little recall of the offence. This observation led to an examination of his drinking habits, which raised "the possibility that he may



already be doing himself some permanent health damage". The probation officer then contextualised this drinking pattern in the lifestyle of "a young man who has somewhat lost his way in the world", who "appears rather aimless and depressed" and who "regards the regular and excessive consumption of alcohol as a means of identifying with his friends". Recommending a probation order to give the defendant "a much needed 'push' in the right direction", the probation officer explained:

"(The defendant), like many of his contemporaries, has come to view the time spent in a public house as being the only interesting or enjoyable part of his day. Motivation towards finding employment or stretching himself in any more constructive way would appear lacking. In such circumstances a loss of self-respect and a deterministic view of one's fate becomes something of an inevitability."

#### **21-25 year olds: the independent and the needy**

There was no ambiguity in the deep personal problems or serious offending histories, sometimes in combination, of this older group of young men. It was quite common for defence solicitors representing such young men to juxtapose their age and criminal record. This technique stressed their alarming predicament and the urgent necessity for action to halt the slide into chronic recidivism.

"The defendant is 22 and now on his third page of previous convictions...There is a frightening pattern of offending now emerging."

"He is aged 24, with an appalling record...Sentences passed have spanned the whole range of options including a 13 month custodial sentence."

"The defendant is just 21 and has chalked up a number of convictions, some quite serious for his age."

Age was also connected with the intensity of personal problems to heighten the sense of urgency.

"My client has an appalling record...All of the offences arose when he was not only heavily drunk. He was very drunk indeed. He was associating with the alcoholics in (the city centre). I repeat: he is 21."

"[H]e is 23. There you have the real problems and the stark reality of his age...The relationship (with his girlfriend) will go if he is imprisoned, there is no doubt about that and that raises the possibility of him being itinerant at about 24 years of age."

Against such a background, the court could be urged to seize a last opportunity to avert irretrievable deterioration.

"[Y]ou might look at the past failure. But all I can say is that it is a positive sentence, not a negative one. This would obviously be the last chance to him of the devotion of such funds to treatment."

"I ask you to say you will give him a chance and defer sentence...This would enable him to continue, as he is now desperately trying to do, to take the right steps."

"The 4B option is perhaps the only choice open to you. Custody, or probation with a 4B order. That may at least give him some real direction to pursue for the rest of his life."

In this context, "the turning point" was often a key concept in the argument.

"But he does realise, perhaps for the first time, that it is up to him to change. And he has been making an effort with help from others to take the first steps along the road."

"The ingredients of stability - a home, a relationship - which were previously lacking, are now present. I invite you to defer sentence to see if what he promises is true. By sending him to prison you may be destroying the only chance he has for the future, because, for once, it's all there waiting for him."

Within these general parameters for mitigation, complex cases in this age range were understood in terms of 2 broad categories: the independent and the needy. Because of the preponderance of alcohol-related cases any attempt to distinguish these characterisations in terms of sober offenders would be misleading.

### Example 9.9

The defendant, aged 22, admitted burglary, 3 shoplifting offences and breach of bail. He had 3 previous convictions, the last being 3 years earlier.

The burglary involved smashing the window of a leather goods shop to take a jacket. On arrest, the defendant disclosed earlier thefts of clothes. It was explained that he was a Glaswegian, who had come to City to live with relations, attracted by the prospect of work. Whilst he was unemployed, his girlfriend became pregnant and he committed the offences to raise money to support her. After his arrest, his girlfriend returned to her parents in a distant city, and he went back to Glasgow to help with a crisis in his own family. Thus pre-occupied, he lost track of the court proceedings.

The SER outlined a history of parental alcoholism, cruelty, and institutional care. His recent offending, in a state of panic, "was not rational behaviour, but the product of an unstable young man the worse for drink". The probation officer offered the following assessment:

"The present offences seem to represent an isolated episode of madness in a young man whose unstable history suggests he could have turned out much worse. (The defendant) impresses as a likeable and otherwise intelligent individual of considerable energy. He talks so much and so fast that it is at times hard to keep track of him. He seemed very determined, and I had the impression that if he set his mind to something, he would either succeed one thousand per cent or fail utterly."

With this in mind, the probation officer recommended financial penalties, observing:

"Whilst I could see some benefit in the Probation Service monitoring and encouraging his progress, I would not consider him an ideal candidate for Probation as he stated his determination not to reoffend and I consider he may well manage this.."

The defendant was ordered to pay compensation totalling £775, and placed on community service, although the probation

officer had questioned the realism of such an order given his geographically scattered commitments.

The probation officer's remarks in this case illustrate the point at issue. Independence, in these judgements, did not necessarily entail either the absence of personal problems or the ability to solve them in a laudable manner. Rather, it concerned a defendant's will to deal with his problems in his own way, for better or worse. Thus, SERs contained the following assessments:

"(The defendant) is an independent young man who has encountered some problems in his use of alcohol and its effects. He appears to have recognised this and states that he has consciously reduced his drinking considerably. (He) does not, however, wish for specific help with this. Whilst (his) circumstances have clearly been chaotic in the past he has recently made efforts to find secure employment and independent accommodation reflecting a more responsible attitude to his situation than the Court maybe (*sic*) aware of, given his failure to appear in Court."

"(The defendant) is a young man who appears to have the potential and the ability to make something of his life rather than to continue committing offences. In the past he has been unable to capitalise on his assets and the serious current offences appear to arise from him taking a fairly easy option in obtaining money without regard to the consequences."

This capacity for self-determination could evoke some annoyance with offenders who chose the less respectable routes through life. One magistrate in a post-sentence interview remarked: "He's an irritating young man, with qualifications but going nowhere".

#### **Example 9.10**

The defendant, aged 25, was charged with assaulting a police officer, criminal damage and a public order offence, all arising from a single incident when police intervened in a domestic dispute. The defendant, "unsteady on his feet and smelling of drink", kned an officer in the groin and tore

another's jacket. He had 14 previous convictions, mostly for burglary, but including arson and assault.

Exploiting the scope professional influence noted in Chapter Seven, the defendant's probation officer attended court, explaining: "I realise this report is lengthy, but, having known the defendant for 7 years, I have tried to point out the circumstances behind his offending and the influence of the various sentences he has had passed on him". The detailed account of a miserable life was summarised in the SER in the following way:

"(The defendant) is a reasonable young man who desperately wishes to avoid further trouble. He grew up in a home where excessive drinking occurred and there was little opportunity to develop secure relationships, hence his inability to do now. He had no particular skills at school either academic or sporting which would have provided some self-esteem and he has developed into an anxious man. When his anxiety levels became high he turned to drink and drugs as the quickest way of alleviating these anxieties. Unfortunately it served merely to compound his difficulties...(He) has served four lengthy periods of imprisonment and it holds neither fear nor confrontation for him as the regular routine of prison life shelters him from anxieties. Indeed it has only been in institutions that he has been able to sustain any growth."

The magistrates dispensed with the defence solicitor's services by signalling their intention to follow the recommendation for a probation order including requirements that the defendant attend a groupwork programme and "undertake whatever treatment the probation service should direct for (his) alcohol problem".

Despite the persistence, and often unpleasantness, of these defendants' offending, their plight was frequently illustrated by the intractability of their problems and a pathetic reliance on other individuals or institutions. SERs contained observations to this effect:

"(The defendant) is a man of considerable, but not necessarily disabling, intellectual and social

limitations. He has been well, possibly too well, supported in the past by his mother, and probably lacks the capacity to exercise much self-discipline. His life lacks structure, and has become increasingly focused on the consumption of alcoholic drink, probably limited only by his lack of means. Drinking is the root of his offending."

"In such cases results cannot hope to be achieved instantaneously but will require instead sustained intervention over time. The major task until now has been to attempt to minimise the seriousness of the defendant's offending; thus avoiding the damaging effects of custody; whilst awaiting the level of his emotional maturity to catch up with his chronological age."

"[D]uring his first period on remand...he looked visibly ill through worry about the experience. Now he seems relaxed and confident in the cells which have regrettably become like a second home for him...When in custody, he is always full of regret for his actions and of good intentions for the future, and I believe these are all genuine at the time...The question remains...how long can he maintain this progress?"

Defence solicitors and probation officers thus appealed directly to magistrates' humanitarian instincts and antipathy to imprisonment as unconstructive. As one defence solicitor despondently concluded: "It's an uphill struggle, I don't pretend that it's much more than a case of one step forward and 6 back". Magistrates' remarks in post-sentence interviews expressed their sympathetic despair.

"I somehow didn't want to be fierce to him. I just looked at him and wondered: 'Why are you offending like this? Why can't you pull yourself together?' It stuck in my mind that he's a good worker. I felt he would like to overcome this and become a good member of society. At his age he's either going to do it or not."

"He's thoroughly inadequate. He doesn't work. he doesn't do anything, he was at (special school). No-one's managed to make anything of him. In the old days he would have been in what we used to call 'colonies', but nowadays it's all community care...He needs someone to organise his activities, take him out, see he is occupied."

### **"Tragic" cases**

This was a group of 11 cases involving 3 defendants in their 30s and 8 in their 40s. They had usually been successful

earlier in life; they had lost all close relationships; in several cases their criminal histories began relatively late; and they were addicted, 2 to drugs and 9 to alcohol. Essentially, the picture in each case was of a life ruined by drink or drugs; a downward spiral of disappointment, followed by substance abuse, precipitating further disappointment. The incomprehensibility of this apparently inexorable progress into physical and material ruin was identified in Chapter Two. No "right thinking" person, equipped with the capacity to do otherwise, could conceivably elect for this life of decay.

#### **Example 9.11**

The defendant, aged 42, had admitted 6 shoplifting offences, extraction of electricity, 2 breaches of bail and breach of a community service order. These offences dated back 11 months. Sentence had been deferred 6 months earlier in the expectation that the defendant would get treatment for his alcoholism, "make efforts to work" and pay his extensive fines.

Before relating the individual offences, the prosecution solicitor eased the information processing burden for magistrates with the comments: "All (stolen) items were either bottles of alcohol or foodstuffs...It's right to say that in respect of every matter before the court the defendant was under the influence of alcohol...".

The defendant had pursued a successful naval career, followed by skilled work in the Middle East. Then his wife and children left him, his career ended and his substantial criminal record began. The SER concluded:

"(The defendant) has been unable to fulfil the objectives set by the Court during the period of deferment and appears to be someone who is on a course of self-destruction. He has talked of suicide...[H]e would find any financial penalty almost impossible to pay...He is considered unsuitable for Community Service because of his poor health and his performance on a previous work placement. (He) has been placed on Probation a number of times...However, he remains a vulnerable individual and if the Court feels able to make a non-custodial disposal

today, I would ask the Justices to consider imposing a six month Probation Order on (him)."

After reading this, the magistrate addressed the defence solicitor: "We've got to approach this realistically and my colleagues and I really think that the recommendation...is the way we ought to deal with this, unless you have other representations".

The alacrity with which these magistrates reached their decision was striking. It illustrates the power of compassion to obscure considerations of offence seriousness and persistence. The clerk, who encouraged the magistrates to make a probation order for 12 instead of 6 months, subsequently commented:

"Six months is really too short. Even (City) probation service can't cure someone like that in only 6 months!...[W]ith someone like that, even if he seems better in 6 months, problems recur, don't they? He was very lucky not to go down today, or even upstairs (to Crown court), with a record like that. OK, he's a sick man, but look at his record".

The drug addict of Example 8.4, who was placed on community service whilst in breach of a conditional discharge, a probation order and a suspended sentence, provides a further illustration of this phenomenon. Another concerns a 45 year old alcoholic charged with drunk and disqualified driving. He had numerous previous convictions and was in breach both of a suspended sentence imposed at crown court for serious assaults and of a probation order made subsequently. The magistrates adjourned the case for enquiries into placement at a therapeutic community: "No-one wants to put anyone - particularly an intelligent man - away if there's another way out".

One magistrate, in a post-sentence interview in one such case, remarked:



"It's very hard to put yourself apart from the social aspects of things and not be swayed by the emotion of it, but it's nice when you can take a more benevolent view."

### **"Sick" offenders**

The ubiquity of "sickness" as a metaphor in lay life for alien, frightening or distasteful phenomena was considered in Chapter Two. During the course of the study, I heard the word "sick" applied to certain offenders by magistrates in interviews, and by clerks and solicitors in informal exchanges. The category of sick offenders cut across age distinctions among defendants over 21, although most were middle aged and alcoholic. Notably, no young adults fell into this category. Since there was no logical impossibility preventing a young adult from being "sick", their absence from the category possibly reflects the less entrenched appearance of their problems. Turbulence and vulnerability to contamination, for example, were qualities of a transient maturational phase. Sickness, by contrast, was an intractable condition.

There was more to sickness, however, than intractability. The superficially gross notion of sickness involved a nuance which underpinned a serious sentencing dilemma. Something in the inner experience of sick offenders defied both comprehension and rational response. Although they were capable of criminal responsibility, they appeared incapable of exercising responsibility on their own behalves. Their behaviour was not only socially inappropriate; it was self-destructive. They seemed to lack the basic self-interest which should inform rational behaviour and upon which the available responses of the court relied. This characteristic went deeper than defiance or excessive neediness. Sick offenders simply did not appear to grasp the advantages to be had from co-operating with the courtroom process. It was this absence of, in a quite literal sense, "personal responsibility", which lay at the core of the concept of sickness. The responses of City

magistrates to sick offenders must be understood in terms of the acute difficulty this posed them in sentencing.

Two basic groups of sick offenders could be identified: sick young men and hopeless cases.

### **1. Sick young men**

As has been seen, the categories of independent and needy young men were capable of embracing deep personal and social problems and relatively serious offending. They therefore sufficed for the vast majority of offenders aged 21 to 25. A few defendants, however, could not be accommodated within these categories. These defendants differed from the majority in that some aspect or aspects of their behaviour appeared bizarre. However, although they appeared to need psychiatric treatment, they thwarted all attempts to provide it.

The defendant described in Example 8.7 was one of these sick young men, and magistrates' fruitless pursuit of the fullest information over a period of several months in that case was symptomatic of the manner in which these defendants paralysed sentencing decision making. This was not the fault of the magistrates alone. Another case took 9 months to process, impeded partly by the defendant's failure to respond to bail on several occasions, partly by his changes of address and partly by the quest for medical, psychiatric and social information. Even at the final hearing, the defence solicitor urged the magistrates to seek a new psychiatric report, despite the fact that "[t]he SER recommends community service and that will be my submission at the end of the day". This curious advice illustrates the dilemma. It seemed doubtful that anyone really believed that the sentencing options would alter in consequence of yet more information in these cases. The problem was the unease aroused by the prospect of imposing any "real world" sentence on a defendant, when, as one magistrate remarked in a post-sentence interview, "you wonder if he's in touch with the same world as us".

The result, in each case, was procrastination, in which all court personnel, to some degree, conspired, although it was the magistrates who were ultimately held responsible for these delays. The following exchanges occurred in one already protracted case, as the defence solicitor pre-empted the prosecution address in the manner described in Chapter Eight:

**DS:** (*hesitantly*) "I'm wondering whether I should make an application here. Just after he appeared last, he was committed to custody for breaking a (civil court) injunction. He spent his time in custody in the hospital. There is a SER which outlines a poor response to supervision. I wouldn't normally ask for a further report, but...his circumstances have changed...Because there isn't a favourable report you will be considering custody and should have all the information. He has an appointment with (a forensic psychiatrist)."

**M:** (*to PO*) "Anything to add?"

**PO:** "He's in breach of his probation order by these further offences, failing to notify change of address and he consistently fails to keep appointments. In my view he finds supervision more of a burden than a help and his problems are not amenable to probation supervision. Possibly (the psychiatrist) may have something to offer, but it's a matter for you whether you want that information or not."

**Clerk:** "A SER might assist you in your sentencing, to give you the up-to-date circumstances."

**M:** "Psychiatric reports?"

**DS:** "I asked (the psychiatrist) if he was willing, but I can't order reports...It's for you if you feel it would be helpful."

**M:** "Well, we feel it would be helpful. Yes."

Afterwards I spoke to these magistrates, who were not optimistic that the psychiatric report would have much to suggest, "unless he's *very* sick, but that might make sentencing even more of a problem".

"He's a sick man, obviously, although some of his behaviour may have been for our benefit. We need as much information as we can get, but then what can we do at the end of the day?"

These sick young men were all alcohol-related offenders, but the significance attached to this fact varied. It was ignored in Example 8.7. In another case, the "chronic alcohol abuse"

identified by the probation officer was thought by a magistrate to reflect the defendant's escape into fantasy.

"Is it a dependency, a prop because he can't cope with life, or is it an escape route for someone who likes a binge? It's not the same when someone is trying to blot out problems...We would take a different view of someone who just enjoyed it."

In a third case the defence solicitor laid great emphasis on alcoholism, combined with epilepsy, as the key to understanding the bizarre offences which included accompanying firemen to a blaze started by the defendant himself, and demanding money on the pretence of being a detective: "He was driven by an insatiable urge to consume alcohol".

## **2. Hopeless cases**

The numbers of destitute alcoholics appearing before City magistrates for drunkenness offences had fallen in recent years, since the introduction of a cautioning scheme. Their petty thefts and public order offences, however, still brought them into court, where their appearances were viewed with some foreboding by the clerks, upon whom fell the burden of dealing with the unpredictable behaviour observed in Chapter Seven.

The compassionate treatment of tragic defendants was inspired by recognition of their fall from respectability. The hopeless cases, however, appealed to no such tragic history. Indeed, they had shed their histories, living and being judged entirely in the present. They seemed never to have been otherwise than they were now: vagrant, dirty, physically ruined and temperamentally uncertain. It was rarely necessary to enquire into the backgrounds of these men to establish their hopelessness. It was simply obvious.

This alien condition inspired a mixture of distaste, impatience, embarrassment, humour and patronisation, in concentrations which varied according to the behaviour of the defendant in the courtroom. Patronisation sprang from the same

belief that these sick men were incapable of self-regulation which justified the swift removal of disruptive defendants into custody observed in Chapter Seven.

#### Example 9.12

It was nearly Christmas. The obese 41 year old defendant was apparently sweating, despite the season. He clutched a handkerchief, with which he mopped his face.

**Clerk:** "You're charged with theft of a bottle of alcohol -"

**D:** "I didn't mean to -"

**DS:** (*raising hand*) "Shhh."

...

**Clerk:** "Do you plead guilty or not guilty?"

**D:** "Guilty. I'm sorry I did it -"

**Clerk:** "Yes, your solicitor will explain for you later."

**CPS:** "The proprietor (of a guest house) heard someone walking out, went to investigate and found the defendant with a bottle of whisky...[H]e said that he had often walked past and saw it was a cosy place with plenty of drinks available and he thought he would go in and get himself a nightcap."

The defendant's previous convictions spanned 9 pages and 25 years. He was in breach of a suspended sentence, and had already been reconvicted once since its imposition, for similar "walk-in" burglaries.

**DS:** "Each time he comes to court he says this will be the last time, and looking at his previous convictions I think I can say he has been trying very hard. I have counted up his previous convictions and they have been lessening...due very much to the help and support of the (homeless person's hostel), where he has been living after many years of living rough."

The defendant wrung his handkerchief while the magistrates and clerk conferred.

**M:** "We've got quite a difficult problem, because you've got a suspended sentence for burglary almost a year ago, you've been to court during the period of suspension but it wasn't activated, and here you are again. We're going to impose one day's imprisonment for the suspended sentence and we're going to impose one day for this

offence, concurrent. So you'll be kept in custody till the close of business today."

D: (*puzzled*) "Till the close of business?"

M: "Yes."

D: (*holding up one finger*) "One day?"

M: "Yes."

D: (*beaming*) "Oh, thank you very much. Merry Christmas!"

M: "Yes, we hope you have a merry Christmas, and an honourable one. Now go with the officer."

D: (*cheerfully to waiting police officer*) "How are you? All right?"

(*Smiles exchanged among those left in court.*)

### Summary

Simplification by characterisation is not necessarily dysfunctional or unjust. Decision makers may learn over time that, in the context of the situation within which they operate, certain gross cues constitute fairly reliable guides to more complex distinctions. Characterisation thus provides usable information at relatively little cost in cognitive effort or time (Fiske and Neuberg 1989). For example, Mileski (1969), studying a minor American court, found that black and white defendants in intoxication cases differed in several key respects: white defendants tended to be skid row drunks, in late middle age, destitute, and arrested in states of intoxicated incapability; black defendants were generally younger, reasonably solvent, and arrested for causing a disturbance. Although the occasional "misclassification" revealed the extent of sentencers' reliance on colour cues, this gross characterisation nevertheless usually served to distinguish appropriately between cases. Characterisation techniques, therefore, can provide

"a way of maintaining smooth-running operation of the court, without gross violation of either the court's concepts of punishment, on the one hand, or the defendant's rights, on the other."

(Scheff 1966, p.140)

The basic offender characterisations identified in this chapter do not cover the entire range of defendants. Most notably, defendants aged between 26 and 30 are absent. One reason for this may be that these apparently uncategorisable

offenders could have been accommodated under the broad headings of independent and needy on the basis of SER assessments. They are not, however, included here in those categories because of a striking change in mitigation addresses. The emotive juxtaposition of age, criminal record and personal problems, and the concept of the turning point abruptly disappeared from defence solicitors' speeches on behalf of defendants older than 25. Perhaps, as one magistrate remarked, "[o]nce you get into your mid-late 20s, hopes are beginning to fade". Nevertheless, in complex cases, the independent and needy characterisations were perhaps sufficiently flexible to embrace these few defendants.

It is perhaps unsurprising if City court's basic characterisations did not cover the entire range of defendants. The majority group was that of the young adult offenders. Hence, for this group, concepts of the nature of their criminality, and characterisation, were richly developed. Defendants in the age range 26 to 30 years were comparatively scarce. There is no need for well articulated "simplifying choice heuristics" for comparatively rare events, particularly when there is a serviceable alternative.

Thus, much of City court's sentencing decision making could be understood in terms of a few gross characterisations. This should perhaps not be surprising. Decisions in lay magistrates' courts are a collective exercise. Categories, therefore, must be such that most people can subscribe to them. Numerous categories, categories involving crucial fine distinctions, or esoteric categories not generally intuitively accessible, would incapacitate collective decision making.

This point extends the observation in Chapter Eight of the importance of "like-mindedness" in recruitment to a bench, particularly bearing in mind City magistrates' penchant for debate. Discussion of individually idiosyncratic

characterisations, or of fine distinctions, could have protracted decision making almost interminably.

However, magistrates do not function in isolation, constructing idiosyncratic interpretations inaccessible to other courtroom personnel, as is rather suggested by Parker, Sumner and Jarvis (1989). All contributors to the decision making process must be able to participate in the characterisation process for most of the time. They could not otherwise contribute effectively. This is perhaps particularly important in the operation of a democratic court such as City. Indeed, the observations of this chapter reinforce those earlier which showed the susceptibility of magistrates to the inferences of information givers. In this respect, as will be argued later, the non-participation of probation officers in the concept of "sickness" could be significant.

A further extension of this issue concerns the flexibility of characterisations, enabling individuals with differing perspectives nevertheless to agree as to outcome. This analysis has taken a parsimonious approach to the concept of sickness. However, as the clerk's remarks in Example 9.11 suggest, some people may have utilised this conceptualisation when others perceived neediness or tragedy. Nevertheless, this is not to suggest that characterisations did not matter. An inappropriate characterisation by one party would be discernible to others. Thus, to a defendant of whom the defence solicitor said that he was "terribly unhappy" as a child, was "too frightened to refuse" to commit the offences, and had not had "the right person to turn to up to now to confide in", the magistrate caustically remarked: "You're 27, and there's no problem about sending you to prison if we're so minded. Understand?"

## **CONCLUSIONS**

This chapter examined the necessity for simplifying strategies for information processing in the courtroom. In relatively



non-serious cases, magistrates were often provided with cues to understanding early in the prosecution address. The most powerful such cue was reference to defendants' intoxication, which provided a simple schema portraying the nature and moral flavour of the case. In complex cases, decision making was assisted by the utilisation of offender characterisations: vulnerable and undisciplined youth; independent and needy young men; tragic cases; and sick offenders. Defendants' alcohol use was portrayed in ways which substantiated these characterisations.

## **CHAPTER TEN**

### **MITIGATION:**

#### **MAKING THE MOST OF THE INTOXICATION EXCUSE**

This chapter examines firstly the styles of impression management adopted by alcohol-related offenders at court. It then considers variations in mitigation based on intoxication or alcoholism according to types of offence and offender.

#### **IMPRESSION MANAGEMENT**

Offenders who drew the court's attention to their alcohol problems could successfully enhance the process of characterisation described in Chapter Nine. For some defendants, however, the potential attractions of this technique for reducing punishment were counterbalanced by their ambivalence about the deviant identity which it conferred on them.

#### **Enhancement of identity**

Occasionally, defendants appeared to contribute to their characterisation more by accident than by design.

#### **Example 10.1**

A 24 year old defendant in a sober case was recommended for a "last chance" on probation with a 4B condition of day centre attendance. He was an "independent" young man, whose sustained offending prompted the defence solicitor to observe: "No-one could criticise you for imposing a custodial sentence today, but nevertheless I ask what it would achieve. Nothing, save to get him out of everyone's hair for a while".

The hearing took place in one of the juvenile courts, in which the defendant sat directly in front of the bench at a few feet distant, in the arrangement described in Chapter Seven. The magistrates thus had an unimpeded close-up view of his remarkable looks: angelic features in a cloud of red curls. In a post-sentence interview, explaining their decision to accept

the recommendation, the magistrates commented with satisfaction:

"His demeanour influenced me and the thought he would respond to the sentence...I'm fairly optimistic...His reception of the sentence seemed appropriate - relief - positive - he was taking it seriously. That confirmed the idea that custody was wrong at this point, because he wouldn't have responded in that way. It seemed as if it was the right sentence at the right time."

#### **Example 10.2**

A 22 year old defendant was charged with further offences whilst already the subject of a probation order, a suspended sentence and a community service order. This defendant's neediness was summed up in the SER: "[T]his is a disturbed, vulnerable and physically sick young man who does seem to be making a supreme effort at the present time".

The colourful portrayal in the SER and mitigation address of a pathetic young man in need of long term support was rather at odds with his large, square, burly physique, with close-cropped hair, which conveyed an appearance of thuggishness. As the hearing progressed, however, the defendant grew increasingly blotchy faced, and he produced a handkerchief with which surreptitiously to wipe his reddening eyes. He was openly weeping by the time the magistrates announced a further community service order.

Other defendants played a more obviously active part in their characterisation. In Chapter Seven it was noted that defendants in City court enjoyed a degree of latitude which permitted them some self-expression. Of particular interest, here, is the enhancement of identity through drunkenness at court. If young defendants had been drinking before their appearance, they did not advertise the fact in the courtroom. To do so would probably have been received as defiance; certainly, the boisterousness of young adults was likely to be regarded in the courtroom as evidence of their indiscipline. For older defendants, however, drunkenness could be an

advantage. These defendants often advertised their alcoholic status by referring to themselves as "registered" (or in one case "qualified") alcoholics. This claim invoked medical authority on their condition by borrowing from the bureaucratic terminology of drug addiction.

Tragic defendants were frequently drunk in court. In this condition they were miserable and repentant. They were sometimes also voluble, in an apparent attempt at explanation. Magistrates showed considerable patience with the rambling interruptions of these defendants.

### Example 10.3

DS: "I would point out that he is in work and also has come to the realisation that he is an alcoholic. He has joined Alcoholics Anonymous and been with them for the past month."

M: "The indication from the probation service is that they think there is something positive here."

Def: *(belatedly)* "There's a meeting tonight."

M: "Do you think you're getting help?"

Def: *(swaying to feet)* "I missed probation that I had previously, and (my new probation officer) seems a good person. I used to go to see (my other probation officer) at the drop-in."

M: "Well, you'll get as much help from (this probation officer) as (the other one). Now, we want to make a probation order... and you know what means. You've got to stay out of trouble."

Def: "Well, that shop across the road, I used to go and buy drink - they won't let me in."

### Example 10.4

DS: "...He attends a weekly group where he takes a central role and he feels optimistic, despite the setbacks, that he can overcome his difficulties -"

Def: "Can I say something?"

The defendant leaned confidentially towards the defence solicitor and began speaking incoherently but loudly.

DS: *(desperately)* "Perhaps he'd like to tell you himself."

Def: "I went to the consultant at the drugs clinic and he said: 'We've got to come to an agreement, you've got to

cut down on drink or we'll cut your script'. I said: 'That's blackmail!' - But - we both took it in - you know - so I accept that's what I've got to do, but it's difficult with (my lodger) being there because he drinks more than I do. But I've just got to try harder -"  
M: (*encouragingly*) "That's quite right."

The behaviour of hopeless defendants, drunk or sober, was quite different. The degree of self-expression permitted in City court was often increased for these defendants by virtue of their lack of legal representation. These men belonged squarely in the realm of "ineligibility" (Macandrew and Edgerton 1969), noted in Chapter Five. "Sick" beyond all hope of repair, they enjoyed a state of "non-responsibility" in which there were no real boundaries to their behaviour except in the negative sense that they were not expected to observe the normal rules of courtroom propriety.

The hopeless defendants, particularly well known "regulars", rarely disappointed this expectation. The resultant theatre of their appearances, foiled by the discomfiture of struggling clerks and magistrates, inspired overt amusement among spectators. Observing these performances, it was increasingly difficult to believe that these men were, as they seemed, oblivious of this ridicule. Rather, one began to suspect that they were pleased to share what, for them, was a perpetual experience of their lives, with people who usually enjoyed immunity from it.

Alcoholic defendants commonly became increasingly impatient as the morning drily wore on. They were, however, low on the court's list of priorities, particularly since their time spent waiting did not add to the legal aid bill for the day's work. There was always a possibility, as a result, that they would not return to the afternoon hearing, or would arrive drunk. Whatever their condition, it was usually impossible to record more than a sample of their generous contributions to the proceedings.

### Example 10.5

The 2 defendants, in their 50s, were jointly charged with a public order offence. Several times during the morning, one poked his head round the courtroom door and was sent away by the police officer. Eventually he entered and sat down. When the police officer remonstrated, he announced loudly: "I want to be tried now". The clerk granted his wish.

**Clerk:** "Do you plead guilty or not guilty?"

**1st Def:** "Guilty."

**2nd Def:** "Guilty. I was drunk."

**CPS:** (*speaking over indistinct mummings from dock*) "The 2 defendants were in the (shopping centre). A police constable saw them on the seats. One was grabbing food from another person. The constable warned him. The other defendant intervened, he protested and used abusive language. His friend became involved. Both defendants were extremely drunk at the time."

**2nd Def:** "This man wouldn't harm anybody. I'm sure I wouldn't either."

**Clerk:** "Well, what would you like to say?"

**1st Def:** "Someone gave me drink. I'm ever so sorry for causing all this trouble to the court."

**2nd Def:** "I'm sorry from the bottom of my heart. I was drunk and I was in a bad mood."

**M:** "You will each be fined £20. I'm just going to tell you, you've apologised to the court, but you should apologise to the people of (City) whom you have caused distress. Just you remember that, next time you go out and get drunk."

**2nd Def:** (*inflamed*) "You've no heart. You've no understanding."

The defendants were ushered, grumbling, from the court.

### Example 10.6

When all other business was completed, the 53 year old defendant was brought up from the cells, to which he had been removed as he and his supporters grew steadily more noisy in the waiting area. The clerk began putting the 2 charges of public order offences to him.

**Def:** (*interrupting*) "I want to tell you, I think it's a bit wrong. I take tablets, I've lost half my lung, I don't use words like that. I've been in the war, I lost my brother in the war, but I've never insulted a woman in my life -"

**M:** "Is that a not guilty plea?"

**Def:** "If you say so. I've paid my fines -"

The defendant continued talking as the magistrates and clerk conferred.

**M:** "We don't want this to go on unnecessarily."

**Clerk:** "I'll try, but if he says he didn't, then it's a not guilty plea."

The clerk began again to put the charge.

**Def:** "If you'd done 2 years in the hospital and took tablets you wouldn't remember. I don't remember, but I've studied the law -"

**Clerk:** (raising a hand) "In that case, if you've studied the law, you won't have any trouble grasping this. If you say you don't remember -"

**Def:** "I don't."

**Clerk:** "But still you accept that you did do it -"

**Def:** "Well, yes."

**Clerk:** "Then a guilty plea is acceptable."

The clerk put the second charge.

**Def:** "Well, I don't agree there. There's a lot of people use my name. Someone's been using my name."

**Clerk:** "That has to be a not guilty plea."

The magistrates and clerk conferred, leaving the defendant to resume his declamation. He took his glasses on and off and waved his arms expansively as he addressed the whole court.

**Def:** "Who broke into my house and stole all my things? Did you catch *him*? He took my cooker, my money - I knew who it was actually, but I don't go to the police. I'm homeless, I've been in hospital, my rent is £15 a week -"

**Clerk:** "This will be adjourned to 6th April, when you're already due for trial on another charge."

**Def:** "Will you give me a piece of paper? I might not remember."

### **Conflict of identity**

The academic discussion of "deviance avowal" was considered in Chapter Five. Some of this literature tends to portray the embracement of a "sick" or alcoholic identity in order to reduce criminal culpability as an "easy option", in the same way that, as seen in Chapter Three, the criminal or alcoholic

lifestyle is simplistically seen as an easy alternative to the rigours of respectability for the undersocialised. That the issue is more complex, however, was suggested by the discussions of the relationships between rationalisation, mitigation and self-image.

Observation of defendants in City court who grappled with the choice between sick or alcoholic, and criminal identities revealed the difficulty of deviance avowal. The ambivalence of these men was abundantly clear. The immediate attractions of reduced punishment were offset, and in many cases outweighed, by the prospect of having a purported pathology professionally confirmed and treated.

#### **Example 10.7**

The defendant, aged 24, was charged with theft and criminal damage. He had a number of previous convictions, had appeared in court already several times during the observation period, and had been placed on probation 2 months previously. At that time, the SER writer had despondently concluded:

"I am not convinced that a Probation Order would have much impact on (the defendant's) offending behaviour however (*sic*) if the Court were to consider such a course appropriate, the supervision would focus on his drinking habits and employment prospects. If the Court considers that a Probation Order is an appropriate disposal today, a period of six months would allow for some focused work and is in my opinion this is (*sic*) the maximum length that (he) could realistically sustain."

On this occasion, I got into conversation with the defendant in the waiting area. He looked seedier and shabbier than when I had last seen him, and was nursing a recently disabled arm. He rehearsed his problems with an apparent unconcern for privacy which often seemed to characterise those who had become accustomed to living out their lives in public.

"I'm getting it adjourned. I'm going to see a psychiatrist. My brain box has gone. I went to ask my doctor for valium, but he wouldn't give me any. He said I'd never get off them. That's what this is all about -



I've been very depressed. I've lost the use of my hand as well - I put my arm through a window when I was drunk and cut the artery. It doesn't hurt so much now it's warmer, they've given me exercises to do. I can't work. I've been sleeping rough for 4 days - my brother's just moved into a new house with his wife and baby and they say they want their privacy. I've lost my wife as well, but I'm glad now. She kept on at me and didn't give me time to think. She was taking drugs in front of my son - that's why we split up because I objected to that. But I've been very depressed and I suffer with my nerves."

This defendant may genuinely have feared for his sanity. With so many problems piling up, this might be an understandable anxiety. It is, however, one thing to wonder whether one is going out of one's mind, but quite another to have it confirmed by a psychiatrist. This was the first of several occasions on which this defendant arrived at court having made an appointment with a psychiatrist which he subsequently failed to keep. Meanwhile, his condition apparently deteriorated. A month later, while a further adjournment for psychiatric assessment was debated, he sat in court hunched over himself with an odd, faintly smiling expression, as if puzzling over the situation. This "sick young man's" ambivalence about his condition in turn helped to stifle the sentencing process for a considerable period.

#### **Example 10.8**

The defendant, aged 45, had committed offences of drunk and disqualified driving. He had several previous convictions, was in breach of a suspended sentence and a probation order, and in his probation officer's view, would "never be free from further offending or fulful (*sic*) his potential even in part, until such time as he seeks effective treatment for his alcohol and underlying psychological problems".

The probation officer described this defendant's ambivalence about treatment in the following way:

"(The defendant) is an intelligent man who shows some insight into his situation. He yearns stability and the intimacy of a close relationship but has proved quite

unable to sustain one; fearing as he does that people will get too close and begin making demands of him that he is unable or unwilling to meet. Such a fundamental area of difficulty underlies his drink problem and has not, thus far, been addressed by the various contacts that (he) has had over the years with the (drinking problem service). He is clearly resentful of any intervention that might seek to explore this side of his personality too deeply and as a consequence such professional treatment has only ever been of limited value."

The defence solicitor challenged this aspersion on the defendant's integrity:

"He felt at that time that he could not face what was in his background. He was not resentful but scared of facing up to things...He realises now that he must delve into his background, but feels that he needs the support of a therapeutic community to do that."

While the magistrates were in retirement, the defendant spoke to the defence solicitor: "I'm not really sure about this idea, I think I might rather get a prison sentence over with than keep this hanging on". On the magistrates' return, the defence solicitor again pressed for an adjournment for enquiries into therapeutic community opportunities. The magistrates complied.

In a subsequent application to the court for the discharge of the probation order as being of no further advantage, the probation officer explained:

"(The defendant) struggled with the notion of spending twelve months or so in rehabilitation and (*sic*) when he could, as he saw it, simply choose to go to prison for six months - a sentence which he did not regard as onerous...In the event (he) chose the 'safer' of the two options; appearing in court on his adjourned date drunk, thereby disqualifying himself from eligibility at the rehabilitation unit where he was due the next day, and giving the Magistrates little alternative but to activate the suspended sentence."

#### **VARIATION BY TYPE OF OFFENCE**

Certain systematic differences in the appeal to intoxication were related to the type of offence in question. Essentially,

these differences turned on the issue of self-control. The intoxicated loss of control was advanced as mitigation for some types of offences, but was apparently deemed inapplicable to others. The differences may be examined under the broad headings of excess alcohol, violence and dishonesty.

### **Excess alcohol**

This heading is used generically to include offences of drinking and driving, being drunk in charge of a vehicle and failing to provide specimens for alcohol testing. Mitigation speeches in these cases were starkly contrary to those in all other types of alcohol-related offences, which relied in varying degrees on an appeal to intoxicated loss of control. Such a condition would be acknowledged only in extreme cases of drunken driving, in which only an appeal to mercy was realistically available to the defendant. Defence solicitors went to considerable lengths to demonstrate that the technical intoxication of their clients did not reflect upon their competence as drivers. There were several basic techniques, often utilised in combinations, for making this point.

Firstly, it could be pointed out that the police had initially approached the defendant engaged in an innocuous activity such as tending a broken down vehicle or sitting in a parked one. Occasionally it was claimed that the defendant, while driving safely, was the victim of a malicious report to the police by someone with a grudge against him.

Secondly, it could be observed that the discovery of the excess alcohol offence was a by-product of apprehension for a minor transgression such as having a defective light or failing to display a tax disc. Even for a defendant stopped after speeding or driving through traffic lights at amber, it could be claimed that "there is no suggestion that his driving caused danger at any time".

Thirdly, it could be argued that the defendant was a careful drinker who had unwittingly exceeded the alcohol limit despite his best efforts to avoid it. This was apparently achieved by surprising numbers of defendants, who had drunk a responsibly small quantity, forgetting that they had not eaten all day, believing that the effects of last night's binge or lunch time's sherry had worn off, or unaware of the now obvious inadvisability of mixing alcohol with their medication.

Fourthly, it could be claimed that the defendant had no intention of driving at the time of his drinking, but some unforeseen necessity, such as the wife going into labour, arose. In some of these cases, driving was portrayed as the responsible act of a comparatively sober defendant, taking over the wheel from his intended chauffeur who had become irresponsibly drunk.

As long as scope for such arguments remained, affirmations of defendants' competence as drivers would persist even in the face of extraordinarily high alcohol readings or chronic alcoholism.

#### **Example 10.9**

The defendant, aged 45, admitted driving with excess alcohol, whilst disqualified and without insurance. The circumstances were unusual in that he had driven to the police station, announced that he been drinking and driving, handed in his car keys and asked to be locked up for safety. He was four times over the permitted level of breath alcohol. This was his second excess alcohol conviction. He had a history of alcoholism which was fully documented in the SER.

In the face of this defendant's evident disbelief in his own fitness as a driver, the defence solicitor advised the magistrates:

"He knows he is an alcoholic in some ways. A man who drinks a lot is able to cope a little better in some

ways. On the last occasion of drinking and driving he was actually parked on the side of the road looking under the bonnet to investigate a funny noise. He was not stopped for anything he did driving."

Loss of self-control, in excess alcohol cases, was rarely, if ever, attributed to intoxication. For example, a defendant who drove erratically at high speed through a housing estate when signalled to stop by the police, and who assaulted one of the arresting officers, had panicked because, in the words of the SER, he "felt some vulnerability as an Irishman". In several cases, the decision to drive was portrayed as the impulsive reaction to stress, such as a family argument provoking a desire to escape. Such impulsivity, however, was never causally linked to the defendant's intoxication.

#### **Example 10.10**

The defendant, aged 23, admitted failing to provide specimens of breath and criminal damage. Police, encountering him staggering at the roadside with a motorcycle, had asked him to take a breath test.

**CPS:** "[A]t (this) the defendant became extremely abusive and went into a complete rage. At the police station he became verbally abusive and wouldn't quieten down. At one point, sitting in a room being spoken to by the sergeant, his rage was such that he began to punch the wall boards, apparently unaware of the damage he would do to himself as he kept punching and punching the wall."

The defence solicitor explained that the defendant had lost his licence for driving with excess alcohol several years previously.

"On this occasion, he was at a party, and remembering well the consequences for his licence of drinking and driving, he pushed his bike down (the) road...believing there was nothing wrong with this...He honestly and sincerely thought that as long as he was pushing his bike he was within the law. You may take it as an indication of the firmness with which he held that view that he behaved with such vehemence afterwards, to the extent of not noticing the injury he may have done to his own hand."

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This appeal to the disinhibition of violence through intoxication against a background of provocation was quite common in cases of assaults on female partners.

"The ABH relates to a long standing relationship. The victim is also a heavy drinker and during drinking sessions tempers became frayed and violence occurred on both sides. On this occasion he perhaps went a little beyond what was reasonable in self-defence."

"The assault happened in a nightclub on the night after they broke up. The defendant was in the club, and who turns up but his girlfriend with 2 friends? Why was she there? It wasn't her usual stomping ground. The defendant took the view that she was provoking him. Words passed. He went to throw a drink in her face and the glass unfortunately touched her."

Anticipation of this line of argument apparently prompted the prosecution solicitor in one case to remark pointedly:

"It might be said that striking is an appropriate way to deal with a hysterical woman, but the prosecution say that the defendant punched her whilst she was on the floor."

In cases in which no provocation was discernible at all, mitigation might then appeal to extreme intoxication to the point of irrationality or the indiscriminate discharge of emotions usually constrained by sobriety.

"It was because they were Irish. He was substantially in drink and wasn't behaving himself."

"This particular behaviour is out of all character to him and we must go back into his history to understand them...On this occasion, he went to the fair and consumed a very large quantity of alcohol. These offences represent the release of long pent-up emotions."

In one case, even this resort was ruled out by the probation officer's observation:

"He realises now that what he did was totally wrong and that to hit somebody because he perceives that they are 'eyeing him' is totally unacceptable behaviour. It was pointed out very strongly to him that his victim did not, in any way retaliate and therefore not only was his reasoning no excuse for his actions but it also appears

to have no validity. From his own admission he had only drunk some 2 pints of alcohol that evening so it seems unlikely that that was a strong factor."

The defence solicitor remarked sourly: "It is unfortunate that the report should refer to the events surrounding the assault in quite the way it does".

## **2. Appeal to misjudgement**

The term "misjudgement" is preferred here to "accident" or "mistake", in order to identify more clearly the issue at stake: confused intoxicated reasoning, leading to an unfortunate outcome.

"The defendant had quite a bit to drink. He went over to a house where an old friend lived. What he didn't know was that his friend had died. The new occupant didn't know him at all. There followed an altercation and the window was broken in recklessness as he was quite distressed."

Intoxicated misjudgement could explain why a defendant would attack an unprovocative third party. It was a popular mitigation for assaults on females against whom provocation could not be alleged. Such females were less likely to be involved in relationships with the defendant. Quite often they were intervening in a confrontation between the defendant and another victim or potential victim.

"The offences were committed under the influence of drink and at a time when he was emotionally very upset. It's not an intentional, direct assault, but took place when he was on the floor being restrained...[T]he blow was one which unfortunately caught the woman police constable on the nose."

The faulty reasoning of the intoxicated offender could result in the inappropriate use of force as a means to problem solving.

"This criminal damage was again committed in drink. He had gone to get his belongings back from where he had been staying with a friend. Had he not been clouded with drink he would have gone away when he realised his friend was not there."



"[H]e was sitting (in the car) when the police came. He said he was messing about with the lock. I think in my own mind he was looking for a place to sleep, but he was drunk."

Paradoxically, sobriety was strongly pressed in mitigation in a case involving a disastrous misjudgement in a crucially heated moment against a background of stress.

"It seems that each of these problems, none of them that important in itself, came to a head together. I wish to stress on his behalf that the defendant was not under the influence of drink. This is not a case of a young man getting drunk and behaving violently as a result. The defendant himself says: 'There's no point in hitting your own brother. I wouldn't have had the bat if I hadn't been kicked out (of home)'. He was not under the influence of drink and it was a background of family difficulties which erupted into the street. Firstly, then, I ask you to bear in mind that he has no previous convictions. Secondly, it was not a question of drink and senseless violence. Thirdly, it was not a direct attack on the police officer, but invective directed at his brother, not at the police. Fourthly, also, these offences occurred against a background of family difficulties, which don't excuse his behaviour but do explain it."

### **Dishonesty**

The intoxication of a burglar or thief was advanced as a cause of impulsive, and often incompetent, crime. Thus denying premeditation or professionalism, this technique relied on the assumption that the precursors to dishonest crime were directly reflected in its disappointing outcome. Failure to recall the offence was frequently advanced in support of this argument, although memory dysfunction appears to be unrelated to intentionality (Mitchell 1988). Indeed, during their intoxicated bouts of amnesic activity, alcoholics showed a remarkable sense of purpose in their misappropriation of alcohol from the array of available goods. Motivelessness was also a useful claim, although "common sense", applied to the data, would suggest that in many cases the most mundane motivations lay behind intoxicated offending. Of an offender with a university education and a career in academic research, a defence solicitor observed in all seriousness: "Most of the time he steals books. He doesn't know why". A number of

examples from mitigation addresses are given, to illustrate the sometimes complex nature of these impulsive intoxicated aberrations.

"My client would describe this as a drunken escapade...He told the police: 'I knew we were prattling around, I knew it was wrong, but I wasn't in a straight state of mind, I had drunk so much'...None of the 4 co-defendants had any need or plans to use the items taken. They were simply taking items during the drunken time they were on the premises."

"The defendant was deeply hurt about his dismissal and whilst in drink he decided to teach his employer a lesson by showing that he could circumvent the security system."

"My client says: 'I was pissed out of my mind'...He got drunk and, as he says in his statement: 'I just picked it up, walked out with it. No reason, just drunk. I said to my friend: "I'll give it back tomorrow"'. So even though he was drunk he did realise he had done wrong. He is extremely angry with himself to have taken something of no use to him and which he would have to take back."

"This was a lapse by the defendant, who had met friends who had just got their giro cheques and offered him drink. He can't remember much about the offence and was very vague when I questioned him, because of the amount he had had to drink."

"This offence was committed while the defendant was much the worse for wear for drink and out with a friend. He was armed with a screwdriver and determined to take the bike, and, I emphasise again, because of the drink, when they couldn't start it they threw it in the river."

In this context, thefts by employees provide a useful illustration of the boundaries to the availability of the intoxication excuse. In 6 of the 8 cases involving thefts by employees which arose during the observation period, it might have been possible to generate an explanation invoking an alcohol problem. This did not happen. Indeed, defence solicitors made no reference to their clients' use of alcohol. SERs, however, provided information of 2 kinds, sometimes in combination: the defendant spent part of the proceeds of his thefts on alcohol; or the defendant had a history of alcohol abuse. Evidence supporting the possibility of a drinking problem could usually be found in these cases in the form of

factors associated with alcohol-related harm, such as were noted in Chapter Three: for example, severe debt, absenteeism from employment, employment in the licensing trade or prior alcohol-related convictions. These offences were more often than not described as impulsive, at least in their origin, incompetent, and lacking a satisfactory motivational explanation. Nevertheless, alcohol addiction was not postulated in any of these cases.

"It appears that particularly heavy drinking was a factor in (the defendant's) previous offending. His parents were pub landlords and this may have led to an alarmingly high alcohol consumption at an early age. He told me, however, that he has cut his drinking right down, mainly due to the long hours he works (as a barman)...The present offence has a rather odd and devious quality...(The defendant), however, claims that he is experiencing no real difficulties at present...(He) has a tendency to minimise his guilt in that he sought to justify his actions as to some extent reasonable given the circumstances."

"(The defendant) has told me that he enjoyed a comfortable lifestyle as a child and that he enjoyed spending money and having an abundance (*sic*) of clothes and material items. It appears that mainly through the use of credit cards he accrued considerable debts and when he was faced with the opportunity at work of obtaining cash he took it. The defendant says that (*sic*) it was his intention to use the money to pay off debts but instead he used it for leisure purposes...[T]his offence clearly represents the serious lack of self-discipline and greed."

"(The defendant) committed this offence knowing he was certain to be caught. He was under financial strain and although he had approached his father for help had received none. Thus he took the money as what he perceived to be an easy way out of his financial difficulties in the short term, paid £180 rent arrears and frittered £170 away in four days in what he describes as a binge, buying drinks for himself and friends...[H]e has a chronic problem managing finances...Also of concern is his dismissal for absenteeism on two occasions, which may be a reflection of the attitude which led to the current offence."

"(The defendant) was in the Merchant Navy...[T]here followed a series of seven catering jobs...His relationship with his father...broke down because of a drink problem for which he has received treatment...in the past. He tells me he is now a controlled drinker,

although he admits to drinking between ten and twenty pints of beer per week...(He) cannot give an exact account of what he spent the money on except to say it was on drunk (*sic*), rent and food, nor can he offer an adequate explanation as to why he should commit his first offence at this stage of life."

In these cases, it appeared that neither defence solicitors nor probation officers conceived of the possible utility of motivational explanations based on alcohol addiction, even in the absence of identifiable alternatives. While systematic dishonesty may commonly be regarded as symptomatic of drug dependency (Miller and Welte 1986), such notions of "feeding an addiction" were not applied to alcohol use. Alcohol-related dishonesty generally concerned impulsive crime committed in a state of acute intoxication. Thefts by employees were thus a form of "sober" crime.

#### **VARIATION BY TYPE OF OFFENDER**

Systematic differences in the use of information about defendants' alcohol consumption derived from the selective advancement of the most persuasive representation of their characters or problems.

#### **The character reference**

It was noted in Chapter Four that social and moral judgements about individuals and groups are often conveyed in assertions about their drinking habits. In Chapter Nine, the process of characterisation described the portrayal of wholistic case typologies. Some observations about defendants' use of alcohol, however, were apparently intended to make specific points about their characters and offending. These points may be described as "character references": the sober character; the lapse; the reformed character; and the new leaf.

#### **1. The sober character**

As in mitigation addresses the assertion of sobriety could establish a point about the nature of an offence, so, in SERs,

comments about a defendant's abstemiousness could form part of a complimentary character reference.

"An apparently fit young man, the defendant doesn't smoke and drinks little. He sees his girlfriend pretty well every evening, including those on which he attends karate classes. He is on good terms with his mother and brother, and says he has no problems outside of his unemployment and the present matter."

"(The defendant) enjoys good health. His interests are fishing, sailing, and listening to music. He says that he does not abuse alcohol or drugs and the offence relating to the possession of cannabis reflects an infrequent indulgence in this drug."

"(The defendant) has a regular girlfriend who he has known for 2 years. He spends every weekend at her parent's home, and one night during the week. He rarely goes out with friends, and he and his girlfriend visit pubs or discos for entertainment. He does not appear to be a heavy drinker."

In one case, involving damage totalling £15,500 caused by squirting a fire extinguisher onto computer equipment, the defence solicitor sought to distinguish between the defendant's lamentable behaviour and real loutishness.

"You have heard there was drinking - that is a slightly emotive expression - it is both quantitative and qualitative in its interpretation. Yes, they had been drinking, but the defendant had only had one lager and was not in any sense intoxicated. This was a very pleasant evening for 6 or 7 young men before Christmas, which unfortunately due to the defendant's exuberance became very unpleasant."

## **2. The lapse**

For first offenders, or those without recent convictions, an offence could be portrayed as an isolated, regrettable lapse from customary good conduct inspired by intoxication. Defendants in such cases were often said to be aghast at the sober discovery of their intoxicated transgressions.

"These offences were clearly committed under the influence of drink and my client can remember very little of the events. He has been shown statements and evidence to the effect that it was he who did these things and no-one else and therefore he accepts that this must be so."

This particular behaviour is out of all character to him..."

"My client had gone to the pub for a social drink. He is a respectable married man with children. The incident happened after closing time, when he had had too much to drink and his recollection is clouded as to what happened."

### **3. The reformed character**

SERs often offered comparisons between defendants' previous and current offences. A switch from alcohol-related to sober crime, particularly after a gap between earlier and present convictions, was generally seen as a change for the better, reflecting greater maturity.

"(The defendant) says that much of his offending in the past was related to his heavy drinking and his involvement with other young men who were committing offences. He tells me that since his marriage he has stopped drinking and now occupies his time by working during the week and dirt-track racing at weekends."

"The defendant's offending was clearly related to alcohol abuse on that occasion and (he) says that he had developed an increasing dependence on alcohol during the preceding years. (He) acknowledges that he had a drink problem that he has since overcome."

### **4. The new leaf**

Recent changes in a defendant's drinking pattern could be advanced as evidence that he had been brought to his senses, often by the fact of the offence and conviction, sparking a new resolve. Influential relationships featured largely in this kind of argument. In particular, female partners, who earlier were said to provoke offences, were seen in this context to control defendants' excesses.

"He feels his alcohol problem is now under control and is aware that this must continue if his relationship is to survive. Drinking and offending are not acceptable to his partner. He has a strong incentive to prevent the problem from re-emerging."

"Quite recently he has formed a relationship with a young lady and...they are now living together. This will curtail his drinking activities and be a support to him

in trying to overcome this problem and avoid this kind of drinking binge with other young men."

"[T]hings seem to have improved substantially, with the support of his family and a new relationship with a girlfriend, and in particular the alcohol abuse has ceased and he is able to look forward to employment and a stable relationship."

"Alcohol and bad company all played its part. Since the offence he has formed a long standing relationship with a girlfriend, who is in court taking an interest in these proceedings and in him, and keeps a grip on his activities."

SERs also offered these appraisals.

"(The defendant), thankfully, does now appear to be making efforts to tackle the serious drink problem that he has had for many years and which underlies the present offences and all his previous convictions. He has sought help of his own initiative and I gained the impression he was sincere in his desire to stop drinking."

"(The defendant) impresses as a likeable man of apparent satisfactory upbringing and probable good ability, to whom independence in early adulthood led to him forming apparently undesirable associations and to his becoming involved in damagingly heavy drinking, leading to his offending. With the onset of possible greater maturity, he may now be freeing himself from his destructive dependence on alcohol, and to be on course once more for the achievement of conventional goals, in terms of employment, home and marriage."

### **Persuasive Problems**

A major attraction of the intoxication excuse, indicated in the foregoing section, is that it readily establishes a means by which an offender can demonstrate repentance and reform: to reduce his alcohol consumption. This act of contrition appeals to the "malevolence assumption", noted in Chapter Two, in which the involvement of alcohol in an offence is equated with causality. A drinking problem, in this respect, could be something of an asset for an offender prepared to participate in some form of treatment, notwithstanding the real ambivalence experienced by defendants about such an undertaking. It offers both an explanation of his offending and a solution to the problem of demonstrating remorse and

reform (Shapland 1981). It did not, however, follow from this that alcohol-related offenders' drinking habits would receive attention in all cases. In particular, there were 2 types of offender whose drinking problems were routinely disregarded on discovery of another difficulty: the mentally disordered and the drug addicted.

### **1. The mentally disordered offender**

On one occasion, surveying the court list, I noted the name of a defendant whose case had already been adjourned several times for different psychiatric assessments and whose numerous problems had given rise to considerable debate. I remarked to the probation officer that drinking at least appeared to be absent from this defendant's list of troubles. I was told, with surprise, that the defendant drank "like a fish".

Mental disorder was much more powerful than intoxication in attracting the court's attention and concern. Unfortunately, it was a problem for which the court had no readily identifiable solution, although it appeared to be willing to devote weeks or months to the search.

At a simplistic level, in alcohol-related cases, the relationship of defendants' drinking to their offending was far more direct and obvious than that of their mental disorder. They offended while intoxicated, they stole alcohol, or they were self-confessed alcoholics, and they often combined these qualities. Had the court processed these defendants on the basis of these cues, it might be hypothesised that it could have dealt with them rapidly as straightforward cases using simple schemata invoking intoxication, or as hopeless cases. Instead, the court's attention focused on defendants' mental disorder, generating a search for the fullest information and for suitable treatment.



There may have been some feeling that mundane motivations for criminality could not confidently be attributed to the mentally disordered. In a post-sentence interview concerning a schizophrenic who broke an off-licence window to take a bottle of alcohol, a magistrate said:

"He didn't have an alcohol problem, he's not a habitual drinker. He didn't have any number of drinking offences. I don't think he commits drink offences so much as mental lapse offences. Something triggers him off mentally."

Perhaps, more strongly, basic humanity and concern were the motivating factors in these decisions. The well-intentioned quest for treatment, however, could result in remands, often lengthy and in custody, at the end of which it was established only that the psychiatric services either were already providing, or held little prospect of providing it. At this stage, any suggestion of a treatment provision offered a way out of an impasse for the court rather than real improvement in the defendant's situation. Thus, the suggestion that a manic-depressive defendant be placed on probation with a condition of psychiatric treatment was viewed without enthusiasm, but with resignation, by the reporting probation officer.

"(The psychiatrist) takes the view that a Probation Order with a condition to attend for treatment as an out-patient and take his medication would give an added incentive to (the defendant) to co-operate in the administration of prescribed drugs. However, I am of the opinion that supervising (him) under the conditions of such an order would prove extremely difficult and I anticipate that there would be problems regarding reporting, keeping out-patient appointments and taking his medication. Should the Court consider that a Probation Order is an appropriate disposal today I would ask the Court to stress upon (him) the importance of complying with the condition, as outlined...Alternatively the Court may take the view that (his) period of remand, that was equivalent to four months imprisonment, was adequate for these offences."

#### **Example 10.11**

The defendant of Example 9.4, who stole books about the occult, continued to appear in court at intervals during the

study. Alarmed by his deepening slide into fantasy, the magistrates eventually remanded him in custody, apparently in the hope of precipitating his hospitalisation. There followed several weeks during which the probation officer experienced difficulties of access to him and there were delays and confusions over the production of reports by both prison and community psychiatric services. The eventual emergent professional opinion, however, was quite clear: the defendant's psychosis was increasingly resistant to medication and possibly irreversible; nevertheless, he probably still knew that it was wrong to steal; he was an unco-operative, disruptive patient, for whom no suggestions for bettering his condition presented themselves.

Astonished by this implied refusal of treatment to an unpopular, but admittedly mentally ill man, the magistrates again remanded the defendant in custody. The clerk wrote to the Health Authority requesting clarification of the position on the provision of care. The placatory response explained that there had been no intention to deny the defendant treatment, but only to acknowledge the difficulties and pessimistic prognosis.

Defeated, the magistrates discharged the defendant.

## **2. The drug addict**

Probation officers occasionally appeared puzzled when I mentioned that I had an interest in one of their clients, and helpfully sought to correct me by explaining that the offender was a drug addict, not a drinker. This diagnosis routinely overlooked the obvious relationships between these drug addicted defendants' drinking and offending: usually acute intoxication coinciding with criminal behaviour; sometimes theft of alcohol. Their drug addiction, by contrast, was often a chronic background condition. Indeed, the regular receipt of prescribed drugs was likely to be advanced as evidence of increased stability, reducing the likelihood of criminality.

In this context, intoxication by alcohol was deemed to precipitate the occasional unfortunate lapse. Thus, defence solicitors observed:

"He is serving the life sentence of a drug addict. In times of stress he tends to abuse alcohol."

"He gets depressed and drinks on top of the drugs...On this occasion he had been to my office to discuss divorce proceedings and he became so depressed he drank a bottle of vodka and committed the (theft of whisky)."

"(This) is a hiccup along the long road to rehabilitation...[H]is drug problem is on the mend because he has managed to get a prescription. On this occasion he was drinking because he had mismanaged his methadone."

"He has been able to organise his drug intake through having a prescription so that he doesn't do any drinking whatsoever...He is very pleased he's not drinking any more and that's probably why he's not committing so many offences."

The argument that drug addiction represented a distinct improvement on defendants' former alcohol abuse appeared quite frequently in SERs. Indeed, it was so highly developed in some cases that drug abuse appeared to achieve the status of socially responsible behaviour, weighed against the evils unleashed by alcohol.

"I understand from (the defendant) that much of his offending in the past has been related to alcohol abuse. He tells me he no longer uses alcohol as when in drink he can be violent. He states he has replaced alcohol with drugs which enable him to survive without resorting to violence."

"Before he began to use heroin or its substitutes he drank heavily, up to a bottle and a half of spirits per day. This alcohol abuse decreased and he now rarely drinks...It is clear from this pattern that (he) has attempted to find the drug which proved most satisfactory for him, substituting and changing his use of various drugs until developing a regular reliance on opiates...(He) would seem to have made the assessment that the gains from drug use outweigh any disadvantages."

"He says that he used cannabis as an alternative to alcohol for recreational purposes, and that he prefers its effect in that it does not create the same

undesirable after effects as alcohol and that as a drug it does not increase one's level of aggression or unpleasantness...(He) has said that he smoked cannabis despite the fact that it was illegal, but this would not seem to be an act of deliberate defiance. Rather (he) regards the use of cannabis as preferable to the use of alcohol and is prepared to accept the consequences that this may have on him should he be arrested."

Although probation officers did acknowledge in some reports that defendants liberally abused both drugs and alcohol, the former tended to command their greatest attention. At times, this focus appeared to obscure recognition of the involvement of alcohol in the offence. Thus, of a defendant who committed a "walk-in" burglary, taking a crate of beer, and who also stole from a friend while "quite drunk", according to his solicitor, the probation officer wrote:

"(His) offending history is inextricably linked with his use of drugs...The current offences are a continuation of a pattern of offending established since 1971. (The defendant) has entered premises when under the influence of drugs or to obtain money for drugs."

Of another chronically drug dependent offender, the probation officer reported, with no apparent irony:

"(He) maintains that he entered the shop intending to purchase a tin of cat food. Whilst there, he realised that he would be unable to feed his cat for the forthcoming week and decided to steal the bottle of whisky for resale in order to buy food for his pet."

This "alcohol blindness", reminiscent of that revealed in some academic research and noted in Chapter Three, cannot simply be explained as a deliberate ordering of priorities or argument, although these factors may have influenced presentation in some cases. So often did my interest in alcohol-related defendants meet with the confident assertion that these were "drugs, not drink" cases, that I returned to an examination of my notes to check whether I was mistaken. One probation officer, presenting a report on a defendant who had obtained tranquillisers by deception over a substantial period, ruefully told me the following tale:

"When he came up to my office for the interview, when he came in, I thought I smelled alcohol on his breath. But, you know when you're in a closed room, you get so you can't smell it so much. And I asked him about his use of alcohol and he denied it totally. He said he didn't like it. Well, I wasn't entirely convinced, but I let it go. And then after I saw him out - I went outside with him - I went back into my room and it *stank* - it absolutely *stank* of stale alcohol!"

The phenomenon whereby multiple substance abuse is identified as *either* a drug problem or a drink problem has been noted in other studies of professional decision making in clinical (Plant 1976; Sokolow, Welte, Hynes and Lyons 1981) and criminal justice settings (Abram 1990; Miller and Welte 1986). This same research questions the real utility in professional practice of single addiction attributions in multiple abuse cases, finding differences in the nature and severity of the problems, including criminality, associated with multiple and single abuse. Nevertheless, this predominance of drug addiction in the perception of multiple substance abusers appeared to be more than a professional idiosyncrasy of probation officers. The relegation by defence solicitors of alcohol intoxication to secondary status as an episodic lapse within the chronic, "real" problem of drug addiction has already been noted. In post-sentence interviews, magistrates offered these observations of alcohol-related, drug addicted offenders:

"I had more the impression he was a drug addict who took to alcohol sometimes as well. But the occasions he said he couldn't remember seemed to be the ones when he was drunk. It seems as if drink was the adjunct, not the main thing. He didn't look as if he drank that much."

"I don't think any references to alcohol really influenced us. He took an occasional drink. In fact I imagine he didn't want alcohol as long as the drugs kept coming. He's not a great alcohol user or offender as far as we could see."

"Most drug addicts have alcohol as well. It's a general emotional instability."

It is not clear, but might be hypothesised, that the focus on drug addiction is related to the alien experience of the drug user, in comparison with the familiar one of alcohol consumption. Common sense, however, prevailed over professional wisdom in the reaction to one case.

"I didn't really swallow that story about stealing the bottle to sell to get cat food! Why didn't he steal more cat food? It must have been for himself."

#### **SUMMARY**

This discussion has vividly revealed the extraordinary flexibility of the appeal to intoxication in explaining and mitigating criminal behaviour. The theoretical discussions in Chapters Two and Four indicated that lay theories about the relationship between alcohol and criminality involved a network of inaccurate and mutually contradictory assumptions selectively applied to different situations. The analysis here demonstrates the practical reality of this phenomenon.

The process of analysis reveals the inaccuracies of and contradictions between the various assumptions about alcohol which underpinned mitigation. The result is that the arguments proffered in the courtroom appear somewhat ludicrous, impossible to take seriously. This effect, however, is the product of analysis. It does not reflect the impact of these arguments in the courtroom itself. Even to an observer paying concentrated attention to references to alcohol, these shifts in presentation of the relationship between alcohol and offending did not begin to emerge for some considerable time. The most probable reason for this is the readiness of the listener to suspend scepticism based on general, abstract "truths", and to focus on the concrete, situationally specific "script" constructed for each case. This is the seductiveness of lay theorising, noted as a pitfall for professionals in Chapter Two. Case by case, these explanations "made sense".

The key to an analysis freed from case specific, common sense reasoning was the recognition of the stark contrast between

mitigation for excess alcohol offences and the broad thrust of arguments in respect of all others. Court personnel, to whom I mentioned this observation, usually appeared puzzled by my interest. When I drew magistrates' attention to the contrast during a talk about my research to a bench meeting, a senior magistrate remarked: "Well, I never noticed that before". Another magistrate, to whom I mentioned it during an interview, demurred: "I don't think defence solicitors would say that about drunk driving these days. I should go back to my notes on that one if I were you".

These responses reveal, not magisterial inattention, but the situationally specific "sense" which appeals to quite different assumptions about alcohol could make, rendering them unremarkable. Moreover, these appeals addressed themselves to the crucial question of culpability at the heart of the sentencing decision. Precisely because of their direct concern with defendants' capacities for self-control in particular situations, they could not be disregarded as extraneous pieces of information.

To speak of "the intoxication excuse" in mitigation is, therefore, misleading. There is no single intoxication excuse, crudely applied to all alcohol-related offences and offenders. Rather, there is a plurality of intoxication excuses, capitalising on the plurality of lay beliefs about alcohol, selectively and powerfully applied to explain and attribute responsibility for different kinds of criminality. The reach of these lay beliefs, and their moral connotations, is such that even the absence of alcohol from the circumstances of an offence is worthy of mention. This appears to be a unique adaptation of an excuse in mitigation; it is hard to find another single quality of an offence or offender the absence of which is so regularly and forcefully remarked upon.

Chapters Four and Five considered the availability of excuses in rationalisation and mitigation. Here, it can be seen that

"availability" means more than presence. The presence of intoxication, or even alcoholism, in the "facts" of a case had little import if it was not available as an explanation to the perceiver. Thus, since intoxication and alcoholism were associated with impulsive dishonesty, they were not utilised in mitigation for the sustained and premeditated thefts in sober conditions, committed by employees, even when other motivational explanations were unidentifiable.

Availability was also related to an implicit hierarchy of social problems. Within this hierarchy, the persuasiveness of a problem related to its emotive appeal rather than to practical utility in the formation of a response. Mental disorder was more persuasive than either intoxication or alcoholism, even though sentencing was paralysed by the inaccessibility of treatment. Drug addiction was also more persuasive, possibly because of the seemingly alien nature of the condition when compared to the stockpile of "common knowledge" and everyday experience of alcohol.

#### **CONCLUSIONS**

Tragic and hopeless defendants could draw attention to their alcoholic status in ways which enhanced their characterisation. Typical drunken behaviour in court varied according to characterisation. Defendants attracted by the possibility of reducing punishment by the adoption of a sick, or alcoholic identity, might nevertheless experience considerable ambivalence about the embracement of such an identity, with its implications for professional diagnosis and treatment. Systematic differences could be identified in the representation of the involvement of alcohol in an offence. These differences were related to the types of offence or offender under consideration, and appealed to lay theories about alcohol, selectively applied in the context of specific situations.



## **CHAPTER ELEVEN**

### **LAY AND PROFESSIONAL THEORIES:**

#### **MEETING OF MINDS OR MARRIAGE OF INCOMPATIBLES?**

This chapter explores aspects of the theories held by magistrates and probation officers of intoxicated deviance, responsibility and the probation service's professional role in provision of SERs and probation supervision. These issues are considered for their potential influence on sentencing decision making. The chapter also examines tensions in probation officers' professional theories and experience, and the implications of these tensions for their professional identity.

#### **THEORIES OF INTOXICATED CRIME AND RESPONSIBILITY**

Magistrates and probation officers were asked whether there were real or hypothetical cases in which they believed that an alcohol-related offender should not be held responsible for his crime, or in which they perceived alcohol to be a mitigating or aggravating factor. The examination in Chapter Two of the relationships between abstract theories and behaviour in specific situations suggests that these stated principles may be modified when applied to individual cases. Questions about hypothetical instances of alcohol-related crime exposed situationally specific shifts in the interpretation of intoxicated deviance.

#### **Principles of intoxicated responsibility**

Only 6 (30 per cent) of the 20 magistrates responded with an unequivocal negative to the question whether there were real or hypothetical cases in which they thought that an alcohol-related offender should not be held responsible for what he had done.

Six (30 per cent) identified the "spiked drink", or involuntary intoxication, as an occasion for absolving an offender from criminal responsibility.

"If it could be proved that he'd been spiked. But that's about it...That would be the only one because all the others are self-inflicted wounds. Whether it be one drink or whether it be 10, you should know what it can do. You should know what your reaction is."

"Only if somebody else had doctored his drink. Sorry about that. People should be responsible for what they drink...In today's world, when we're trying to teach everybody about drink, people should know that their responsibility is not to drink so that they can't control whatever it is that they're doing."

These remarks illustrate the basic principle which magistrates applied to the judgement of responsibility for intoxicated crime: intoxication was a self-induced condition, in which the drinker courted loss of control. Nevertheless, 8 magistrates (40 per cent) acknowledged further occasions when these judgements were problematic. Notably, in some of these responses, magistrates did not distinguish clearly between the attribution of strict responsibility and the acceptance of mitigation.

One magistrate conceded that driving might become unexpectedly necessary after drinking. Two magistrates acknowledged a problem in general terms.

"I do find this a problem sometimes. I know it's no defence that they were drunk, but there have been times when I've thought: 'This person wouldn't have done it if they weren't drunk'. I really have thought that."

"My thoughts start from you cannot hold alcohol as an excuse. Now, OK, there are occasions when you know very well, had they not drunk the alcohol the case would not have been as serious, perhaps...Then you start getting emotional about it: 'Poor fellow, poor old lass, if she hadn't been drunk that wouldn't have happened'."

Three magistrates thought that alcoholism, as a disease or illness, diminished responsibility.

"Some people are much more culpably drunk than others...If it's got to the stage where it's an actual disease, that's a different kettle of fish altogether. And I certainly (wouldn't) regard (that) as culpably drunk, because I feel that it's just a disease."

"Somebody who is an alcoholic may well not be responsible for his actions. Not specifically. They may have a broad responsibility. They may know that this is the sort of thing they tend to do when they are (drunk), but they are so fixed on a particular habit. It's like a drug addict. It's an illness."

Two magistrates thought that responsibility was diminished when drinking was a response to personal trauma.

"There are obviously times when somebody's gone through an enormous personal trauma...If somebody's wife had just died or something and maybe because of that the person had drunk too much and that had led perhaps to a(n) offence. Yes, personal tragedies of that sort, certainly would be taken into account."

"When people drink through despair and are at their wits end, and one hears about extremely distressing family circumstances, you think to yourself: 'Well, no wonder they've been drinking!'"

Finally, one magistrate described a case in which alcohol consumption played a vital part in a defendant's livelihood.

"Easily. Yes. I'm not saying I agree with what he was doing, but I know why he did it. That was a chap who was a steel fitter, working up on massive places, sky high...He could not do his job unless he'd got a drink inside him. Every(body) on that site who was a steel fitter had alcohol - always had alcohol...He said: 'You tell me somebody else who'd be 130 feet up in the sky with no safety harness, walking across a piece of steel'...It's a Catch 22 situation...You either lose your job or you lose your licence."

Magistrates also equivocated on the subject of mitigation. Six (30 per cent) rejected the intoxication excuse here.

"I'm hard on that. I just feel that it's self-induced and no excuses. And as long as you're aware of what you're up to, well then you've no need to get into trouble with it. I can understand those who are weak and who like it. I know of those who are shy and can't do anything till they've got their sherry down. I can understand that. But...when it comes to criminality, I would give it very little weight in mitigation."

The remainder (70 per cent) offered a variety of instances in which intoxication was potentially mitigating. Four mentioned alcoholism.

"Somebody who doesn't know what they're doing and is perpetually in an alcoholic state. I still say there was a responsibility, but they have become so debilitated that they are - not incapable of responsibility - but much less able to make a conscious decision."

Five observed that intoxication could mitigate when they sympathised with a person's motivations for drinking.

"Yes, I do have some sympathy that drink can help some people...It can give them a lift or a bit of courage. The thing I find most relaxing about having a glass of wine is the actual act of sitting down socially with somebody and drinking (it)...So I understand that after some sort of shock somebody might just sit down and perhaps drink too much...For some (families) it's the norm for dad to be coming home from the pub with a bag of chips every night. He may not do anything to anybody ever, he just walks to the pub...and saunters back. If someone in those circumstances were involved in something (unexpected), you might see that as mitigation."

"There are times of crisis in a person's life when a resort to the bottle seems to be the only thing. Personal grief, personal sorrows, or a series of disasters. When drinking oneself into oblivion does seem to be the only way out, perhaps. But it's rather at variance with my former assertion that I do believe that one has a sense of personal responsibility which should take over-riding preference. I can well foresee that with some people this would be submerged into their own requirements at the time."

Some magistrates pointed to unusual features of an intoxicated offence, such as accident or emergency, and uncharacteristic or incompetent behaviour. Here, the issue seemed to be the absence of prior expectation of offending.

"If it's a very young person, yes. People have got to learn. If somebody has never come across alcohol before and ends up going to a party and therefore that leads to an offence."

"There are certain situations that...backfire on you. He was probably in the wrong place at the wrong time and drinking the wrong alcohol. If it had been somebody else

he might have been able to cope with it and walk away and deal with it another way."

"Occasionally you get people who have acted totally uncharacteristically on a particular occasion having drunk too much."

Eighteen magistrates (90 per cent) identified circumstances in which alcohol was an aggravating factor. Seven mentioned driving offences involving alcohol. Here, the seriousness of such offences was linked to the risk of severe harm, and to a perceived element of deliberation in the offence. Magistrates voiced strong views on this topic.

"Drink-driving...Because there's so much publicity about...the dangers of drinking and driving. When you're in a car having drunk so much that you are actually going along with this weapon, you can cause people so much harm. And it's the fact that they do it knowingly. They actually *must* know."

"There was one very bad one where a chap...ended up driving into the front of somebody's house. He was well gone...His actions were irresponsible from beginning to end, because he went out, with the knowledge that he was going to drink and didn't take any steps to stop himself from driving...His whole attitude was wrong."

Six magistrates (30 per cent) mentioned violence, and one commented on the quality of "noise and terror". Alcohol was thought to unleash excessive savagery in an attack. In some of these responses, it was suggested that alcohol was used intentionally to engender aggression.

"Street violence...[I]f somebody has been drinking they're probably going to be far more violent towards the other person than they would be if they were sober."

"Attacks on publicans...[P]eople who habitually go to certain kinds of pubs which have a reputation for violence, or where nobody's particularly surprised when violence breaks out...There's a whole culture of aggressive drinking."

The notion that alcohol might be consumed intentionally to facilitate offending was taken up by 5 magistrates (25 per

cent), for whom this quality of drinking was the aggravating factor rather than the type of offence.

"When you have deliberately got yourself into a drunk condition so that you will lose your inhibitions and then commit a crime. To me that makes it worse. If there's absolutely no question of disease, you know perfectly well what you're doing."

One magistrate considered the rejection of treatment while persistently offending to be an aggravating factor.

Thus, judgements of responsibility were problematic for magistrates because of their belief in loss of control through intoxication or alcoholism. The assessment of motivations for drinking weighed heavily in judgements of culpability for subsequent offending. Loss of control over drinking itself, drinking in response to personal trauma or drinking without prior expectation of offending reduced culpability. "Provocative" drinking, whereby offending was deliberately or recklessly facilitated through intoxication, increased culpability.

Probation officers were considerably more confident and uniform in their responses. Fourteen (93 per cent) out of the 15 officers gave an abrupt negative to the question whether there were cases in which an alcohol-related offender should not be held responsible for his crime. In clarifying this unequivocal response, they became eloquent on the topic of personal responsibility. Their basic rule was similar to that of the magistrates.

"I do have a sense of people being responsible for their behaviour. And drinking is part of their behaviour. People excuse their offending on the basis that they didn't know what they were doing. They knew they were *drinking*, and usually there's a history that they know what drinking can lead to. Therefore I do have a sense that they have to be responsible at least for the beginning of the sequence of events, even if they didn't know what was happening by the end of it."

"It would be very dangerous to start making exceptions, saying because they were drunk therefore they had no knowledge or control. That's a very slippery slope...I'd be very worried because ultimately people have to be responsible for their own behaviour...If people don't take responsibility for themselves, we're into a very patronising way of viewing the world."

"For many people it's a lot easier to...blame the alcohol, instead of blaming themselves for drinking...But because people have always got the choice about their drinking they've got the choice of doing something about it. I don't think people are unaware of the effects of their drinking. They may choose not to see it that way. They may choose to ignore it."

The officer who said that "[t]he only exception would be if somebody had spiked a drink of somebody, who knew that they reacted to alcohol...and therefore deliberately avoided it", also subscribed to the fundamental principle.

Several officers explained their firmness by reference to their professional role.

"Part of my job is about saying to people that they do have self-determination and that they can control their own behaviour."

"I don't see myself being in the job anyway to excuse people. I respect clients for what they are. I care about what happens to them. But I'm not in the business of excusing them. That's a totally different thing."

"[T]he crux of what we do is about getting people to take responsibility for their actions. So I think that's a very negative way of going about it...A large part of substance abuse includes denial...We should be in the business of confronting rather than colluding."

Only 2 officers (13 per cent) identified circumstances in which they would consider intoxication to be a mitigating factor in an offence. Like magistrates, they were concerned with the motivational background to the drinking.

"Circumstances of considerable stress. Bereavement, for example. A break up of a relationship, loss of a job. Stress, I guess."

"If it's a youngster who doesn't realise just how strong alcohol can be. And he's with a group...and he's perhaps encouraged or gets carried along."

Three probation officers (20 per cent) conceded the possibility of mitigation through intoxication, but with strong reservations.

"I don't know. I wouldn't like to rule that one out...The only difference it makes is that I might say this person has a drink problem, and therefore could do with some help to address it, rather than this person has no problems at all and is just thoroughly nasty. So I suppose we do accept it as mitigation. If somebody went around and in cold blood thumped people, whereas when they do it when absolutely drunk you think this person needs help, don't you? So I guess so."

"It's possible, but nothing comes to mind, to be quite honest. I'd like to think not, but I guess maybe there's been the odd case. Because I believe in personal responsibility. But in minor, trivial cases, where perhaps somebody had a very well established alcohol problem and was absolutely desperate and nicked a bottle of gin...you can understand very easily how it could have happened."

Seven probation officers (47 per cent) rejected mitigation through intoxication. These officers were often concerned to clarify their professional role. Indeed, some appeared quite affronted by their inference that they should concern themselves with questions of mitigation.

"But I'm not in the business of mitigating! Mitigation is for solicitors and barristers...I'm there to give an assessment of a person's situation and some understanding to that situation. Which is not to mitigate. Mitigation is providing excuses and I don't think I'm from the Ministry of Excuses."

"I don't see my role as mitigating at all. That's a solicitor's role. In the court setting I see my role as explaining the offence and saying this offence is inextricably linked with abuse of alcohol...And maybe using that to say rather than just look at the offence, what we've got to look at is the drinking, to stop further offending. That's not mitigation. That's explaining the offences. No, I'm quite clear about that."



The hesitant concessions to mitigation were perhaps also linked to this distinction which probation officers drew between mitigation and explanation. Explanation was a legitimate role for probation officers. It was linked to the construction of sentencing recommendations and concern for offenders' problems.

"Where I come in, as a probation officer, is looking at how to avoid offending in future, which is where alcohol may well come in. In terms of whether it makes the offence more or less serious, I don't concern myself with that."

"If you get into that game of booze as an excuse, it then undermines any work that you're trying to do with somebody. You can show somebody that you care and that you understand. You do not excuse the offence."

Paradoxically, probation officers were much less professionally self-conscious on the subject of aggravation. Only one officer re-iterated the view that these issues were not legitimate professional concerns. Two officers inclined to the view that alcohol per se was essentially a neutral factor in an offence.

"If you beat somebody over the head with an iron bar, I don't really think that it should make it worse or better if you'd been drinking beforehand. The fact that you've done it should be the issue...Otherwise, one falls into the trap of making alcohol into some kind of a determinant of behaviour, and we should start from the assumption that it isn't."

Eleven probation officers (73 per cent) gave examples of aggravation through intoxication. Nine (60 per cent) cited driving offences. To some extent, as 4 officers observed, this was technical point: that excess alcohol constituted an additional offence. Three officers pointed to the appearance of deliberation in such offences. Often, however, the tone of probation officers' remarks conveyed personal abhorrence of the offence.

"There has to be an aggravating factor, particularly in things like death through reckless driving...If somebody's deliberately putting other people's lives at

risk and in fact takes somebody's life...then that seems to have been, in a sense, planned, in that they didn't take the necessary precautions or didn't think it was important enough to protect other people."

"Reckless driving combined with drinking. It's an additional offence. I personally don't have much time for drink drivers. There's so much publicity about drinking and driving that even relatively irresponsible people ought to be sufficiently aware to control their drinking if they're going to drive."

Three probation officers (20 per cent) mentioned violent offences. For 2 officers this was linked to the belief that intoxicated disinhibition would increase the severity of an attack. The third combined personal antipathy with a sociological explanation of alcohol-related violence.

"I don't like violence. Violence with weapons in particular...Those sorts of offences as a probation officer and as a citizen make me uncomfortable...I don't like being in pubs when fights start, I don't like seeing fights...Inner cities in this country seem to me to have started to become the exclusive property, almost, of the 18-30 year olds...My fear is that the more (other) people are excluded from the city centre, the more likely that sort of violence is on the bubble...People feeling afraid to go certain places. Drunken, loud, violent people."

One probation officer regarded the invocation of the intoxication excuse itself as aggravating.

"I don't think drinking necessarily makes the offence worse...When you see somebody who's actually excusing their behaviour through drink, that makes it worse. It's almost as if they're licensing themselves to offend."

Probation officers were perhaps professionally inclined to judge the seriousness of offences by their objective consequences, rather than by the qualitative ingredient of intoxication. Certainly, they did not struggle with the notion of intoxicated responsibility as magistrates did, nor concern themselves greatly with prior motivations for drinking, except when considering aggravation. Personal abhorrence, particularly concerning intoxicated driving, intervened to disrupt the dispassionate professionalism upon which they had

previously insisted. The topic of aggravation thus began to reveal the fusions and tensions between professional theorising and personal attitudes suggested in Chapter Two.

### **Theories of alcohol-related crime**

The discrepancies between abstract principles and responses in real situations were considered in Chapter Two. Some exploration of the intervening factors in this gap between theory and action was attempted through questions about hypothetical instances of intoxicated deviance. Two questions produced markedly different responses from probation officers and magistrates: one concerning City's crime problems; and one concerning personal success in avoiding trouble through drink. Further questions explored explanations of types of alcohol-related crime.

#### **1. City's crime problems**

The choice of the question whether City experienced problems with particular kinds of alcohol-related crime was guided by research evidence that magistrates' sentencing practice may be influenced by the belief that their locality suffers from special crime problems (Burney 1985; Parker, Sumner and Jarvis 1989). However, the more alarmist views on City's crime problems came from the probation officers.

Most magistrates took the question as an invitation to compare City with other places, as indeed it had been intended. Seven magistrates (35 per cent) did not think that City suffered from any particular problems with alcohol-related crime. One magistrate summed up this sanguine view.

"I wouldn't have thought any more than anywhere else. No. We've our drunks, same as every other city. We've got people who drive, so has every other city. We've got the lads who get into scraps, usually because they've had too much to drink...so does everybody else. No, I don't think there's any difference."

Magistrates were also asked whether they thought that City experienced problems with particular kinds of crime

irrespective of alcohol involvement. This additional question was posed in order to test whether magistrates' views were distorted by a concentration on alcohol-related crime. Six magistrates (30 per cent) responded negatively to this question. One observed cheerfully:

"When you come here and you sit in the court building and these people are ranged up and the lists are long, you think: 'By Jove! (City) is a shocking place to be and crime is rampant and the police have absolutely got it out of control!' But that isn't the case at all...We're pretty law-abiding, by and large."

Among magistrates who mentioned "sober" crimes which they thought were prevalent in City, there was no strong consensus about their nature.

On the topic of alcohol-related crime, 6 magistrates (30 per cent) mentioned City's alcoholics. Magistrates here were identifying a social problem rather than a crime problem.

"We've got the habitual drunks, but I imagine that probably every community has these days. In fact, I'm quite sad that they've taken away those seats in the (shopping precinct)...The more you isolate people with problems like drinking, it's not going to help."

"It seems to me that there are an enormous number of alcoholics...It's a very good Tom Tiddler's ground."

Four magistrates mentioned excess alcohol offences, although it was unclear whether they thought that this was a special problem for City, or only that it was widespread. Four magistrates considered violence to be a problem in City: 2 in relation to alcohol-related crime and 2 when considering crime generally.

"The violent crime in (City) on the streets is increasing, according to what the police tell us...It's grown in (City) over the years since I've been a magistrate. It's probably universal now."

"[I]t's purely and simply because they haven't got anywhere to go apart from pubs...It's a social problem that we haven't catered for the number of youngsters that we have here."

"I'm very conscious of street crime, of the mugging or beating up variety...It's a very obvious element and one's conscious of it simply by walking about. You see it."

"I can't really speak on facts, but I get the impression that we are getting a little more violent."

Only 4 probation officers thought that there was nothing special about City's alcohol-related crime problems; a fifth, being recently appointed, had no view on the subject. Three probation officers (20 per cent) mentioned City's alcoholics. Nine probation officers (60 per cent) identified violence as a particular crime problem.

"From the time that I've spent in court it would be very difficult to ignore the alcohol-related affrays and general rucking in the street, and one-off assaults on taxi-drivers...Nasty offences because quite often weapons get used."

In comments such as this, it seemed that probation officers might have been responding to the question in terms of the alcohol-crime association, perceiving it to strongest in relation to violence. Some officers also wondered if their perception of the phenomenon was distorted by the type of work they predominantly undertook.

"Most of my impressions would be from people serving custodial sentences, in which case I've probably got a skewed view anyway, because they tend to be...more serious offences."

However, 5 officers compared City unfavourably with places in which they had previously worked. Notably, all these officers had prior experience in bigger metropolitan and inner city areas. Moreover, these officers in particular tended to remark on the viciousness of City's violence.

"One of the things I've been aware of since coming to (City) is the amount of crimes of violence...I have a gut feeling that alcohol's playing a major part in there somewhere...I am aware that we're getting quite a lot of people doing quite long sentences for serious GBH."

"There seems to me to be not a great deal of really serious organised professional crime, as compared with my experience (elsewhere). But there seems to me to be quite a lot of violent offences...Parts of (City) seem to have quite a reputation for fighting. Drinking and fighting, the Anglo-Saxon disease."

"The thing that surprised me coming to (City) was the amount of offenders we have on our books for violent crime...[T]hat struck me as soon as I came to (City). And it's always seemed that way to me here. It seems to get a lot of gratuitous violence and unsuspecting victims."

## **2. Personal success in avoiding trouble through drink**

Fourteen magistrates (70 per cent) attributed their success in avoiding trouble through drink to the fact that they drank little or nothing. Their collective abstemiousness was impressive.

"I don't drink very much, simply because I'm a nervous sort of person...and I find drink just exaggerates it...I don't think I've ever even remotely approached being drunk!"

"I don't enjoy it much anyway, so it's no hardship. It's easy for me...For a person who really loves it, it must be difficult."

"Easy! I just can't take drink. That's it. End of story...I've never ever been drunk. Never."

Nine magistrates (45 per cent) identified a sense of personal responsibility or self-discipline, which influenced their conduct in all areas of their lives, including, by implication, alcohol consumption.

"I'm very hard working...But I enjoy doing things because I don't want to sit around doing nothing and maybe that's just the type of personality that you are...I can't bear other people to take decisions for me. So I've got to be there at the decision to make sure they get it right!"

"A naturally cautious nature, I would think!"

"It's a frame of mind, isn't it?...My youth wasn't that easy. I had it quite difficult. Because I left home when I was barely 17...and I used to get drunk every night. But I got out of that...I had to make certain decisions...That's what people have to do for themselves."

"Discipline, in a word, probably self-discipline. My discipline was that I wasn't going to struggle in the way I saw my mother struggle. And therefore I'd got to make something of my life."

Perhaps to exemplify this conscious self-discipline, 7 magistrates (35 per cent) pointed to a personal policy for drinking and driving.

"If I'm going to drive, I don't drink. Simple as that."

"I had a hell of an argument yesterday with a Dutchman...[He] said to me: 'Why are you not drinking? You like a drink'. I said: 'Yes, I love a drink, but I'm going home today and I shall be driving home'. 'But, by God!', he said, 'this is lunchtime and (you won't be home till midnight)'. I said: 'No, but I have a rule. I don't drink in the 24 hours I'm going to drive...I'm sorry, but that is a principle I work to'."

Seven magistrates (35 per cent) identified their upbringing as a key ingredient in the development of decorum and abstemiousness in adulthood.

"I'm fairly puritanical about it...I was brought up in a teetotal household."

"It's a style of life and my upbringing, perhaps...OK, you go out on your own life after 18 or 20, and you make your own way. But you still think back: 'Well, that's the way it should be done'."

"I always consider spending money on drink excessively a complete waste. Perhaps I'm a bit of a puritan! My tradition, my upbringing. Alcohol didn't feature very largely."

Two magistrates considered the possible significance of the drinking environment.

"We would drink at home, but not outside...Maybe that's what it is. In certain types of family you drink at home, so if you're going to do anything obnoxious you do it in the house. Whereas the youngsters that drink in the pub, their opportunity for criminal damage is on the way home...So maybe that's what it is. It's where you do your drinking."

"When I was an undergraduate we went to our fair share of parties, and I've no doubt that we all occasionally

overindulged, but in those days we didn't have cars at all. Colleges do mop up an awful lot of drink problems among students."

Only one magistrate, however, explicitly acknowledged personal fallibility.

"It's not planned. It's the unplanned set of circumstances which leads somebody to do something which they haven't thought about...I can think of all sorts of circumstances when I might, or no doubt have - however much I deplore or normally avoid it."

These lay theories of personal success in avoiding trouble through drink belong predominantly in the arena of dispositional theories, considered in their academic formulations in Chapter Three. The heavy reliance on abstention as a primary explanation implies a strong belief in the potential for pharmacologically induced loss of control. Nevertheless, magistrates' explanations of their abstemiousness itself drew predominantly on beliefs about personal responsibility and self-discipline, inculcated through upbringing.

Probation officers displayed a keen awareness of their own potential fallibility. Only 5 officers (33 per cent) explicitly said that they were moderate or non-drinkers. The remarks of a sixth officer are interesting in this context. This officer concentrated on the aversiveness of intoxication. Abstemiousness, although heavily implied, was not mentioned in itself.

"A. I think I know what it does to me. B. I don't like what it does to me. C. I don't like being that out of control of myself....So I'm aware of its effects at all levels: physically, emotionally and psychologically."

For other probation officers, it seemed that moderation was not the only available solution to potential trouble through drink.

"I'm a bit of a coward! When I've had a few beers, I'm still cautious enough not to pick a fight with a bloke in



a T-shirt at the bar. I am very conscious about drinking and driving, which means that I nowadays very rarely drink in (City), but I drink at home in the village and just walk backwards and forwards from the pub."

"I don't like getting out of control. I think it's partly a class thing, partly about setting limits, partly about staying in control of behaviour even when drunk."

"Being cagey, probably!...I could never put my hand on my heart and say I've never drunk and driven. But I'm aware enough to know what the implications would be for me if I did get caught for drinking and driving. So quite often I'm aware of where the police traps are, and I wouldn't drink and drive if I know I'm going through those areas. I've got to say, over the last 5 years or so I've got more responsible in that way. Certainly, now, I wouldn't do it...Because the trouble with me is I do like a drink. And one pint is not enough!"

Only one probation officer mentioned upbringing, and none talked about personal responsibility or self-discipline in the manner of magistrates, as a stable disposition. Probation officers did not seem to see their drinking behaviour as originating in the same self-will which had brought them to their present status in life. Rather, as suggested in the last officer's comments, their present status provided the incentives to control their drinking or its effects.

"I have an awful lot to lose by getting into trouble."

"(When) people are in perfectly satisfactory relationships and good jobs, the incentives aren't there. Or the incentives are there for not offending. You have something to lose".

"It seems to me that most of the people I see who get into trouble through drink have got not a lot in their lives other than drinking with their mates, having a good time. Very short term goals. Maybe it's the case that the longer term your goals are - the more you've got to lose - the less likely you are to get into trouble."

For 2 more officers, their professional experience in itself altered their drinking behaviour.

"If you're talking about drinking and driving, so often they're people my age and (with a) similar background...But it's having worked with people and

learned more about its effects. That's the difference. It's so much a part of our everyday working life."

These themes in probation officers' responses are related to the fundamental factor to which they predominantly attributed their success in avoiding trouble through drink: the context in which their drinking occurred. Ten officers (67 per cent) made this point. The social and environmental context of their drinking dominated most officers' responses.

Seven officers explained the point by contrasting current and previous drinking patterns. This recognition of change in their personal attitudes and behaviour distinguished probation officers from magistrates. Only 2 magistrates reported a shift in drinking pattern between youth and maturity. The candid acknowledgement of a change in their view of drinking and driving was one aspect of this for 2 probation officers.

"There was the odd time when I was younger when I drank and drove. I did not say that with pride because I'm very against drinking and driving. But when I was about 17 and I'd just passed my test, I was rather irresponsible in a lot of ways."

Recollections of studenthood prompted recognition of the merciful protectiveness of certain drinking environments, together with sociological observations of class and culture.

"I didn't really drink until I went to university...that's where I really discovered the delights! There was a lot of boozing going on there. But it was all student parties, and it didn't spill out into public view. If it had, I'm quite sure people would have been arrested."

"In some ways its a matter of chance. I know from my own experience that at university there are a fair amount of people who get into trouble through drink and are never prosecuted. They're dealt with informally. The higher up the social scale you go the more likely you are to be weeded out from the whole prosecution process."

"I was at university...where I used to drink a lot. That was partly about being in a culture where it's expected. One expects rugby players to be drunk on Saturday nights!...A group of similarly aged people in the street

are more likely to attract police attention. That would be a class thing."

For 2 officers, the environment and culture of drinking was also a matter of gender.

"Dare I say being a woman?...First of all, if there's a group of you in the street, the police will tend to go for the men...It tends to be the blokes who are prominent in any kind of disturbance. And if...in my domestic circumstances, I hit the bottle, I'd probably just lounge around the house and get depressed. Which is a typically female response...I'd just languish around the house, be a trouble to myself, but not society."

For the 6 magistrates who said that they did not visit pubs, this information appeared largely to be supportive evidence of their abstemiousness. Certainly, in 4 cases the 2 assertions followed in tandem. For probation officers, this was usually part of their explanations of the circumstances in which they did currently drink. Once again, the significant issue was the protective physical and social context of drinking.

"Luck, number 1, in my younger years. Number 2, rarely drinking, now, outside of the house. Number 3 - which is probably related to number 2 - domestic responsibilities. They keep me at home and make me generally exhausted and I (haven't) got the energy to go out drinking and breaching the peace. A bottle of wine with supper and I fall asleep."

"Most of the drinking I do will take place at home. It's to do with preparing meals for friends...I don't tend to drink a lot in pubs...It was about people who worked together and had interests in common...a drinking circle that was about providing entertainment for each other. Quite an introspective sort of thing."

Concerning their success in avoiding trouble through drink, therefore, most probation officers were situational theorists. Although they believed in pharmacological disinhibition, in this context the quantity of consumption was largely beside the point. Thus, some probation officers talked about "luck", referring to the happy coincidence of social situational factors which protected them from the potential risks engendered by alcohol consumption. Nevertheless, probation

officers did not link their personal fallibility within situationally inspired temptation to an abdication of personal responsibility. In this respect, their professional belief in "explanation, not mitigation" of offenders' behaviour was consistent with their personal moral standards.

### 3. Types of intoxicated crime

Theoretical perspectives shifted in response to a sequence of questions asking for explanations of types of intoxicated deviance. Of primary interest is the shifting reliance on intoxication itself. Disinhibition was invoked most often by both magistrates and probation officers in the explanation of pub violence. Sixteen magistrates (80 per cent) mentioned this.

"It must be alcohol! You're in a pub, you're going to drink, you're going to get excited, you're going to be elated. The alcohol's going to make the adrenalin flow, and you're in a different world...However, they react differently when they've got this alcohol inside them."

Eleven probation officers (73 per cent) also invoked disinhibition.

"Too much drink! People drink too much, lose control, lose their faculties...They lose the inbuilt things they have that stop them doing things normally. Alcohol is a depressant, and depressed people may fight!"

More probation officers than magistrates cited disinhibition in the explanation of marital disputes. Only 3 magistrates (15 per cent), but 8 probation officers (53 per cent) did so. Officers here seemed to be trying to relate disinhibition to a more complex function of drinking within a close relationship.

"Because the physical effect of alcohol is to suppress your inhibitions, and maybe all the feelings that you've had pent up...come bubbling up to the surface. It's a bit like why do (marital disputes) always happen at Christmas? Expectations that things should be nice and suddenly they're not...[W]hen the inhibitions are gone, people express the disappointments that they have in each other, which are probably perfectly healthy and normal -

to be disappointed in your partner - but it suddenly reaches tremendous proportions."

"It's an easy way of exerting power...[I]t's a weapon which is used because it's very powerful. If one party's drinking that completely disarms the other, because you can't be rational, you can't attempt to address problems logically through discussion. You can only deal with the symptoms you're being presented with...That's why it's such a pernicious weapon."

Only one magistrate and 2 probation officers postulated intoxication, through judgement impairment, as a cause of drinking and driving. As the magistrate put it:

"You've got to decide before you have a drink whether you're going to drive. It's too late once you've had a drink...Your brain's affected."

Intoxication *per se* was not mentioned by magistrates at all in relation to chronic alcoholics. It was mentioned briefly by 3 probation officers. Two remarked on its incapacitating effects.

"One of the reasons that people with chronic drink problems appear to commit a lot of crime or get caught for a lot of crime is that when they're drunk they're not very good at it."

There was, in fact, a wide difference between magistrates and probation officers in their explanations of the offending of chronic alcoholics. Two themes dominated magistrates' responses. Firstly, chronic alcoholics could not help themselves.

"Because they're almost continually under the influence of alcohol and are not aware of their actions...They are just not aware. Their minds are never clear enough to reach any form of clear decisions about their actions."

"Because they can't do anything. They've got no control over their actions. They are so committed to alcohol that there is no way that they can be other than they are."

Secondly, chronic alcoholics were sick.

"Because they're sick. That's very disturbing. I hate to see (them) being brought and brought into court...Because they are - they're *sick*. They're as sick as somebody who's got a mental illness."

"The drink takes over from them. I guess they don't realise what they're doing. It's an illness and not a crime."

These 2 theories appeared in the responses of 15 magistrates (75 per cent), vividly demonstrating their belief in the power of alcoholism to strip individuals of their capacity for personal responsibility. Magistrates were fully aware of the structural problems in the lives of chronic alcoholics. However, they tended to remark on their tragedy and offensiveness, rather than their offending.

"They're *dirty*, they're a *nuisance*, they *frighten* people - they're quite frightening! - they demand money. Most people try to avoid them. (But) when you see people so far down the road to oblivion and degradation, I do feel sorry for them...You can't just sweep offensive people out of sight."

Only 3 probation officers (20 per cent) unambiguously referred to loss of control through alcoholism.

"(Some of them) probably break the law because they lack control...I would suspect that some of them...are not responsible for their actions, once they get beyond a certain point."

The majority of probation officers took a sociological perspective on this question. Nine (60 per cent) offered theories of the alienated or anomic condition of the chronic alcoholic, or of social control.

"Because...they (don't) feel they are part of society, or the rules of society apply to them. But it goes deeper than that. They probably deep down feel such outsiders that the rest of the world has very little to do with them, and they have very little to do with the world."

"Chronic alcoholism is defined by a number of factors which are social, which would include unemployment,

difficulties with accommodation, difficulty with finance, difficulty with relationships, that tend to push people towards the margins of their society. And the margins of society are controlled and patrolled by agents of social control, which is what brings them into conflict with the law, quite often."

In this context, loss of control was as much to do with social disempowerment as with physical and mental debility.

"They are in such an impossible situation, because they are in the grips of an addiction that is so overwhelming and resources are just not there to help them. (So) in some senses they would perceive themselves as having no choice about their actions. I think they do have a choice, but the difficulty is that they don't believe (it). So life is a conspiracy, and it's very difficult for them to behave in a way which is within the law."

On other topics, the differences between magistrates and probation officers were more emphatic than theoretical. Both saw the involvement of alcohol in marital disputes in terms of the quality of a relationship, in which drinking might be a cause or a product of dissatisfaction. They commented equally on the exacerbating effects of deteriorating finances and the potential for violence. Magistrates, however, were more likely to assume that the drinker would be the male partner. One magistrate expressed the problem vividly.

"It's one of the saddest things if the person sees his or her marriage partner dwindle away into chronic alcoholism. It's terrible. Because it really means you've lost them, and they won't come back for your sake, either. They won't try to change their ways because it's impossible. So you've lost your influence. Therefore, they've lost your respect, yes, and you've lost your relationship."

Magistrates and probation officers largely agreed that pub violence was perpetrated by young males in groups. Magistrates were perhaps rather inclined to see this phenomenon from a dispositional perspective. Probation officers' theories of pub violence utilised rather more complex perspectives. Seven magistrates (35 per cent) and 4 probation officers (27 per cent) thought that the perpetrators were undisciplined or

looking for trouble. Six officers (40 per cent) and one magistrate (5 per cent) invoked sociological theories of the alienation of working class youth. Seven officers (47 per cent) and 4 magistrates (20 per cent) referred to features of the drinking environment, and these officers tended to mention more situational factors than the magistrates who did so.

"With lots of milling around, violence is much more likely to be around because of people being in close proximity to each other, liable to bump into each other, to knock over each other's drink. Also quite a lot of violence happens outside the pub, which to me is to do with how pubs are located near each other, where there aren't dispersal points or alternative things to draw people away. So...it's not just about individual choice. There are things which affect people's individual choice to get into violence."

The 3 probation officers who mentioned publicans did so unfavourably, while the references by 5 magistrates were sympathetic.

PO: "Pubs probably don't take their responsibilities seriously enough. They're quite happy to go on serving people beyond any point which could be regarded as sensible."

M: "I admire publicans tremendously, because they have a very difficult job to do...The good ones deserve our support."

Drinking and driving was regarded as the personal fault of the offender by 15 magistrates (75 per cent) and 7 probation officers (47 per cent). Probation officers here compensated for their fewer numbers by the force of their remarks. Nevertheless, 8 officers (53 per cent) offered a sociological perspective on this topic, often in combination with individual condemnation.

"They're pig ignorant! It's true! People have this inflated idea of what civil liberties is all about. 'I must have my car, I will drive, I don't have responsibilities to other people.' They drink and drive because other people do, and because magistrates do, and because solicitors have done it. They think it's more socially respectable."



Magistrates tended to comment on the challenge and machismo of drinking and driving. Seven (35 per cent) offered a sociological perspective.

"A far quicker route to sanity on the roads...is a complete bar to drinking and driving. So that one cannot be tempted to have this extra glass or 2 thinking that you are still below the limit...With parties and entertainments removed from housing, with public transport getting worse because society is running more cars, it's an ever increasing problem."

It was noted in Chapter Four that alcohol provides a key reference point for social observation. Here, both magistrates and probation officers were able to provide rapid explanations of instances of alcohol-related crime by associating them with particular types of offender, social situations and intoxicated behaviours. Within these hypothetical "schemata", particular motivations could be imputed to offenders, with consequential implications for judgements of their culpability.

#### **SOCIAL ENQUIRY REPORTS**

Magistrates rarely displayed awareness of the apparent passivity of their role in requests for SERs. A few stressed the importance of reaching an independent judgement of their necessity. One magistrate even questioned the ready acquiescence of probation officers to requests, betraying no suspicion of the degree of preparatory negotiation between court personnel.

Magistrates' pursuit of the fullest information was amply demonstrated in their stated reasons for requesting SERs. They sometimes seemed to attach significance to the lack of information *per se*.

"If there was something...about the defendant which was a bit of a puzzle, and they weren't prepared to say...The information that we really sought about background wasn't forthcoming. Therefore, in spite of them, we want to know more about them...It (may) not be fair, even though

somebody is deliberately putting themselves in the position where we'd be quite justified in going ahead."

The need for information, cited by 9 magistrates, was closely linked to explanation, which was given as a reason by 10 magistrates. In all, 15 magistrates mentioned either or both information and explanation.

"When you really don't understand why the person has done something and there isn't the information readily to hand...The exploration of the background can make something incomprehensible perfectly comprehensible."

Seven magistrates observed the necessity of SERs in cases in which custody was considered. Four observed that SERs expanded the sentencing options for community service and probation. Nine magistrates said that they requested SERs when the defendant needed help or had problems.

"If...the person has got a hopeless set of circumstances in which they're trying to develop. Home background, lack of stickability in employment, general hopelessness."

The popularity of information and explanation as reasons for requesting SERs, together with the pre-emptive requests for and presentation of reports by court personnel noted earlier, suggests that in many cases magistrates made no judgement at all prior to their receipt, not only by default, but purposefully. Magistrates expected their judgements to emerge from perusal of SERs.

This suggestion is supported by City magistrates' remarkable faith in the professional objectivity of the probation service. They did not appear to approach SERs with the suspicion noted in other research (Parker, Sumner and Jarvis 1989).

"I see (probation officers) as mediators, in a way that I don't see the solicitor, because I see them as honest brokers...There's no skin off the probation officer's nose...It doesn't matter to them if you don't follow their advice. But with a solicitor, it's his professional reputation."

While magistrates regarded the information provided by probation officers as neutral, they saw their recommendations as heavily biased towards the defendant's interests. Magistrates thought that by their recommendations probation officers were trying to keep defendants out of custody (4), to achieve "the best possible solution in the interests of the defendant" (4), or to rehabilitate or reform him (8). Magistrates generally seemed to accept these motives as professionally appropriate.

"Most probation officers have a very strong aversion to penal institutions. A very strong aversion."

"Probation officers believe they can do a better job than prison. They have to believe that. That's why they're probation officers. You wouldn't want them not to feel that, really. They've got to believe in what they're doing"

Several, however, criticised probation officers for their refusal to recommend custody.

"I find very frustrating SERs which never recommend custodial sentences and therefore one always has to take a pinch of salt with (them)...Probation officers should have in the back of their mind the possibility of punishment...over the whole range of penalties."

"I've never in all my 15 years seen a SER (which) says: 'In my opinion there is no alternative but imprisonment'. Never. Now that's the sort of decision I'm making all the time."

At one level, these criticisms were paradoxical, given the antipathy to prison of many magistrates themselves. Magistrates, however, were not concerned here with a coincidence of personal attitudes, but with the perceived failure of probation officers to accept the working reality of custody which was part of their own public duty.

Probation officers' statements of their goals in making recommendations lacked the personal passion which magistrates seemed to attribute to them. Two themes appeared most frequently: tariff and the reduction of offending. Six

officers said that they were trying to divert offenders from custody, to keep them down tariff, or to preserve probation recommendations for high tariff cases.

"County policy would say diverting people from custody! I would agree with that. Ensuring that those who aren't at risk of custody are kept as low down tariff as possible."

"If I think people are likely to reoffend one of the agendas for me is to keep them down tariff. So I'll use conditional discharge recommendations as long as I think I can get away with it...If I'm looking towards a probation recommendation I'm trying to make sure that they're fairly high tariff."

Eight officers answered in terms of preventing or reducing reoffending. However, explicit references to the rehabilitation, reform or welfare of offenders were entirely absent from probation officers' stated aims.

"To affect his offending. To offer the court my assessment of his offending and to use the lowest possible thing on the tariff to change that."

"I'm trying to provide the courts with credible alternatives to custody. I'm also trying to make them understand that those alternatives are not soft options...So the recommendations should positively address the issues that I've identified as underlying the offending."

One officer did mention help.

"Other options than custody. Trying to assess what disposal has the best chance of reducing the person's offending in the future. Or providing the person with help on some occasions within the guidelines of the service, in terms of how it wants to use its resources."

How was the reduction in offending to be achieved?

"[T]rying to come up with a recommendation that tries to address the person's individual situation as much as possible, bearing in mind the requirements by the courts and society."

"It's the personal needs of that offender, to stop doing it again. Not just saying this person's got lots of problems therefore let's give him a cheque for £500."

But...looking at how you could meet those needs in order to prevent them doing it again...It's the rigorous pursuit of that. Being imaginative about what it would mean, what you would do with that person to reduce the likelihood of him getting in trouble again."

The alcohol factor in an offence was a useful tool in the construction of these concrete proposals for reducing offending, just as it was useful for offenders in demonstrating remorse and reform. In Chapter Two, the need for professional typologies to link rapidly to decisions for action was identified. The utility of an alcohol factor as an organising principle around which to construct offender characterisations and recommendations has already been demonstrated. Organising principles such as this were utilised in the interests of cognitive economy under pressure of time.

That SERs do not reflect the total sum of probation officers' professional knowledge and theory is illustrated by their responses to a question asking about the differences between drink and drug problems. This was asked in an attempt to clarify the apparent "alcohol blindness" of report writers in cases concerning drug users, noted in Chapter Ten. However, not only were probation officers' responses considerably more varied than those of magistrates, but they sometimes appeared to assume that the question reflected *my* ignorance of alcohol's toxicity. They seemed quite unaware of the discrepancy between their judgements in individual cases and the complexity of their more leisured abstract theorising.

Magistrates generally thought that drug problems were more serious, harder to overcome and arose from personality disturbances in the addicts. Their responses supported the hypothesis of Chapter Ten that concentration on drug rather than alcohol abuse stemmed from the alien experience of the user.

"[T]he destruction of the body...Somebody who's got a healthy body who then pollutes it. That's the thing about

drugs I find very difficult to take...Alcohol also abuses the body, but you get away with it for much longer."

"I've seen all these people on amphetamines and the cannabis business. They all look pretty sad sorts of people. But what it's all about internally I'm not aware...What effects they have, what they feel, what their cravings are I don't know."

"Drugs to me is a no-no from the word go. You're playing with somebody's life. Drugs lead to far worse things happening health-wise than a few drinks...If you're socialising in drug circles you're killing yourself."

"(Drug taking) implies a definite anger with society, because it implies a breaking of the bounds which is unacceptable...and would imply problems rather than just silliness."

Probation officers, however, disagreed among themselves about the comparative seriousness of drink and drug problems. Some felt strongly that drink problems were more dangerous, or harder to overcome. Only 2 thought that more disturbed personalities succumbed to drug addiction. Once again, probation officers utilised more sociological perspectives.'

"The danger in drug use comes from the fact that it's illegal. Society creates the dangers with drugs. Drugs per se don't kill people, normally. You can get them on prescription, and provided you use clean stuff and everything is supervised you're going to be all right...The fact that drink is acceptable lulls people into a false sense of security."

"[D]rink is freely and legally available. So by drinking one isn't automatically entering into a subculture...[L]eisure activities, especially for the young, are inextricably linked with the use of alcohol...So not only is it freely available, it's expected that people will drink...There is a more direct link between drink and offending than between drug use and offending, apart from the fact that drug use is an offence in itself."

"Legal differences. I don't think much else. But the legal differences obviously lead on to subculture differences. So sometimes there is something about drug taking which is about self-image."

"Alcohol can have a very wide social effect...(With drug abuse), you've got it underground, you've got the suppliers of drugs and people being drawn into the

net...[D]rugs seem more insidious. Whereas (with) the excessive use of alcohol, you get vast numbers, like in football or riots, it seems more open. Maybe alcohol is more visible. Maybe that's the only difference."

Thus, probation officers did not distinguish as clearly as magistrates between the information and recommendations in SERs. They saw their reports more wholistically in terms of their objectives. In the exercise of constructing concrete rationales for their recommendations, probation officers focused on an organising principle, of which alcohol was one of the most available and utilisable.

#### **PROBATION**

Relationships between City magistrates and the probation service were generally considered to be good by both sides. However, probation officers complained that magistrates did not understand or accept their contemporary professional role.

"One of the big issues with the court is patrolling the welfare boundary. They want to assign us a welfare role which is increasingly incompatible with what we're trying to do."

"[T]he probation service has increasingly been wanting to define its own particular areas of activity. To focus on certain areas of activity as being priority and go out and get those rather than simply being the recipient of work provided by the courts. So the probation service is wanting to challenge sentencers more and...has openly acknowledged that one of the aims of SERs is to influence sentencing...That's about moving away from providing welfare services for offenders and towards working with offenders on their offending and reducing custodial sentencing, which has got to be about the toughness of probation and its appeal to the courts."

"In (City) magistrates' court, there is a genuine concern for some of the people that appear before them, that they do have very difficult lives with lots of problems. They genuinely want them to be linked up with an agency that's going to help them sort those out. They've looked traditionally to the probation service to be that agency and have had some confidence in us to do so. Now they're facing us saying we are not the agency to work with these people. That would be OK if we could tell them who was. But it's leaving a gap in community provision to help people with myriad problems - debt, housing and so on -

but we're saying they haven't got offending problems and therefore are not our target group."

Magistrates, in fact, quite often expressed support for the notion of probation as an alternative to custody, which would be expected in the light of their personal antipathy to custody. However, they appeared to think that this was a policy for the future, rather than one with which the probation service was already grappling. Furthermore, some magistrates expected the probation service itself to find such a policy problematic.

"As I understand it, a probation order was about befriending. If that's the ethos...then they've got to have a dramatic change of thinking in the probation service if they're now going to be an alternative to custody...There's no reason why they can't do that, but they've got to recognise that it is going to be a total change of their reason for being."

"Probation is something on its own. Community service is something we use instead of custody. I would hate to see us having a juggling act over the same thing. Because I remember probation officers telling us: 'We only like people on community service instead of going inside, because if we have to breach them, we then know that they are going inside. Otherwise we find it very difficult to work the community service'. So if you put somebody on probation, what do you do if the probation doesn't work? Do they then go inside? No, I don't like that idea...It's not helping anybody...Probation should be used for its own sake. It shouldn't be weighed off against anything else."

Magistrates and probation officers conceptualised suitability for probation in very different terms. Magistrates invariably produced a concrete "schema" of a type of person they considered suitable. Also invariably, this schema invoked the classic "inadequate", or undersocialised personality, particularly the young, and often the first and petty offender.

"Those with few family ties, few friends, disorganised, unemployed, alcohol addicted...The drifter with few friends or family who becomes a drinker for some form of personal comfort. The weak-willed, the easily led."



"The category of people who cannot cope and just need someone's shoulder to cry on, to have help organising their lives."

"A young married man, perhaps, who's got a family and a drink problem. Because he has got responsibilities which he as yet is too immature to cope with."

Such a theory of suitability for probation was anathema to probation officers, and gave rise to some of their most overt courtroom conflicts with the magistrates.

#### **Example 11.1**

The defendant, aged 41, had stolen 4 cans of lager and a bicycle. He had numerous previous convictions, and was a chronic drug and alcohol abuser. During the initial hearing, the magistrates insisted on the production of SERs, despite resistance from the probation officer on the grounds that the offences were trivial. The magistrates were adamant that the defendant needed "help and support". The subsequent SER recommended nominal fines and compensation: "(The defendant) would have some difficulty paying these, but this would be likely to help remind him of the need to exercise greater care and restraint in his drinking in the future". On this occasion, the magistrates acquiesced, and the court duty probation officer complained to me about "the waste of time and resources preparing reports for an outcome such as this".

An irony in this case was the SER writer's observation that "[i]n interview (the defendant) tended to be rather dismissive of the offences". The probation service having been publicly dismissive of his offences, the defendant might have been forgiven for his tactical error. Instead, his defence solicitor was obliged to counter the aspersion on his character: "He is unhappy about the use of the word "dismissive" of the offences. He is not dismissive. He is unhappy to be back before the court".

### Example 11.2

A 32 year old first offender had shoplifted alcohol on several occasions and admitted to a drinking problem. The magistrates consulted the clerk lengthily in the retiring room about this "tragic" case. The clerk, returning, appealed to the probation officer.

**Clerk:** "They wanted to make a probation order, but I told them: 'A. He's a first offender and B. he's not a custody risk. Whatever you may feel you're being told to reserve probation for more serious cases. Also he's already got the drinking problem service and a social worker, and with a drink problem there's not much you can do'. Is that right?"

**PO:** "That's right."

**Clerk:** "They want a caring service again!"

**PO:** (*jocularly*) "That's not us!"

In the post-sentence interview, the magistrate declared:

"We felt he was ideal for probation, but the clerk dissuaded us, saying it wasn't appropriate because probation is now more an alternative to custody. I said that's just political, to empty the prisons, and he needed help... (The conditional discharge) will hang over him at least, so if he reoffends he'll be brought back, but even then we'll probably be told not to put him on probation."

Probation officers defined suitability for probation in more abstract terms. The offender's position on the tariff partly determined his suitability for probation.

"Seriousness moves me towards probation because of the likelihood of custody. Pattern of offending moves me towards probation because it can look at that in terms of reducing future offending."

"[T]he probation order has to be appropriate for a wide variety of offenders. We are a criminal justice service and it's a mistake to start at the wrong end of the scale. We could say that there are people that one would not want on probation, because probation isn't *justified*, because it isn't a very serious offence... (But) we don't say to (Scrubs): 'What sort of prisoners would you like next week?'... We have to be responding to the different sorts of offenders that are out there."

The only personal attribute of the offender with which probation officers were concerned was his motivation.

"[M]otivation. That's a key determinant of when you go for a probation order. To talk about alcohol-related offenders as a whole group is not helpful, but with anyone with some alcohol dependency you've got to have a spark of motivation to do something about it...Having said that, sometimes a spark is enough, because as probation officers we'll be able to work on people's motivation and keep alongside them and seize the moment."

"Those who have an awareness that their excessive use of alcohol is causing them a problem, or have some level of insight - it might not be that great - that it is something to do with their offence."

This concern has been noted in other research into professional decision making (Paley and Leeves 1982; Shamblin 1990). Motivation, however, was a double edged virtue. One probation officer remarked, without a trace of irony:

"If I think that the drinking problem service can do the job better, then I'm looking to a conditional discharge with a suggestion that they go to that agency and I'll be telling the magistrates: 'If the will is there to work at it, then he'll work at it with a probation order or not. If the will isn't there, then a probation order's a waste of time'."

Even high tariff defendants could disqualify themselves from probation by their eagerness to resolve their drinking problem.

### **Example 11.3**

The defendant, aged 21, admitted taking a vehicle without consent and drunken driving. He had 5 previous convictions, including one for excess alcohol. On this occasion he had drunkenly taken his employer's van, averredly in the fuddled belief that he was required to drive it back to (City), but was delayed at more pubs en route. He was arrested after a near accident and a police chase.

The SER writer concluded:

"(The defendant), thankfully, does now appear to be making efforts to tackle the serious drink problem that he has had for many years and which underlies the present offences and all his previous convictions. He has sought help of his own initiative and I gained the impression he was sincere in his desire to stop drinking...Since he is already attending the drinking problem service and is therefore getting the help he needs, there would seem little point in a Probation Order as well. The drinking problem service's policy is that people should attend of their own choice, and therefore attendance there should not be a condition of any order of the court."

Thus, probation officers' theories were not invulnerable to contradiction. Their theories of probation supervision itself, their defining activity, involved considerable tensions. This was particularly illustrated in their views on groupwork programmes, instituted under Schedule 11(4A) of the Criminal Justice Act 1982.

For magistrates, describing the difference between ordinary probation supervision and probation with a groupwork condition was easy. It was firstly a matter of counselling method.

"Groupwork conditions enable a defendant to not only hear others' problems and discuss them but also to voice his own problems. Hopefully receiving, after discussion, some help and guidance from others, as distinct from an occasional one-to-one, limited time visit to a probation officer."

"It's tough going on a lone journey, but if you're doing it with other people who've got similar problems then you realise that you're not alone."

Secondly, it was a matter of stringency.

"They've got to organise their lives to make time for (groupwork). With the ordinary probation order, do the probation officers go and visit them?...There's a bit more of the punishment element in the groupwork...It's an imposition, isn't it?"

"A probation order on its own is a bit meaningless, quite honestly. You hope that somebody is befriending the individual..., that they're going to visit them to find work, to find somewhere to live, those sorts of things.

Find their feet, sort of thing. I never expect much more from a probation order. Whereas I do feel with the groupwork that they're being encouraged to talk about their offending behaviour."

"There's a good possibility of a better response from the offender if they're on a group session rather than just straightforward counselling...You (take) the real (yob)..., knocking on the door and sitting there listening to this bloke or young lady bending his ear for however long it is. He'll probably come away and say: 'Yes, thank you very much'. And go -" (*displays 2 fingers*)

Thus, most magistrates approved of a special project for drunken drivers which ran on an experimental basis for 2 years.

"[I]t seemed a good idea. But what was slightly puzzling was that they would only recommend it for the really bad cases. That I never quite understood...I would have thought that the first offenders could have done with it just as much if not more. Because the second offender may be past curing."

Among probation officers, however, there was protracted debate about the status of their groupwork programme. Officers perceived conflict between social work method and tariff.

"Once you get into writing extra conditions, you're intruding more into people's lives. It's very important that if you have an extra condition in an order you've thought about it carefully. You haven't just tacked it on for the sake of it...I think it's a tariff issue, whereas (others) feel strongly it's about method...I can't see (that)."

"The groupwork has to be reserved as a tariff disposal...I never recommend groups for people's own good. Never. I retain it always as a tariff disposal...Because (groups) are quite difficult for people. Not an easy option."

"A (groupwork) order needn't be as intrusive at all as a standard order in terms of the number or frequency of contacts or what goes on. (Groupwork) seems to me to be about method, which is that it is more appropriate to discuss your drink problems with other drinkers or people than it is to talk about them separately. Why that should be seen as higher up the tariff, I can't fathom. [Y]ou have to link your method with what you want to achieve."

"[I]f you're going to look at it as tariff, you should be considering is it more of an intrusion into people's time? Are they giving up more of their liberty? Well, I don't think with the groupwork programme necessarily they are...To me it's a method of work and what you feel would be more appropriate to that person."

As a result of this collective ambivalence, the programme for drunken drivers was a highly controversial topic, exacerbated at times by officers' personal abhorrence of the offence.

"Aiming it at third time (offenders) struck me as rather ridiculous...[S]hould we really be giving them an opportunity to do it a fourth time? Once I can understand, possibly. Twice is a dreadful mistake. Three times is almost unforgivable...But it's something that should have been out of the probation service's orbit altogether. Alcohol education for drivers should be a lot more basic. It should be incorporated into the driving test...It was also seen by a lot of the courts as a let off, because it was an alternative to a fine. If I was given a choice of 8 sessions or a £500 fine, that's a bargain."

"There was no tariff issue at all. It was set up to deal with the fact that quite a lot of people were coming through with that offence. In a different organisation that would have been called a crime prevention project...It just wasn't valid under the probation that's trying to get hardened offenders."

"We have had the luxury of getting people on probation who are more likely to succeed, which is very nice and rewarding. But perhaps we should be applying the same techniques to our mainstream probationers...[H]aving got into it obviously you give it your best and it's paid off in that it's been a successful programme...But I am concerned about it, mainly from the resourcing point of view, and also because it's a group previously untapped by probation and I'm not sure we should be in there."

It was not only the particular offence of drunken driving which aroused strong feelings in probation officers. Working with alcohol-related offenders could be unpleasant, depressing and de-skilling. Frustration, failure and hopelessness were repeated themes in officers' experience, exacerbated by other unprofessional feelings.

"[W]henever they attend the drinking problem service it always seems to go wrong. They always bugger it up...That's a depressing feeling."

"[T]he hopelessness of it all. The number of times people you've worked hard with, were getting somewhere. Then suddenly they haven't...It can be quite scary having drunken clients...I've had clients who I have been scared of when they've come into the office, when they've been drinking."

"They're so frustrating. Often nothing ever changes... Probably not (more than other groups), but more visibly so. If somebody's coming in pissed every week, then it's quite obvious that you've failed. It's brought home to you more closely. Yes, it's frustrating, because you think: 'Oh, for God's sake, just put the bottle away, won't you? It's so easy'. Which of course, it isn't. And the deceit and the lying and the denial."

"Some of the drinkers I've worked with have frightened me sometimes...(For) a senior in a city centre office, who's supposed to be to handle everything, being brought downstairs to deal with (a drunk), has on occasions been difficult...(And) all the lies and all the deceit and the self-deception. The covering up just (goes) on. Whenever you thought you were doing something, it's disappeared again."

"I can't work with chronic alcoholics. I find that very difficult. I never like them on office duty, can't bear having to talk to them in court...I can't cope with the filth and the aggression. It's not that I'm frightened of the aggression. It makes me aggressive."

These personal reactions could spill on to the pages of an SER.

#### **Example 11.4**

The defendant, aged 21, was charged with criminal damage, ABH and 5 offences of shoplifting. He was in breach of his probation order for the second time, and on each occasion numerous offences were involved. The probation officer wrote:

"All the offences he faces today are typical of the pattern he has established over the past 18 months; all committed when drunk and he has very little recollection of any of them...(The defendant) tells me now that throughout all this period he did not realise he was still on Probation. Certainly, his Probation Order probably seemed like an irrelevant detail at the

time...[H]e has proved exasperating in that he has offended constantly and I am at a loss to suggest what might stop him. He has reported occasionally to our Office, however, most of his failures are understandable given the sheer amount of offending, arrests and remands...A Community Service Order proved to be a complete waste of time."

The officer's frustration was further vented on the defendant's partner.

"(His girlfriend) is known to the Probation Service because of the many boyfriends...who have unfortunately gone on to serve lengthy custodial sentences...Now (he) tells me that he has found some stability and motivation to change through his relationship..., but this is a relationship which has proved disastrous for him in the past and disastrous for several other young men."

Probation officers who did derive some satisfaction from working with alcohol-related offenders usually identified its sources in the methods of work available, contact with specialist agencies and intellectual stimulation.

"I enjoy helping to formulate policy. There's some vanity there. I think I've got ideas that I want to put forward...It's about moving, changing and developing."

"I enjoy working with other agencies. It gives me another viewpoint, I pick up more knowledge, and it gives me a feel of working in a network, rather than stuck in my own office."

"There's quite a lot of literature about. When you're rummaging about for things to learn about, there is rather more about alcohol and offending than there is about what you do with people who take without consent, say...The way our society uses a most powerful and prevalent drug is of some interest."

"It provides an opportunity for doing a good piece of focused work...It's a well researched methodology for casework tools, so it means that you can implement a programme quite neatly."

"It was always nice working with people (on alcohol education programmes). It seemed very relevant to them and very relevant to them getting into trouble, very relevant to them being on probation. So much seems distant and far removed and cloud cuckoo land. Everybody wonders why they're on probation and nobody really knows, including the probation officer. That was something very



tangible. They knew they got in trouble because they were drunk, and there we all were, talking about drink."

Thus, differences of opinion between probation officers and magistrates about suitability for probation were not simply a matter of degrees of seriousness. They were rooted in fundamentally different styles of conceptualisation. Magistrates invoked concrete cognitive schemata of "suitable people", and related them to concrete notions of "what probation officers do with them". Probation officers applied abstract notions of tariff and motivation to individual cases and to the appropriateness of methods of supervision. In contrast to the straightforward logic of magistrates' reasoning, probation officers struggled with ambiguities and conflicts in their theories. Those theoretical problems could be exacerbated in practice by strong personal responses in specific cases.

#### **SUMMARY**

This chapter reveals 4 issues of particular relevance to an understanding of City magistrates' sentencing practice. Firstly, the balanced perspectives of magistrates on their local crime problems may have been an important factor in their sentencing practice. The punitive results of magisterial "crusades" against perceived epidemics of particular types of crime have been observed elsewhere (Burney 1985; Parker, Sumner and Jarvis 1989). Furthermore, since magistrates were not collectively preoccupied with particular crimes, they may have been more open to invitations to focus on offenders themselves. This, it was argued in Chapter Five, is a key to successful mitigation.

The reasons for the apparent difference of opinion between magistrates and probation officers as to the dangerousness of City's streets are not clear. It should be stressed that there is no suggestion here that either the probation officers or the magistrates were "right". This study did not examine "the truth" about City's crime and cannot adjudicate on the issue.

It may be admitted, nevertheless, that probation officers' opinions were surprising, and that I had anticipated that the more alarmist views would come from the magistrates. There may be some general validity in officers' notions of the distortions of their professional experience. Violent offenders might command a higher priority in their attention, given their greater chances of custodial sentences, and higher risk under supervision. This, however, does not explain the comparisons offered by probation officers with experience elsewhere. It would appear odd for magistrates to be entirely insensitive to an unusually high level of violence in their locality, if it existed, even without great knowledge of other areas. Furthermore, the strength of these officers' beliefs enhanced the milder observations others of the alcohol-violence association, lending apparent unity to their collective perceptions.

However, the discrepancy suggests a potential pitfall in the common sense assumption by one group that its perceptions, being "the truth", would be shared by another. It might not be in the overall professional interests of probation officers to air their views too loudly, thus making magistrates uncomfortably aware of a serious crime problem about which they had been apparently ignorant, and, by implication, dilatory. The professional goals of probation officers to promote non-custodial sentencing by individualising the circumstances of offenders would hardly be served by the potential, albeit unwitting, incitement to magistrates to "stamp on" violent crime. In this context, it is interesting to note that as this part of the research data was analysed, the probation service announced, amid some local publicity, its own research into City's serious problem of violent crime. Again, it should be stressed that these observations do not depend on the objective "truth" of City's crime problems. They arise from the *beliefs* about those problems held by magistrates and probation officers.

Secondly, the dispositional perspective of magistrates in explaining their own success in avoiding trouble through drink could imply punitiveness, derived from the condemnation of indiscipline and the evasion of personal responsibility. However, it seemed that City magistrates generally thought that the deviant drinking and offending of others was due to personal misfortune rather than wilful fecklessness. Common sense versions of the academic "undersocialisation" theory were sympathetically invoked, as were notions of personal misery.

"If I were in the state that some of the people are who are here, I would drink alcohol too. Sort of oblivion seeking. Solace. Luckily I'm not in the position that I want to do it."

"Most of the people who are arrested for drink-related offences tend to be...inadequate people who have other problems. So they're drinking to fill a need in the way they might be taking drugs to fill a need."

One magistrate eloquently described the tension between the condemnation inspired by a strong personal morality and the recognition of personal advantage.

"People who drink out of bravado at my age, I despise them really...If they haven't learned to master it by now then they go down in my estimation. Sounds terribly prim, doesn't it?...It sounds cataclysmically goody-goody to say you despise them. Because when you think about human beings, people have got a good reason for drinking...usually. You know what they say: 'To understand all is to forgive all'....They've taken refuge in drink, quite a lot of the ones we see. And they've had no training. It's all to do with background, isn't it? Most people I see in court...haven't had a chance! Because they've had no decent family upbringing. And if the family hasn't stood by you and given you a proper basis for your life, it's not surprising that you meet up with peer groups and start drinking."

This sympathetic distinction between themselves and others may be a key to understanding the generally humanitarian approach to defendants which has been noted throughout the observational material gathered in the courtroom. Nevertheless, the moral ambivalence described by the last

magistrate might contribute to the vulnerability of this approach to situational influences and moral inferences. In Chapter Seven, it was seen that situational distractions, such as the composition of the bench of the day and weaknesses in mitigation or SERs, could enhance the judgement of offence seriousness. In Chapter Eight, the susceptibility of magistrates to moral inferences conveyed in the presentation of information was identified. Some of these influences, particularly when present in combination, might evoke more strongly condemnation borne out of personal morality by obscuring recognition of the greater misfortunes suffered by others.

Thirdly, magistrates' susceptibility to the moral inferences contained in SERs, noted in earlier chapters, is partly explained by their unguarded approach to those documents. Exceptions to this approach might occur, for example, in cases involving offences about which individual magistrates felt strongly. Again, the potential influence on sentencing of a strongly opinionated magistrate was considered in Chapter Seven.

Fourthly, the strict application of their basic principle concerning responsibility was clearly problematic for magistrates, because of their belief in intoxicated and alcoholic loss of control. In resolving this dilemma, magistrates appeared pre-occupied with the assessment of offenders' motivations for drinking prior to offending. This explains their interest in, and the power of SERs, which provided a characterisation from which to infer such motivations.

In particular, the strong belief of magistrates in the debility of the alcoholic offender contributed heavily to the paralysis in sentencing decision making which has been noted on several occasions. Here, the sociological and situational perspectives, and absence of appeals to sickness in probation

officers' theories enabled them to take a more robust approach to addicted defendants. This, however, contributed further to the sentencing impasse, since magistrates frequently looked to the probation service for a resolution to the problem.

The theories of probation officers are of interest in themselves, given their relatively influential status in City court. It was suggested in Chapter Two that professional theories confer identity on the practitioner and agency. The firm stance on intoxicated responsibility adopted by probation officers was not only facilitated by their theories of deviance, but was an important aspect of their professional identity. Nevertheless, this claim to dispassionate professionalism could be disrupted by the intrusion of personal feelings. One officer candidly acknowledged the tension between professional responsibility and personal antagonism towards drunk drivers.

"Drinking and driving is such a horrendous offence. I have great difficulty recommending drink-driving courses to the court...I have a gut feeling that they really ought to get locked up. It all goes back to the deserving offender doesn't it? It's there, in the back of our minds, however much we try not to say it. Who deserves our help and who doesn't? Somehow, the white collar Sierra salesman bowling down the (road) after his business lunch doesn't evoke a lot of sympathy in me. I think: 'Why should I put my time aside for him? He doesn't deserve it! Lock the bugger up!' I recognise those feelings in me, and it ain't right, really, but that's my gut feeling that comes out occasionally. So I've got to combat that when I'm thinking about drinking and driving."

It would seem from some of the case examples, both in previous chapters and here, that probation officers were not always so aware of, or determined to control such tension. Working with alcohol-related offenders could enhance officers' sense of professional identity, through the acquisition of knowledge, skill and involvement in interdisciplinary expertise. However, it could also attack this identity. The intrusion of personal feeling into their responses did not stem only from the

abhorrence of some of their offences, but from the experience of professional failure.

This perspective contributes to understanding some of the puzzles of earlier case examples. For example, the discrepant treatment observed in Examples 8.3 and 8.4 can be linked to the differential experience of professional self-worth of the probation officers involved. The imprisoned alcoholic of Example 8.3 inspired tolerant amusement on the part of the police officer escorting him to the cells. When I commented on this to his exasperated probation officer, I was told:

"Yes, they might say he's fine when he's sober, but they're only containing him. He knows the system, how to get what he wants and not to get out of line. They're not challenging his lifestyle. He thinks because he's on social security he's entitled to take what he wants from shops. And I don't really hold that view."

The "tragic" defendant of Example 9.11 was also eventually imprisoned. His probation officer told me that after his release he went to the probation office several times in a drunken state and was "quite obnoxious". His offensiveness eventually resulted in a severance of relations.

"I swore at him in the end. I told him to fucking well get out and not come back if he was going to talk to me like that...He's a very unhappy man, with many problems. Like so many people who rely on alcohol, he tends to dump his unhappiness on you. Over a period of time, he certainly left me feeling de-skilled and demoralised and feeling I was spending so much time and effort and nothing was changing at all."

An irony of these probation officers' experiences is that it was cases such as these that gave rise in the courtroom to some of the most moving tributes to their endeavours. In Example 9.11, as was seen, this came from the defendant himself. In Example 9.4, the defence solicitor for the psychotic book thief remarked:

"Until recently he had the support of a probation officer, who he used to go to regularly, whenever he had a problem. Now (that officer) has left, and although he

does have the opportunity to go to other probation officers, he feels very keenly the loss of this particular one, who was very patient with him."

A further irony for probation officers is the discrepancy between the confidence with which they argued their professional ethos against the alleged misconceptions of magistrates and the extent of their internal confusion, ambivalence and disagreement. The professional identity which they publicly promoted was less easy to pursue rigorously in practice. One probation officer in interview remarked:

"It's quite difficult to see sometimes where change is ever going to come from, if somebody just goes round and around and around. Very often it's round and around, down and down. So it's just being with them and holding that, trying not to make the situation worse, rather than anything else."

Talking informally to probation officers about offenders I had witnessed in court, it seemed that the firm, explicit plans for reducing offending which they formulated for their SERs lost their thrust in the messy, real worlds of their clients' lives. Indeed, I was sometimes left wondering just how far the shift in public professional identity claimed by probation officers had left their involvements with offenders' welfare entirely privately intact. Whilst I was interviewing one senior probation officer, who was propounding the tariff and offence focus of the new philosophy with impressive vigour, the telephone rang. The request (granted) of an officer for permission to send a probation assistant daily to the home of an imprisoned offender to feed his cat was the cause of much embarrassed mirth: "Well, that's blown my cover!" Indeed it had, and to that extent, at least, *plus ca change, plus c'est la meme chose*.

The insistence by probation officers on a professional distinction between mitigation and explanation is notable. As a technical distinction, this may be tenable. Probation officers were bringing their comparatively varied and flexible range of theories of crime to bear on the explanation of

individual offenders' predicaments. They did not assume that these explanations in themselves achieved particular sentencing outcomes, but rather that they expanded the range of constructive sentencing options. Nevertheless, in Chapter Five it was argued that explanation, by attracting attention to the individuality of a case, is a crucial part of the mitigation process. The influence of probation officers' explanations and their characterisations of offenders, for better or worse, has been repeatedly noted in the preceding chapters.

### **CONCLUSIONS**

The attribution of responsibility to intoxicated offenders was problematic for magistrates because of their belief in loss of control through intoxication and alcoholism. In attempting to resolve this dilemma, magistrates appeared to focus on offenders' motivations for drinking. In relation to their personal success in avoiding trouble through drink, magistrates were dispositional theorists, regarding offenders as very often the victims of personal misfortune or inadequacy. Magistrates' susceptibility to the characterisations, explanations and inferences contained in SERs was partly explained by their belief in the professional objectivity of probation officers, and their distinction between information and recommendations in reports. They conceptualised suitability for probation in terms of types of offender, invoking notions of undersocialisation. They related these to concrete notions of what probation supervision entailed.

Probation officers held firm principles for the attribution of responsibility for intoxicated deviance. These principles were related to probation officers' theories of office: their beliefs about their professional role and tasks. In describing their personal success in avoiding trouble through drink, probation officers were mostly situational theorists. They invoked more varied and complex theories of intoxicated



deviance than did magistrates, and notably did not subscribe to the conceptualisation of alcoholism as "sickness". Probation officers perceived SERs wholistically in terms of their endeavours to achieve certain aims related to tariff considerations and the reduction of offending. They conceptualised suitability for probation abstractly, in terms of tariff and offenders' motivation. Dispassionate professionalism, however, could be disrupted by personal abhorrence of particular offences, and reactions to the frustrations, failures and unpleasantness of working with alcohol-related offenders. Moreover, probation officers struggled with conflicts in their theories of their professional role and tasks, notably in relation to probation supervision, their defining activity.

## CHAPTER TWELVE

### CONCLUSIONS

This chapter considers some implications of this theoretical and empirical study of the intoxication excuse in mitigation.

#### **INTOXICATION: OUR FAVOURITE EXCUSE**

The impatience of many academics over the survival of the intoxication excuse in the face of accumulating research evidence of its inaccuracy was noted early in this study. The finger of blame for this phenomenon has been pointed at academics themselves, medical imperialists, conniving lawyers and an ignorant public. But the secret of the intoxication excuse's success lies in its own intrinsic attractions.

The apparent contrivance of the intoxication excuse is frequently mocked. Nevertheless, an offender might genuinely seize upon his intoxication as the explanation for his misdemeanour because of its intuitive accessibility. Some influences on our behaviour are simply not intuitively obvious to us as plausible causes of our actions. The presence of an audience has been noted as an example of this. Moreover, knowledge of "true" influences on our behaviour does not necessarily provide us with more persuasive mitigation for our misdeeds. "I hit him because I was drunk", however suggestive of moral evasion, will always sound better than "I hit him because no-one stopped me", or "I hit him because people were looking".

Offenders continue to offer the intoxication excuse in mitigation, not because they are the last to hear of its inaccuracy, but because it works. From successful personal neutralisations and rationalisations for their offending, it is a short step to public mitigation. Furthermore, those personal neutralisations and rationalisations are not uniquely constructed by offenders, but are available to all who seek to excuse themselves for some departure from sober social

convention. They are rooted in the stockpile of everyday knowledge about alcohol's effects on mind, mood and behaviour. We all share in that "common knowledge", and the vast majority of us are practised in the art of invoking the neutralisations and rationalisations which it offers. Even when we have no personal experience of certain effects described in common knowledge, we remain confident that they are the "real" results of intoxication for others. The intoxication excuse, therefore, is immediately accessible, widely available, readily intelligible, and, indeed, personally meaningful as an explanation for moral infractions.

Intoxication provides a platform for constructing moral judgements which might well be unrivalled for its scope, variety and power. Certainly, there was no hint of an equal in the empirical study described here. Public reference to an offender's intoxication is not constrained by any delicacy of the subject, evokes vivid imagery of his conduct, provides the measure of his character, offers the opportunity to demonstrate remorse and reform, and justifies both punishment and rehabilitation. There is something for everyone here. All participants in the courtroom decision making process can benefit from the mention of intoxication. Even sober offenders can exploit it. The continuing popularity of the intoxication excuse can hardly be in doubt.

#### **SENTENCING: PROCESS AND PARALYSIS**

Studies of courtroom processes can be remarkably reticent on the subject of the defendants themselves (e.g. Parker, Casburn and Turner 1981; Parker, Sumner and Jarvis 1989). Of alcoholics it is often claimed that they deliberately keep a low profile in court (Cook 1975; Mileski 1969). It is sometimes alleged that courtroom procedures embrace a conspiracy to mute the hapless defendant (Carlen 1976). Bottoms and McClean's (1976) exploratory study of self-presentational styles in the courtroom is a comparatively rare

attempt to consider the active participation of defendants in the decision making process.

The comparative latitude for self-expression enjoyed by defendants in City magistrates' court facilitated, and even necessitated their inclusion as actors in the analysis. This study, then, extends our understanding of the styles of impression management available to defendants in pursuit of mitigation, and the extent to which these styles complement or conflict with their personal self-images. Of greatest interest here was the courtroom behaviour of alcoholics, who advertised their condition by overt drunkenness, but who differed in their ambivalence about or embracement of this public identity.

To observers, the extreme inappropriateness of the courtroom displays of the "hopeless" cases signified irrationality, thereby confirming their pathology, or "sickness". Such a perspective, however, assumes that the rewards on offer in the courtroom, which serve as incentives for decorum, apply equally to all defendants. These incentives are to do with the prospect of ameliorating the potential damage to be sustained from an appearance in court: material or financial loss, reduced social status, and public humiliation. But these incentives had no relevance to these destitute men. Materially, financially and socially they had already lost whatever advantages they had once possessed. They lived out their lives in a state of public humiliation. Physically, they could even gain from brief incarceration.

These defendants derived quite different rewards from their court appearances, amongst the most significant, it seemed to me, being the satisfaction of seeing the chaos and embarrassment of their world impinge upon the protected existence of others. At the end of the day, there was little court personnel could have done to prevent this. The limits of the court's sanctions for such behaviour were fairly narrow,

and nothing within the courtroom could alter the perverted system of rewards and punishments of the alcoholic's world. But these men were in fact behaving as they were expected to behave. It was part of their "sickness" to contradict the rules of propriety which governed courtroom activity.

The degree of latitude permitted to defendants was one factor in the processes through which mitigation exerted its influence in City court. It was an aspect of the democratic, mutually respectful style of problem solving by negotiation favoured by staff and magistrates.

The promotion of structured decision making and expression of opinion among magistrates was also suggested to enhance their susceptibility to mitigation by increasing their attention to the plights of individual defendants. In this respect, the success which has been claimed for the criteria for justifying custody for young offenders in the Criminal Justice Act 1988 in reducing rates of incarceration may be well founded. These criteria, by demanding justifications for custody derived from case detail, attract attention to the individuality of cases. Thus, by "provoking mindfulness" (Palmerino, Langer and McGillis 1984), mitigation achieves its purpose.

The pursuit of leniency in City court was assisted by magistrates' collective antipathy to custody. That this did not result in a more unusually low rate of imprisonment was partly because magistrates perceived that personal feeling was an inappropriate basis for the exercise of public office. Nevertheless, the parsimonious use of the custodial sanctions in City court deserves some further consideration.

Studies of magistrates' sentencing decisions have often sought to explain why courts utilise custody (e.g. Burney 1985; Parker, Sumner and Jarvis 1989). However, as Parker, Sumner and Jarvis (1989) observe, magistrates impose custody because hitherto, official restraints upon them have been

comparatively few. Indeed, as was found in this study, magistrates see the recourse to custody as part of their public office, however personally unpleasant its imposition may be. It might be pertinent, therefore, to ask why some courts *do not* use custody as much as others.

Once the focus is shifted in this way, some of the conclusions of sentencing research seem to lose their apparent force. For example, Parker, Sumner and Jarvis (1989) suggest that a court's sentencing tradition is reinforced by the precedent of previous disposals: the visibility of a previous custodial sanction on a defendant's record, by demonstrating its failure to reform him thus far, encourages further incarceration. Such an analysis appears to offer a plausible explanation of the perpetuation of custodial sentencing. But it cannot tell us why some courts resist this "push" towards increasing use of imprisonment. It is rather less intuitively reasonable to argue that the visibility of previous non-custodial disposals promotes their continued use, since presumably by his reconviction the defendant who has not experienced custody is also demonstrating his failure to learn his lesson.

In seeking to explain the excessive use of custody, Parker, Sumner and Jarvis overlook some potentially useful insights into its parsimonious use. In particular, they fail to examine the unusually low rate of custody shown by one of the courts in their study, concluding merely: "The repetition of punitive decisions cannot, in the end, be disguised by the exceptions, even contradictions" (Parker, Sumner and Jarvis 1989, p.173).

Combing Parker, Sumner and Jarvis' study for possible influences on the sentencing practice of the court with a low custody rate, certain features were found which complemented the findings of this study. The courthouse was blessed with good facilities. Clerks were courteous and helpful to defendants and were influential in advising magistrates. Probation officers never recommended custody, rarely implied

it, and offered persuasive alternative recommendations; their reports were strategic and coherent arguments; they engaged in a comparatively high level of dialogue with magistrates in the courtroom. Magistrates were not particularly alarmed about their local crime problems; they did not hold a simple ideology of sentencing; they took a paternalistic and consensual approach to sentencing; they were receptive to the notion of alternatives to custody.

These are observations about the decision making process. Those seeking to influence sentencing *decisions* might therefore usefully turn their attention to the identification and enhancement of *decision making processes* such as these, which in combination may powerfully influence outcomes.

This discussion of sentencing in City court should not end without acknowledging the irony of the experience of these magistrates, whose humanitarian concern for offenders was persistently thwarted by the sheer inaccessibility of treatment or help. The paralysis of the sentencing decision making process in cases of alcoholic or mentally disordered offenders has been repeatedly observed.

There is insufficient space here for a diversion into the philosophy of sentencing. Indeed, this study has been less concerned with what sentencing ought to be than with what it in practice *is* in one court. The failure of City magistrates' persistent efforts to secure professional help for disturbed defendants is testimony to the criminal justice system's ineffectiveness as an instrument for the delivery of treatment. Nevertheless, it does not follow that defendants would have fared better under a "just deserts" (Von Hirsch 1976) approach. City magistrates' paralysis in the face of profound individual distress or disturbance was an aspect of their susceptibility to mitigation. The accumulation of research into decision making processes in general and sentencing in particular which has been reviewed and

complemented by this study indicates that tolerance of deviance is enhanced by the recognition and tolerance of complexity. To seek to attenuate their sometimes laboured styles of reasoning might have made life easier for City magistrates, but there is rather little evidence that a pure just deserts approach reduces the harshness of defendants' experience of punishment (Hudson 1987). Within what proved so often to be an intractable system, the display of magisterial humanity was something of a virtue in itself.

### **CALLING IN THE PROFESSIONALS**

The professional influence of the probation service was an important aspect of sentencing in City court. In view of the extended role for the probation service envisaged in the implementation of the Criminal Justice Act 1991, the nature of, and tensions in this influence merits further comment.

Probation officers in City magistrates' court were fortunate. They enjoyed a working environment in which their professional expertise was recognised and their participation was encouraged. No derogation of the quality of their work is intended by the observation that probation officers alone cannot produce this happy state of affairs. The research which informed this study, and which was noted particularly in Chapter Seven, indicates that probation officers find it difficult to thrive professionally in courts which are antagonistic to their endeavours. The inhibition of their skills in hostile environments has been observed in several courtroom studies (e.g. Ashworth, Genders, Mansfield, Peay and Player 1984; Darbyshire 1984; McWilliams 1986). It is probably not mere coincidence that the highest quality of SERs was produced in the court with the lowest custody rate in Parker, Sumner and Jarvis' (1989) study. Rather, those probation officers, like the ones in City court, were enabled to exercise their professional skills by the sympathetic environment in which they operated.



However, a receptive environment which facilitates the exercise of skill does not guarantee that professional influence will always be benign. The susceptibility of City magistrates to moral inferences contained in SERs, combined with their faith in professional objectivity, created a situation in which real or implied condemnation of defendants in reports could work powerfully to their detriment.

It does not seem to be useful here to allege malign intent, or professional incompetence against probation officers in relation to some of the reports noted in this study. Their capacities for tolerance of deviance and persuasive argument on defendants' behalves have been equally frequently observed. Rather, the question should be asked what inspired probation officers to vent intolerance in some cases, in contradiction to their professional standards of practice. In the case of alcoholic defendants, it seemed that an antagonistic SER was the culmination of unprofessional feelings of failure, fear, anger and distaste, which steadily eroded professional confidence and personal tolerance. To deny that these alcoholic offenders were exceptionally demanding and difficult people would be naive. Probation officers cannot be instructed simply not to feel the way they did in such trying circumstances. Rather, attention should be directed to the mechanisms by which they may be sustained in their efforts, or enabled to avoid cathartic purging in the pages of their reports.

The preliminary examination of professional theories in Chapter Two noted the allegations of expansionism against the professions, and suggested that this was a simplistic perspective. In this study, it was clear that probation officers were not pursuing expansion of their sphere of activity in crude terms of the numbers of offenders under their supervision. Indeed, they were deliberately rejecting such merely quantitative professional growth, at the cost of some friction with the magistrates. Probation officers'

theories of their professional role in the production of SERs and probation supervision were reminiscent of McWilliams' (1986) conclusion that the probation service has moved from a personalised focus on individual offenders to a impersonal view of offenders as "units of policy". Probation officers sought expansion in terms of high risk, high tariff defendants. This pursuit was an explicit aspect of their contemporary professional identity.

The point about this pursuit which concerned me, as an observer of professional and lay interactions, was the yawning gap between the language of the probation service and that of the magistrates. Magistrates very rarely used the term "tariff" at all, let alone utilised the sophisticated abstract conceptualisation invoked by probation officers. Within magistrates' concrete, schematic styles of reasoning about types of offender and what probation officers do with them certain logic was obvious and inescapable: undisciplined people need punishment; needy people need help; "sick" people need treatment. Magistrates' liking for the groupwork programmes and denigration of individual supervision, noted in Chapter Ten, stemmed from their difficulty in conceptualising what probation officers did with offenders in one-to-one supervision. Concrete problem solving, such as finding a job or accommodation, was the limit of their imagination in this respect. By contrast, magistrates thought they knew what happened to offenders on groupwork programmes because the term invoked schematic notions such as "sharing problems" and "helping each other".

The conclusions which probation officers reached through their abstract professional styles of reasoning about tariff and motivation simply made no sense within these theoretical constructs. The fact that conflict did not arise more frequently between probation officers and magistrates sometimes appeared to have less to do with theoretical agreement than with a fortunate coincidence of interests in

many cases: for example, defendants who appeared to magistrates to be in need of help, also often appeared to probation officers to be sufficiently high tariff and well motivated to warrant their professional intervention. Furthermore, probation officers exploited this kind of reasoning in their arguments and recommendations: probation supervision could challenge the undisciplined; guide the vulnerable; help the needy.

Probation officers' reports, couched in concrete, individualistic terms disguised the discrepancy between their theoretical orientation and that of magistrates. In Chapter Ten it was suggested that probation officers did not utilise the full extent of their theoretical repertoire in the preparation of SERs in the interests of cognitive economy. However, a further issue should be raised here. Probation officers' construction of SERs is an intrinsic aspect of the judgement of individual culpability with which the court is concerned. In this respect, probation officers' definitional distinction between mitigation and explanation ignored the process of judgement formation in which they were actively and powerfully involved. It was because of this inescapable involvement in judgements of and responses to individual culpability that probation officers' reports were constructed as they were, and did not reflect their broad theoretical understanding of the sociological and situational influences on offending more fully.

A final concern about SERs arises from the clear, explicit plans for probation supervision upon which officers prided themselves. These plans may certainly be persuasive to magistrates, particularly given their concrete, schematic styles of reasoning about probation. Nevertheless, it seemed to me that in the process of supervision, probation officers became absorbed in the day to day, messy real worlds of their clients' lives, in which these plans became obscured. Precisely this phenomenon has been observed in Willis' (1983)

study of the process of probation supervision. To this extent, there was a danger that magistrates' were being seriously, although unintentionally, misled. Indeed, it was a singular irony of probation officers' experience that they appeared to be drawn by their clients into precisely the tangle of "welfare" problems which they complained magistrates attempted to thrust upon them.

This study, therefore, raises questions about the evolving professional role of the contemporary probation service. The manner in which these issues will resolve themselves as the probation service seeks to move centre stage in the criminal justice system remains to be seen. This study may, however, have a message for probation officers pursuing this quest. Lay magistrates are precisely that: they are lay theorists, constructing lay judgements of responsibility and culpability, and linking them to lay notions of justice by means of lay styles of reasoning. The outcome may not always be what professionals would want. But lay magistrates are not required to become professional theorists; they would not be lay magistrates if they did. To berate magistrates for having "the wrong idea" is to miss this point. There is probably little to be gained from trying to force professional conceptualisations upon them, therefore. Rather, the means may be explored through which those professional perspectives may be more successfully communicated through the medium of lay language, which demands, not abstract exhortations about the importance of tariff, but concrete accounts of offenders in their "real worlds" and what probation officers do with them.

**APPENDIX A:**  
**INTERVIEW SCHEDULE: MAGISTRATES**

**SECTION ONE: PERSONAL INFORMATION**

First, I would like to ask you a little about yourself.

1. How long have you been a magistrate?
2. Can you tell me a little about what you do outside of your duties as a magistrate?
3. Which parts of your magisterial duties do you find most interesting?
4. What are the rewards of being a magistrate?
5. What are the dissatisfactions of being a magistrate?

**SECTION TWO: INTOXICATION AND DEVIANCE**

I would like to ask some questions about how you see alcohol-related offending. You may be a little surprised at some of these questions, but I am just interested to hear your immediate reactions.

6. Does (City) have problems with particular sorts of alcohol-related crime?
7. Considering how very many of us drink, alcohol-related crime is comparatively rare. How would you account for your own success in avoiding trouble through drink?
8. What circumstances can you think of when would it be wrong to hold an alcohol-related offender responsible for what he has done?
9. Can you think of circumstances when you have accepted, or would be prepared to accept, drinking as a mitigating factor in an offence?
10. Can you think of cases when you have thought, or when you would think, that drinking makes an offence more serious?
11. What are the differences between drink problems and drug problems?
12. Why do chronic alcoholics break the law?
13. What do you think are the reasons for pub violence?

14. Why is drinking so often a feature of marital disputes?
15. Why do people drink and drive?

**SECTION THREE: SENTENCING**

I would like to ask you some questions now about your views on sentencing, Social Enquiry Reports and probation.

16. What, for you personally, is the primary aim of sentencing?
17. How do you try to achieve that?
18. (City) Magistrates Court seems to use custody less than some other courts. How would you explain this?
19. What are the circumstances in which you ask for Social Enquiry Reports?
20. What are probation officers trying to achieve by their recommendations in Social Enquiry Reports?
21. What kinds of alcohol-related offenders are suitable for probation?
22. How would you describe the differences between ordinary probation and probation with a groupwork condition?
23. What do you think about current moves to use probation as an alternative to custody?

**APPENDIX B:**  
**INTERVIEW SCHEDULE: PROBATION OFFICERS**

**SECTION ONE: PERSONAL INFORMATION**

First, I would like to ask you a little about yourself.

1. How long have you been a probation officer?
2. What are your present responsibilities in the team?
3. What are your particular interests? (e.g. client groups, areas of responsibility, methods)
4. Has your work produced any particular involvement in work concerned with alcohol problems?

**SECTION TWO: INTOXICATION AND DEVIANCE**

I would like to ask some questions about how you see alcohol-related offending. You may be a little surprised at some of these questions, but I am just interested to hear your immediate reactions.

5. Does (City) have problems with particular sorts of alcohol-related crime?
6. Considering how very many of us drink, alcohol-related crime is comparatively rare. How would you account for your own success in avoiding trouble through drink?
7. What circumstances can you think of when would it be wrong to hold an alcohol-related offender responsible for what he has done?
8. Can you think of circumstances when you have accepted, or would be prepared to accept, drinking as a mitigating factor in an offence?
9. Can you think of cases when you have thought, or when you would think, that drinking makes an offence more serious?
10. What are the differences between drink problems and drug problems?
11. Why do chronic alcoholics break the law?
12. What do you think are the reasons for pub violence?
13. Why is drinking so often a feature of marital disputes?

14. Why do people drink and drive?

**SECTION THREE: SENTENCING AND PROBATION**

I would like to ask you about your views on Social Enquiry Reports and probation.

15. What are you trying to achieve by your recommendations in Social Enquiry Reports?
16. What kinds of alcohol-related offenders are suitable for probation?
17. What are the differences between ordinary probation and probation with a groupwork condition?
18. What do you think about current moves to use probation as an alternative to custody?
19. Tell me three things you like about working with alcohol-related offenders.
20. Tell me three things you don't like about working with alcohol-related offenders.



## APPENDIX C

### POST-SENTENCE INTERVIEWS: MAGISTRATES.

**Defendant:**

**Magistrate(s):**

I am interested in the ways in which your sentencing decisions take into account issues about alcohol in particular cases. I have some specific questions to ask you, but first:

1. Perhaps you could tell me in your own way about your thinking in this case?
2. What was the most important consideration of all in this case for you?
3. How seriously did you view this matter?
4. What information especially helped you to reach your decision?
5. What did the references to alcohol tell you about this case?
6. What kind of person do you think this offender is?  
What makes you think that?
7. What effect, if any, do you hope this sentence will have?
8. How optimistic are you that this effect will be achieved?
9. How satisfied do you feel with this outcome?
10. What made you decide that you agreed with the recommendation/did not agree with the recommendation in the Social Enquiry Report?

11. (If probation was not the outcome)  
Did you consider probation at all?

12. Is there anything else you could tell me about your  
thinking in this case?

## BIBLIOGRAPHY

- ABELSON, R. P. (1976) 'Script Processing in Attitude Formation and Decision Making', pp. 33-45, in J. S. Carroll and J. W. Payne (eds) *Cognition and Social Behavior*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- ABRAM, K. M. (1990) 'The Problem of Co-occurring Disorders Among Jail Detainees: Antisocial Disorder, Alcoholism, Drug Abuse and Depression.' *Law and Human Behavior*, Vol 14, No 4, pp. 333-45.
- ACRES, D. (1987) 'Consistently Achieving Our Sentencing Aims', pp. 61-5, in D.C. Pennington and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.
- ADESSO, V. J. (1985) 'Cognitive Factors in Alcohol and Drug Use', pp. 179-208, in M. Galizio and S. A. Maisto (eds) *Determinants of Substance Abuse: Biological, Psychological and Environmental Factors*. New York: Plenum Press.
- AGNEW, R. and PETERS, A. A. (1986) 'The Techniques of Neutralization: An Analysis of Predisposing and Situational Factors.' *Criminal Justice and Behavior*, Vol. 13, No. 1, pp. 81-97.
- ALLEN, H. (1987) *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions*. Milton Keynes: Open University Press.
- AJZENSTADT, M. and BURTCH, B. E. (1990) 'Medicalization and Regulation of Alcohol and Alcoholism: The Professions and Disciplinary Measures.' *International Journal of Law and Psychiatry*, Vol. 13, Nos. 1-2, pp. 127-47.
- ANDERSON, R. (1978) *Representation in the Juvenile Court*. London: Routledge and Kegan Paul.
- ANTZE, P. (1987) 'Symbolic Action in Alcoholics Anonymous', pp. 149-81, in M. Douglas (ed) *Constructive Drinking: Perspectives on Drink from Anthropology*. Cambridge: Cambridge University Press.

- ARCHARD, P. (1979) *Vagrancy, Alcoholism and Social Control*. London: Macmillan.
- ARCHER, J. and BROWNE, K. (eds) (1989) *Human Aggression: Naturalistic Approaches*. London: Routledge.
- ARMOR, D. J. (1980) 'The Rand Reports and the Analysis of Relapse', pp. 81-94, in G. Edwards and M. Grant (eds) *Alcoholism Treatment in Transition*. London: Croom Helm.
- ASHWORTH, A. (1987) 'Disentangling Disparity', pp 24-35, in D. C. Pennington and S. Lloyd-Bostock (eds) *Issues and Problems in the Psychology of Sentencing*. Oxford: Centre for Socio-legal Studies.
- ASHWORTH, A., GENDERS, E., MANSFIELD, G., PEAY, J., and PLAYER, E. (1984) *Sentencing in The Crown Court: Report of an Exploratory Study*. Oxford: Centre for Criminological Research.
- ASQUITH, S. (1977) '"Relevance" and Lay Participation in Juvenile Justice.' *British Journal of Law and Society*, Vol. 4, No. 1, pp. 61-76.
- ATHENS, L. H. (1980) *Violent Criminal Acts and Actors: A Symbolic Interactionist Study*. London: Routledge and Kegan Paul.
- ATKINSON, J. M. and DREW, P. (1979) *Order in Court: The Organisation of Verbal Interaction in Judicial Settings*. London: MacMillan.
- ATHENS, L.H. (1989) *The Creation of Dangerous Violent Criminals*. London: Routledge.
- AUSTIN, W., WALSTER, E. and UTNE, M. K. (1976) 'Equity and the Law: The Effect of a Harmdoer's "Suffering in the Act" on Liking and Assigned Punishment', *Advances in Experimental Social Psychology*, Vol. 9, pp. 163-90.
- BAHR, H. M. and CAPLOW, T. (1974) *Old Men Drunk and Sober*. New York: New York University Press.
- BALDWIN, J. and McCONVILLE, M. (1977) *Negotiated Justice: Pressures to Plead Guilty*. London: Martin Robertson.

- BALL-ROKEACH, S. J. (1973) 'Values and Violence: A Test of The Subculture of Violence Thesis.' *American Sociological Review*, Vol. 38, pp. 736-49.
- BANKOWSKI, Z. K., HUTTON, N. R., and McMANUS, J. J. (1987) *Lay Justice?* Edingburgh: T. and T. Clarke.
- BANKSTON, W. B. (1988) 'Determinants of Lethal and Non-lethal Violence: Some Theoretical Considerations.' *Deviant Behavior*, Vol. 9, No. 1, pp. 77-86.
- BARDO, M. T. and RISNER, M. E. (1985) 'Biochemical Substrates of Drug Abuse', pp. 65-99 in M. Galizio and S. A. Maisto (eds) *Determinants of Substance Abuse: Biological, Psychological, and Environmental Factors*. New York: Plenum Press
- BARRETT, R. J. (1985) 'Behavioral Approaches to Individual Differences in Substance Abuse: Drug-taking Behavior', pp. 125-75 in M. Galizio and S. A. Maisto (eds) *Determinants of Substance Abuse: Biological, Psychological, and Environmental Factors*. New York: Plenum Press.
- BAR-TAL, D. GRAUMANN, C. F. KRUGLANKSI, A. W. and STROEBE, W. (eds) (1989) *Stereotyping and Prejudice: Changing Conceptions*. New York: Springer-Verlag.
- BEAN, P. and WHYNES, D. (eds) (1986) *Barbara Wootton: Social Science and Public Policy: Essays in her Honour*. London: Tavistock.
- BECK, A. T., WISSMAN, A. and KOVACS, M. (1976) 'Alcoholism, Hopelessness and Suicidal Behaviour.' *Journal of the Study of Alcohol*. Vol. 37, pp. 66-77.
- BECKER, G. S. (1976) *The Economic Approach to Human Behaviour*. Chicago: University of Chicago Press.
- BECKER, H. S. AND GEER, B. (1982) 'Participant Observation: The Analysis of Qualitative Field Data', pp. 239-50 in R. G. Burgess (ed) *Field Research: A Sourcebook and Field Manual*. London: Allen and Unwin.
- BENNETT, T. and WRIGHT, R. (1984a) *Burglars on Burglary: Prevention and the Offender*. Aldershot: Gower.

- BENNETT, T. and WRIGHT, R. (1984b) 'The Relationship Between Alcohol Use and Burglary.' *British Journal of Addiction*, Vol. 79, No. 4, pp. 431-7.
- BERKOWITZ, L. (1986) 'Some Varieties of Human Agresion: Criminal Violence as Coercion, Rule-following, Impression Management and Impulsive Behaviour', pp. 87-103, in A. Campbell and J. J. Gibbs (eds) *Violent Transactions The Limits of Personality*. Oxford: Basil Blackwell.
- BEST, J. and LUCKENBILL, D. J. (1982) *Organizing Deviance*. Englewood Cliffs: Prentice-Hall.
- BICKMAN, L. (1976) 'Observational Methods', pp. 251-290 in C. Selltiz, L. Wrightsman and S. Cook *Research Methods in Social Relations. Third Edition*. New York: Holt, Rinehart and Winston.
- BING, I. (1990) *Criminal Procedure and Sentencing in the Magistrates' Court*. London: Sweet and Maxwell.
- BLANE, H. T. (1979) 'Middle-aged Alcoholics and Young Drinkers', pp. 5-36, in H. T. Blane and M. E. Chafetz (eds) *Youth, Alcohol, and Social Policy*. New York: Plenum Press.
- BLANE, H. T. (1982) 'Problem Drinking in Delinquent and Non-delinquent Adolescent Males.' *American Journal of Drug and Alcohol Abuse*, Vol. 9, No. 2, pp. 221-32.
- BLANE, H. T. and CHAFETZ, M. E. (eds) (1979) *Youth, Alcohol, and Social Policy*. New York: Plenum Press.
- BLANE, H. T. and LEONARD, K. E. (eds) (1987) *Psychological Theories of Drinking and Alcoholism*. New York: Guilford Press.
- BLUM, R. H. (1982) 'Violence, Alcohol, and Setting: An Unexplored Nexus.' pp. 110-42 in J. J. Collins (ed) *Drinking and Crime: Perspectives on the Relationships Between Alcohol Consumption and Criminal Behaviour*. London: Tavistock.
- BLUMSTEIN, A., COHEN, J., ROTH, J. A. and VISHER, C. A. (eds) (1986) *Criminal Careers and "Career Criminals": Vol. 2*. Washington, D.C.: National Academy Press.

- BOND, R. A. and LEMON, N. F. (1979) 'Changes in Magistrates' Attitudes During the First Year on the Bench', pp. 125-42, in D. P. Farrington, K. Hawkins and S. M. Lloyd-Bostock (eds) *Psychology, Law and Legal Processes*. London: MacMillan.
- BOND, R. A. and LEMON, N. F. (1981) 'Training, Experience, and Magistrates' Sentencing Philosophies: A Longitudinal Study.' *Law and Human Behavior*, Vol. 5, Nos. 2-3, pp. 123-39.
- BOTTOMS, A. E. and McCLEAN, J. D. (1976) *Defendants in the Criminal Process*. London: Routledge and Kegan Paul.
- BOTTOMS, A. E. and MCWILLIAMS, W. (1986) 'Social Enquiry Reports Twenty-Five Years After the Streatfield Report', pp. 245-76 in P. Bean and D. Whynes (eds) *Barbara Wootton: Social Science and Public Policy: Essays in Her Honour*. London Tavistock.
- BRAIN, P. F. (ed) (1986) *Alcohol and Agression*. London: Croomhelm.
- BRAIN, P. F. (1986) 'Alcohol and Agression - The Nature of a Presumed Relationship', pp. 212-23, in P. F. Brain (ed) *Alcohol and Agression*. London: Croom Helm.
- BRIAR, S. and PILIAVIN, I. (1965) 'Delinquency, Situational Inducements, and Commitment to Conformity.' *Social Problems*, Vol. 13, No. 1, pp. 35-45.
- BRICKMAN, P. (1978) 'Is It Real?' pp. 5-34 in J. H. Harvey, W. Ickes and R. F. Kidd (eds) *New Directions in Attribution Research*. Vol. 2. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- BROWN, S. A., GOLDMAN, M. S. and ANDERSON, L. (1980) 'Expectations of Reinforcement from Alcohol: Their Domain and Relation to Drinking Patterns.' *Journal of Consulting and Clinical Psychology*, Vol. 48, pp. 419-26.
- BUCKLE, A. and FARRINGTON, D. P. (1984) 'An Observational Study of Shoplifting.' *British Journal of Criminology*, Vol. 24, No. 1, pp. 63-73.

- BURGESS, R. G. (1982a) 'Early Field Experiences', pp 15-18 in R.G. Burgess (ed) *Field Research: A Sourcebook and Field Manual*. London: Allen and Unwin.
- BURGESS, R. G. (ed) (1982) *Field Research: A Sourcebook and Field Manual*. London: Allen and Unwin.
- BURGESS, R. G. (1982b) 'Keeping Field Notes', pp. 191-94 in R.G. Burgess (ed) *Field Research: A Sourcebook and Field Manual*. London: Allen and Unwin.
- BURNEY, E. (1979) *J. P.: Magistrate, Court and Community*. London: Hutchinson.
- BURNEY, E. (1985) *Sentencing Young People: What Went Wrong With the Criminal Justice Act 1982*. Aldershot, Hants: Gower.
- CAMERON, M. O. (1964) *The Booster and The Snitch: Department Store Shoplifting*. London: The Free Press of Glencoe.
- CAMPBELL, A. (1986) 'The Streets and Violence', pp. 115-32 in A. Campbell and J. J. Gibbs (eds) *Violent Transactions: The Limits of Personality*. Oxford: Basil Blackwell.
- CAMPBELL, A., BIBEL, D. and MUNCER, S. (1985) 'Predicting Our Own Aggression: Person, Subculture or Situation?' *British Journal of Social Psychology*, Vol. 24, pp. 169-80.
- CAMPBELL, A. and GIBBS, J. J. (eds) (1986) *Violent Transactions: The Limits of Personality*. Oxford: Basil Blackwell.
- CAPPELL, H. and GREELEY, J. (1987) 'Alcohol and Tension Reduction: An Update on Research and Theory', pp. 15-54 in H. T. Blane and K. E. Leonard (eds) *Psychological Theories of Drinking and Alcoholism*. New York: Guilford Press.
- CARLEN, P. (1976) *Magistrates' Justice*. London: Martin Robertson.
- CARROLL, J. S. (1982) 'Committing a Crime: The Offender's Decision', pp. 46-67, in V. J. Konecni and E.B. Ebbesen (eds) *The Criminal Justice System: A Social-Psychological Analysis*. San Francisco: W. H. Freeman & Co.



- CARROLL, J. S. and PAYNE, J. W. (eds) (1976) *Cognition and Social Behavior*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- CARROLL, J. S. and PAYNE, J. W. (1976) 'The Psychology of the Parole Decision Process: A Joint Application of Attribution Theory and Information-Processing Psychology', pp. 13-32 in J. S. Carroll and J. W. Payne (eds) *Cognition and Social Behavior*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- CARROLL, J. S. and PAYNE, J. W. (1977) 'Judgements About Crime and the Criminal: A Model and a Method for Investigating Parole Decisions', pp. 191-239 in B. D. Sales (ed) *Perspectives in Law and Psychology*. New York: Plenum Press.
- CARROLL, J. AND WEAVER, F. (1986) 'Shoplifters' Perceptions of Crime Opportunities: A Process Tracing Study', pp. 19-38 in D. Cornish and R. Clarke (eds) *The Reasoning Criminal: Rational Choice Perspectives on Offending*. New York: Springer-Verlag.
- CARTER, R. M. (1967) 'The Presentence Report and the Decision-making Process.' *Journal of Research in Crime and Delinquency*, Vol. 4, No. 2, pp. 203-11.
- CAUDILL, B. D. and MARLATT, G. A. (1975) 'Modeling Influences in Social Drinking: An Experimental Analogue.' *Journal of Consulting and Clinical Psychology*, Vol. 43, pp. 405-15.
- CAVAN, S. (1966) *Liquor License: An Ethnography of Bar Behaviour*. Chicago: Aldine.
- CHRISTIANSEN, B. A. and GOLDMAN, M. S. (1983) 'Alcohol Related Expectancies vs. Demographic/Background Variables in the Prediction of Adolescent Drinking.' *Journal of Consulting and Clinical Psychology*, Vol. 51, pp. 249-57.
- CLARKE, R. V. G. (1980) '"Situational" Crime Prevention: Theory and Practice.' *British Journal of Criminology*. Vol. 20, No. 2, pp. 136-47.
- CLARKE, R. V. and CORNISH, D. B. (1985) 'Modeling Offenders' Decisions: A Framework for Research and Policy', pp. 147-

- 85 in M. Tonry and N. Morris (eds) *Crime and Justice: An Annual Review of Research: Vol. 6*. Chicago: University of Chicago Press.
- CLINARD, M. B. and QUINNEY, R. (1967) *Criminal Behavior Systems: A Typology*. New York: Holt, Rinehart and Winston.
- COID, J. (1986a) 'Alcohol, Rape and Sexual Assault', pp. 161-83 in P. J. Brain (ed) *Alcohol and Aggression*. London: Croom Helm.
- COID, J. (1986b) 'Social-cultural Factors in Alcohol-related Aggression', pp. 184-211 in P. J. Brain (ed) *Alcohol and Aggression*. London: Croom Helm.
- COLLINS, J. J. (1982) 'Alcohol Careers and Criminal Careers', pp. 152-206 in J. J. Collins (ed) *Drinking and Crime: Perspectives on the Relationships Between Alcohol Consumption and Criminal Behaviour*. London: Tavistock.
- COLLINS, J. J. (eds) (1982) *Drinking and Crime: Perspectives on the Relationships Between Alcohol Consumption and Criminal Behaviour*. London: Tavistock.
- COLLINS, J. J. (1986) 'The Relationship of Problem Drinking to Individual Offending Sequences', pp. 89-120 in A. Blumstein, J. Cohen, J. A. Roth and C.A. Visher (eds) *Criminal Careers and "Career Criminals"*. Washington, D. C.: National Academy Press.
- COLLINS, J. J. (1989) 'Alcohol and Interpersonal Violence: Less Than Meets the Eye', pp.49-67 in N. A. Weiner and M. E. Wolfgang (eds) *Pathways to Criminal Violence*. London: Sage.
- COOK, T. (1975) *Vagrant Alcoholics*. London: Routledge and Kegan Paul.
- COOK, T. (ed) (1979) *Vagrancy: Some New Perspectives*. London: Academic Press.
- COOKE, R. K. (1987) 'The Practical Problems of the Sentencer', pp. 57-60 in D. C. Pennington and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.

- CORBETT, C. (1987) 'Magistrates' and Court Clerks' Sentencing Behaviour: An Experimental Study', pp. 204-16 in D. C. Pennington and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.
- CORDEN, J. and NOTT, D. (1980) 'The Power to Defer Sentence.' *British Journal of Criminology*, Vol. 20, No. 4, pp. 358-67.
- CORDILIA, A. T. (1986) 'Robbery Arising out of a Group Drinking-Context', pp. 167-80 in A. Campbell and J. J. Gibbs (eds) *Violent Transactions: The Limits of Personality*. Oxford: Basil Blackwell.
- CORNISH, D. B. (1978) *Gambling: A Review of the Literature and its Implications for Policy and Research*. London: H.M.S.O.
- CORNISH, D. and CLARKE, R. (1986) 'Introduction', pp. 1-16 in D. B. Cornish and R. V. Clarke (eds) *The Reasoning Criminal: Rational Choice Perspectives on Offending*. New York: Springer-Verlag.
- CORNISH, D. B. and CLARKE, R. V. (eds) (1986) *The Reasoning Criminal: Rational Choice Perspectives on Offending*. New York: Springer-Verlag.
- CORNISH, D. B. and CLARKE, R. V. (1987) 'Understanding Crime Displacement: An Application of Rational Choice Theory.' *Criminology*, Vol. 25, No. 4, pp. 933-47.
- COX, W. M. (1985) 'Personality Correlates of Substance Abuse', pp. 209-46 in M. Galizio and S. A. Maisto (eds) *Determinants of Substance Abuse: Biological, Psychological, and Environmental Factors*. New York: Plenum Press.
- COX, W. M. (1987) 'Personality Theory and Research', pp. 55-89 in H. T. Blane and K. E. Leonard (eds) *Psychological Theories of Drinking and Alcoholism*. New York: Guilford Press.
- CRITCHLOW, B. (1985) 'The Blame in the Bottle: Attributions about Drunken Behavior.' *Personality and Social Psychology Bulletin*. Vol. 11, No 3, pp. 258-74.

- CROCKER, J, FISKE, S. T. and TAYLOR, S. E. (1984) 'Schematic Bases of Belief Change', pp. 197-226 in J. R. Eiser (ed) *Attitudinal Judgement*. New York: Springer-Verlag.
- CURNOCK, K. and HARDIKER, P. (1979) *Towards Practice Theory: Skills and Methods in Social Assessments*. London: Routledge and Kegan Paul.
- CURRAN, J. H. and CHAMBERS, G. A. (1982) *Social Enquiry Reports in Scotland*. Edinburgh: Scottish Office Central Research Unit, HMSO.
- DALLOS, R. and SAPSFORD, R. J. (1981) 'The Person and Group Reality', pp. 429-59 in M. Fitzgerald, G. McLennan and J. Pawson (eds) *Crime and Society: Readings in History and Theory*. London: Routledge and Kegan Paul.
- DANIELS, A. K. (1970) 'Normal Mental Illness and Understandable Excuses: The Philosophy of Combat Psychiatry.' *American Behavioral Scientist*. Vol. 14, No. 2, pp. 169-78.
- DARBYSHIRE, P. (1984) *The Magistrates' Clerk*. Chichester: Barry Rose.
- DAWES, R. M. (1976) 'Shallow Psychology', pp 3-11 in J. S. Carroll and J. W. Payne (eds) *Cognition and Social Behavior*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- DAVIS, J. R. (1983) 'Academic and Practical Aspects of Probation: A Comparison', *Federal Probation*, Vol. 47, No. 4, pp. 7-10.
- DENNEY, R. C. (1986) *Alcohol and Accidents*. Wilmslow, Cheshire: Sigma Press.
- DENZIN, N. K. (1987) *The Recovering Alcoholic*. Newbury Park: Sage.
- DERICCO, D. A. and GARLINGTON, W. K. (1977) 'The Effect of Modeling and Disclosure of Experimenter's Intent on Drinking Rate of College Students.' *Addictive Behaviors*, Vol. 2, pp. 135-39.
- DIENSTBIER, R. A. (1978) 'Attribution, Socialization, and Moral Decision-making', pp. 181-206 in J. H. Harvey, W. Ickes and R. F. Kidd (eds) *New Directions in Attribution*

*Research: Vol. 2.* Hillsdale, New Jersey: Lawrence Erlbaum Associates.

- DOBASH, R. E. and DOBASH, R. P. (1984) 'The Nature and Antecedents of Violent Events.' *British Journal of Criminology*, Vol. 24, No 3, pp. 269-88.
- DORN, N. (1983) *Alcohol, Youth and the State.* London: Croom Helm.
- DOUGLAS, J. D. (ed) (1970) *Deviance and Respectability: The Social Construction of Moral Meanings.* New York: Basic Books.
- DOUGLAS, M. (ed) (1987) *Constructive Drinking: Perspectives on Drink from Anthropology.* Cambridge: Cambridge University Press.
- DOUGLAS, M. (1987) 'A Distinctive Anthropological Perspective', pp. 3-15 in M. Douglas (ed) *Constructive Drinking: Perspectives on Drink from Anthropology.* Cambridge: Cambridge University Press.
- DRASS, K. A. and SPENCER, J. W. (1987) 'Accounting for Pre-sentencing Recommendations: Typologies and Probation Officers' Theory of Office.' *Social Problems*, Vol. 34, No. 3, pp. 277-93.
- DREITZEL, H. P. (ed) (1970) *Recent Sociology No. 2: Patterns of Communicative Behavior.* New York: MacMillan.
- EATON, M. E. (1984) *Familial Ideology and Summary Justice: Women Defendants Before a Suburban Magistrates' Court.* Phd. Thesis, London: London School of Economics.
- EBBESSEN, E. B. and KONECNI, V. J. (1982) 'Social Psychology and the Law: A Decision-making Approach to the Criminal Justice System', pp. 3-23 in V. J. Konecni and E. B. Ebbesen (eds) *The Criminal Justice System: A Social-Psychological Analysis.* San Francisco: W. H. Freeman & Co.
- EDWARDS, G. and GRANT, M. (eds) (1980) *Alcoholism Treatment in Transition.* London: Croom Helm.
- EDWARDS, S. S. M. (1984) *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal*

- Law and Criminal Justice System*. Manchester: Manchester University Press.
- EISER, J. R. (ed) (1984) *Attitudinal Judgement*. New York: Springer-Verlag.
- EISER, J. R. and VAN DER PLIGT, J. (1988) *Attitudes and Decisions*. London: Routledge.
- ELLSWORTH, P. C. (1978) *Attitudes Towards Capital Punishment: From Application to Theory*. Paper Presented at Society of Experimental Social Psychology Symposium on Psychology and Law: Princeton, N. J.
- EVANS, C. M. (1986) 'Alcohol and Violence: Problems Relating to Methodology, Statistics and Causation', pp. 138-60 in P. F. Brain (ed) *Alcohol and Aggression*. London: Croomhelm.
- EWART, B. and PENNINGTON, D. C. (1987) 'An Attributional Approach to Explaining Sentencing Disparity', pp. 181-92 in D. C. Pennington and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.
- FAGAN, J. A., STEWART, D. K., and HANSEN, K. V. (1983) 'Violent Men or Violent Husbands? Background Factors and Situational Correlates', pp. 49-67 in D. Finkelhor, R. J. Gelles, G. T. Hotaling and M. A. Straus (eds) *The Dark Side of Families: Current Family Violence Research*. Beverley Hills: Sage.
- FAJARDO, R. (1976) *Helping Your Alcoholic Before He or She Hits Bottom: A Tested Technique for Leading Alcoholics into Treatment*. New York: Crown.
- FARRINGTON, D. P. (1987) 'Early Precursors of Frequent Offending', pp. 27-50, in J. Q. Wilson and G. C. Lounsbury (eds) *From Children to Citizens: Vol. II: Families, Schools, and Delinquency Prevention*. New York: Springer-Verlag.
- FARRINGTON, D. P., HAWKINS, K., LLOYD-BOSTOCK, S. M. (1979) 'Introduction: Doing Psycholegal Research', pp. xiii-xvii, in D. P. Farrington, K. Hawkins, and S. M. Lloyd-

- Bostock (eds) *Psychology, Law and Legal Processes*. London: Macmillan.
- FARRINGTON, D. P., HAWKINS, K., LLOYD-BOSTOCK, S. M. (eds) (1979) *Psychology, Law and Legal Processes*. London: MacMillan.
- FAULKNER, W., SANDAGE, D. and MAGUIRE, B. (1988) 'The Disease Concept of Alcoholism: The Persistence of an Outmoded Scientific Paradigm.' *Deviant Behaviour*, Vol. 9, No. 4, pp. 317-32.
- FEENEY, F. (1986) 'Robbers as Decision-makers', pp. 53-71 in D. B. Cornish and R. V. Clarke (eds) *The Reasoning Criminal: Rational Choice Perspectives on Offending*. New York: Springer-Verlag.
- FEINBERG, G. (1984) 'Profile of The Elderly Shoplifter', pp. 35-50 in E. S. Newman, D. J. Newman and M. L. Gewirtz (eds) *Elderly Criminals*. Cambridge, Mass: Oelgeschlager, Gunn and Hain.
- FELKER, C. J. (1989) 'A Proposal for Considering Intoxication at Sentencing Hearings: Part I.' *Federal Probation*, Vol. 53, No. 4, pp. 3-11.
- FELKER, C. J. (1990) 'A Proposal for Considering Intoxication at Sentencing Hearings: Part II.' *Federal Probation*, Vol. 54, No. 1, pp. 3-14.
- FELSON, R. B., BACCAGLINI, W. and GMELCH, G. (1986) 'Bar-Room Brawls: Aggression and Violence in Irish and American Bars', pp. 153-66 in A. Campbell & J. J. Gibbs (eds) *Violent Transactions: The Limits of Personality*. Oxford: Basil Blackwell.
- FELSON, R. B. and STEADMAN, H. J. (1983) 'Situational Factors in Disputes Leading to Criminal Violence.' *Criminology*, Vol. 21, No. 1, pp. 59-74.
- FESTINGER, L. (1957) *A Theory of Cognitive Dissonance*. London: Tavistock.
- FINCHAM, F. D. and JASPARS, J. M. (1980) 'Attribution of Responsibility: From Man the Scientist to Man as Lawyer.' *Advances in Experimental Social Psychology*, Vol. 13, pp. 81-138.

- FINGARETTE, H, (1988) *Heavy Drinking: The Myth of Alcoholism as a Disease*. Berkeley, California: University of California Press.
- FINGARETTE, H. (1990a) 'Alcoholism: Can Honest Mistake About One's Capacity for Self Control be an Excuse?' *International Journal of Law and Psychiatry*, Vol. 13, Nos. 1-2, pp. 77-93.
- FINGARETTE, H. (1990b) 'Response to Lehman's Article "Alcoholism, Freedom and Moral Responsibility".' *International Journal of Law and Psychiatry*, Vol. 13, Nos. 1-2, pp. 123-6.
- FINGARETTE, H. and HASSE, A. F. (1979) *Mental Disabilities and Criminal Responsibility*. Berkeley: University of California Press.
- FINKEL, N. J. and HANDEL, S. F. (1989) 'How Jurors Construe "Insanity".' *Law and Human Behavior*, Vol. 13, No. 1, pp. 41-59.
- FINKELHOR, D., GELLES, R. J., HOTALING, G. T., and STRAUS, M. A. (eds) (1983) *The Dark Side of Families: Current Family Violence Research*. Beverley Hills: Sage.
- FISKE, S. T. and NEUBERG, S. L. (1989) 'Category-based and Individuating Processes as a Function of Information and Motivation: Evidence From our Laboratory', pp. 83-103 in D. Bar-tal, C. F. Graymann, A. W. Kruglanski and W. Stroebe (eds) *Stereotyping and Prejudice*. New York: Springer-Verlag.
- FITGERALD, M., MCLENNAN, G., and PAWSON, J. (eds) (1981) *Crime and Society: Readings in History and Theory*. London: Routledge and Kegan Paul.
- FITZMAURICE, C. and PEASE, K. (1986) *The Psychology of Judicial Sentencing*. Manchester: Manchester University Press.
- FORGAS, J. P. (1981a) 'Affective and Emotional Influences on Episode Representations', pp. 165-80 in J. P. Forgas (ed) *Social Cognition: Perspectives on Everyday Understanding*. London: Academic Press.



- FORGAS, J. P. (1981b) 'Epilogue: Everyday Understanding and Social Cognition', pp. 259-272 in J. P. Forgas (ed) *Social Cognition: Perspectives on Everyday Understanding*. London: Academic Press.
- FORGAS, J. P. (ed) (1981) *Social Cognition: Perspectives on Everyday Understanding*. London: Academic Press.
- FORGAS, J. P. (1986) 'Cognitive Representations of Aggressive Situations', in A. Campbell and J. J. Gibbs (eds) *Violent Transactions: The Limits of Personality*. Oxford: Basil Blackwell.
- FREIDSON, E. (1966) 'Disability as Social Deviance, pp. 71-99 in M. B. Sussman (ed) *Sociology and Rehabilitation*. Cleveland: American Sociological Association.
- FURNHAM, A. F. (1988) *Lay Theories: Everyday Understanding of Problems in the Social Sciences*. Oxford: Pergamon Press.
- FURNHAM, A. and HENDERSON, M. (1983) 'Lay Theories of Delinquency.' *European Journal of Social Psychology*. Vol. 13, pp. 107-20.
- FURNHAM, A., JASPARS, J. and FINCHAM, F. D. (1983) 'Professional and Naive Psychology: Two Approaches to the Explanation of Social Behaviour', pp. 315-40 in J. Jaspars, F. Fincham and M. Hewstone (eds) *Attribution Theory and Research: Conceptual, Developmental and Social Dimensions*. London: Academic Press.
- GABOR, T. and JAYEWARDENE (1978) 'The Pre-Sentence Report as a Persuasive Communication.' *Canadian Journal of Criminology*, Vol. 20, No. 1, pp. 18-27.
- GALIZIO, M. and MAISTO, S. A. (eds) (1985) *Determinants of Substance Abuse: Biological, Psychological, and Environmental Factors*. New York: Plenum Press.
- GALIZIO, M. and MAISTO, S. A. (1985) 'Toward a Biopsychosocial Theory of Substance Abuse', pp 425-29 in M. Galizio and S. A. Maisto (eds) *Determinants of Substance Abuse: Biological, Psychological, and Environmental Factors*. New York: Plenum Press.

- GAROFALO, J. (1987) 'Reassessing the Lifestyle Model of Criminal Victimization', pp. 23-42 in M. R. Gottfredson and T. Hirschi (eds) *Positive Criminology*. Newbury Park, California: Sage Publications.
- GAYFORD, J. J. (1975) 'Wife Battering: A Preliminary Survey of 100 Cases.' *British Medical Journal*, Vol. 1, pp. 194-97.
- GEER, B. (1964) 'First Days in the Field', pp. 322-44 in P. E. Hammond (ed) *Sociologists at Work: Essays on the Craft of Social Research*. New York: Basic Books.
- GHODSIAN, M. and POWER, C. (1987) 'Alcohol Consumption Between the Ages of 16 and 23 in Britain: A Longitudinal Study.' *British Journal of Addiction*, Vol. 82, pp. 175-80.
- GIBBENS, T. C. N. and PRINCE, J. (1962) *Shoplifting*. London: The Institute for the Study and Treatment of Delinquency.
- GIBBS, J. J. (1986) 'Alcohol Consumption, Cognition and Context: Examining Tavern Violence', pp 133-51 in A. Campbell and J. J. Gibbs (eds) *Violent Transactions: The Limits of Personality*. Oxford: Basil Blackwell.
- GILLER, H. and MORRIS, A. (1981) *Care and Discretion: Social Workers' Decisions with Delinquents*. London: Burnett Books.
- GILLIES, H. (1976) 'Homicide in the West of Scotland.' *British Journal of Psychiatry*, Vol. 128, pp. 105-27.
- GLASER, B. G. (1965) 'The Constant Comparative Method of Qualitative Analysis.' *Social Problems*, Vol. 12, pp. 436-45.
- GOLDMAN, M. S., BROWN, S. A., and CHRISTIANSEN, B. A. (1987) 'Expectancy Theory: Thinking About Drinking', pp. 181-226 in H. T. Blane and K. E. Leonard (eds) *Psychological Theories of Drinking and Alcoholism*. New York: Guilford Press.
- GOODMAN, R. A., MERCY, J. A., LOYA, F., ROSENBERG, M. L., SMITH J. C., ALLEN, N. H., VARGAS, L. and KOLTS, R. (1986) 'Alcohol Use and Interpersonal Violence: Alcohol

- Detected in Homicide Victims.' *American Journal of Public Health*, Vol. 76, No. 2, pp. 144-9.
- GOTTFREDSON, M. R. (1984) *Victims of Crime: The Dimensions of Risk*. London: H.M.S.O.
- GOTTFREDSON, M. R. and HIRSCHI, T. (eds) (1987) *Positive Criminology*. Newbury Park, California: Sage Publications.
- GREELEY, A. M., MCCREADY, W. C., and THEISEN, G. (1980) *Ethnic Drinking Subcultures*. New York: Praeger.
- GREENBERG, S. W. (1982) 'Alcohol and Crime: A Methodological Critique of the Literature', pp. 70-109 in J. J. Collins (ed) *Drinking and Crime: Perspectives on the Relationships Between Alcohol Consumption and Criminal Behaviour*. London: Tavistock.
- GUSFIELD, J. R. (1963) *Symbolic Crusade: Status Politics and the American Temperance Movement*. Urbana: University of Illinois.
- GUSFIELD, J. R. (1981) *The Culture of Public Problems: Drinking-Driving and the Symbolic Order*. Chicago: University Press.
- GUSFIELD, J. R. (1987) 'Passage to Play: Rituals of Drinking Time in American Society', pp. 73-90 in M. Douglas (ed) *Constructive Drinking: Perspectives on Drink from Anthropology*. Cambridge: Cambridge University Press.
- HAMILTON, C. J. and COLLINS, J. J. (1982) 'The Role of Alcohol in Wife Beating and Child Abuse: A Review of the Literature', pp. 253-87 in J. J. Collins (ed) *Drinking and Crime: Perspectives on the Relationships Between Alcohol Consumption and Criminal Behaviour*. London: Tavistock.
- HAMMOND, P. E. (ed) (1964) *Sociologist at Work: Essays on the Craft of Social Research*. New York: Basic Books.
- HARFORD, T. C. (1979) 'Ecological Factors in Drinking', pp. 147-82 in H. T. Blane and M. E. Chafetz (eds) *Youth, Alcohol and Social Policy*. New York: Plenum Press.

- HARFORD, T. C. (1983) 'A Contextual Analysis of Drinking Events.' *The International Journal of the Addictions*, Vol. 18, No. 6, pp. 825-34.
- HARFORD, T. C., WECHSLER, H. and ROTHMAN, M. (1983) 'The Structural Context of College Drinking.' *Journal of Studies on Alcohol*, Vol. 44, No. 4, pp. 722-32.
- HARRE, R. (1981) 'Rituals, Rhetoric and Social Cognitions', pp. 211-24 in J. P. Forgas, (ed) *Social Cognition: Perspectives on Everyday Understanding*. London: Academic Press.
- HARRIS, R. J. (1985) 'Towards Just Welfare: A Consideration of a Current Controversy in the Theory of Juvenile Justice.' *British Journal of Criminology*, Vol. 25, No. 1, pp. 31-45.
- HARRIS, R. and WEBB, D. (1987) *Welfare, Power and Juvenile Justice: The Social Control of Delinquent Youth*. London: Tavistock.
- HARTOCOLLIS, P. (1962) 'Drunkenness and Suggestion: an Experiment with Intravenous Alcohol.' *Quarterly Journal of Studies on Alcohol*, Vol. 23, pp. 376-89.
- HARVEY, J. H., ICKES, W. and KIDD, R. F. (eds) (1978) *New Directions in Attribution Research. Vol. 2*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- HAUGE, R. and IRGENS-JENSEN, O. (1987) 'Age, Alcohol Consumption and the Experiencing of Negative Consequences of Drinking in Four Scandinavian Countries.' *British Journal of Addiction*, Vol. 82, pp. 1101-10.
- HAWKER, A. and STEVENSON, G. (1984) 'Young People, Drink and the Law: a Descriptive Study covering Two London Magistrates' Courts.' *Alcohol and Alcoholism*, Vol, 19, No. 1, pp. 51-61.
- HAWKINS, K. (1983) 'Assessing Evil: Decision Behaviour and Parole Board Justice.' *British Journal of Criminology*, Vol. 23, No. 2, pp. 101-27.
- HAWKINS, K. (1983) 'Thinking About Legal Decision Making', pp. 7-24 in J. Shapland (ed) *Decision Making in the Legal*

- System: Issues in Criminological and Legal Psychology*,  
No. 5. Leicester: British Psychological Society.
- HEALY, J. (1988) *The Grass Arena: An Autobiography*. London:  
Faber and Faber.
- HEATH, D. B. (1981) 'Determining the Sociocultural Context  
of Alcohol Use.' *Journal of Studies on Alcohol*,  
*Supplement No 9: Cultural Factors in Alcohol Research and  
the Treatment of Drinking Problems*, pp. 9-17.
- HEATHER, N. and ROBERTSON, I. (1985) *Problem Drinking*.  
Harmondsworth: Penguin Books.
- HEIDENSOHN, F. (1985) *Women and Crime*. Basingstoke:  
Macmillan Education.
- HEIDER, F. (1958) *The Psychology of Interpersonal Relations*.  
New York: Wiley.
- HENERSON, M. E., MORRIS, L. L. and FITZ-GIBBON, C. T. (1978)  
*How to Measure Attitudes*. London: Sage.
- HEWSTONE, M. (1983) 'Attribution Theory and Common-Sense  
Explanations: An Introductory Overview', pp. 1-26 in  
M.Hewstone (ed) *Attribution Theory: Social and Functional  
Extensions*. Oxford: Basil Blackwell.
- HEWSTONE, M. (ed) (1983) *Attribution Theory: Social and  
Functional Extensions*. Oxford: Basil Blackwell.
- HINDELANG, M. (1973) 'Causes of Delinquency: A Partial  
Replication and Extension.' *Social Problems*, Vol. 20  
pp. 471-87.
- HINE, J. McWILLIAMS, W. and PEASE, K. (1978)  
'Recommendations, Social Information and Sentencing.'  
*The Howard Journal of Penology and Crime Prevention*,  
Vol. 17, pp. 91-100.
- HINES, V. G. (1982) *Judicial Discretion in Sentencing by  
Judges and Magistrates*. Chichester: Barry Rose.
- HIRSCHI, T. (1969) *Causes of Delinquency*. Berkeley:  
University of California Press.
- HIRSCHI, T. (1986) 'On the Compatibility of Rational Choice  
and Social Control Theories of Crime', pp. 105-18 in D.  
B. Cornish and R. V. Clarke (eds) *The Reasoning Criminal*:

*Rational Choice Perspectives on Offending.* New York: Springer-Verlag.

- HIRSCHI, T. and GOTTFREDSON, M. (eds) (1980) *Understanding Crime: Current Theory and Research.* London: Sage.
- HIRSCHI, T. and GOTTFREDSON, M. (1983) 'Age and the Explanation of Crime.' *American Journal of Sociology*, Vol. 89, No. 3, pp. 552-84.
- HOBBS, D. (1988) *Doing the Business: Entrepreneurship, The Working Class and Detectives in the East End of London.* Oxford: Clarendon.
- HOGARTH, J. (1971) *Sentencing as a Human Process.* Toronto: University of Toronto Press.
- HOLLIS, M. (1987) *The Cunning of Reason.* Cambridge: Cambridge University Press.
- HOLSTEIN, J. A. (1985) 'Jurors' Interpretations and Jury Decision Making.' *Law and Human Behavior*, Vol. 9, No. 1, pp. 83-100.
- HOME OFFICE (1980) *Young Offenders. Cm. 8045.* London: H.M.S.O.
- HOME OFFICE (1986a) *Criminal Statistics England and Wales 1985. Cm 10.* London: H.M.S.O.
- HOME OFFICE (1986b) *Criminal Statistics England and Wales Supplementary Tables 1985: Vol. 5: Court proceedings by Petty Sessional Division and Commission of the Peace Area.* London: H.M.S.O.
- HOME OFFICE (1987a) *Criminal Statistics England and Wales 1986. Cm 233.* London: H.M.S.O.
- HOME OFFICE (1987b) *Criminal Statistics England and Wales Supplementary Tables 1986: Vol. 5: Court proceedings by Petty Sessional Division and Commission of the Peace Area.* London: H.M.S.O.
- HOME OFFICE (1988a) *Criminal Statistics England and Wales 1987. Cm 498.* London: H.M.S.O.
- HOME OFFICE (1988b) *Criminal Statistics England and Wales Supplementary Tables 1987: Vol. 5: Court proceedings by Petty Sessional Division and Commission of the Peace Area.* London: H.M.S.O.

- HOME OFFICE (1989a) *Criminal Statistics England and Wales 1988*. Cm 847. London: H.M.S.O.
- HOME OFFICE (1989b) *Criminal Statistics England and Wales Supplementary Tables 1988: Vol. 5: Court Proceedings by Petty Sessional Division and Commission of the Peace Area*. London: H.M.S.O.
- HOME OFFICE (1990a) *Criminal Statistics England and Wales 1989*. Cm 1322. London: H.M.S.O.
- HOME OFFICE (1990b) *Criminal Statistics England and Wales Supplementary Tables 1989: Vol. 5: Court Proceedings by Petty Sessional Division and Commission of the Peace Area*. London: H.M.S.O.
- HOME OFFICE (1992a) *Criminal Statistics England and Wales 1990*. Cm 1935. London: H.M.S.O.
- HOME OFFICE (1992b) *Criminal Statistics England and Wales Supplementary Tables 1990: Vol. 5: Court proceedings by Petty Sessional Division and Commission of the Peace Area*. London: Government Statistical Service.
- HOOD, R. (1962) *Sentencing in Magistrates' Courts: A Study in Variations of Policy*. London: Stevens and Sons.
- HOPE, T. (1985) *Implementing Crime Prevention Measures*. London: H.M.S.O.
- HORE, B. D. and PLANT, M. A. (eds) (1981) *Alcohol Problems in Employment*. London: Croom Helm.
- HORWITZ, A. and WASSERMAN, M. (1980) 'Some Misleading Conceptions in Sentencing Research: An Example and a Reformulation in the Juvenile Court.' *Criminology*, Vol. 18, No. 3, pp. 411-24.
- HOUGH, M. and MAYHEW, P. (1983) *The British Crime Survey: First Report*. London: H.M.S.O.
- HOUGH, M. and MAYHEW, P. (1985) *Taking Account of Crime: Key Findings from the Second British Crime Survey*. London: H.M.S.O.
- HOUGH, M., MOXON, D. and LEWIS, H. (1987) 'Attitudes to Punishment: Findings from the British Crime Survey', pp. 117-30 in D. C. Pennington and S. Lloyd-Bostock (eds) *The*

*Psychology of Sentencing: Approaches to Consistency and Disparity.* Oxford: Centre for Socio-legal Studies.

HOWARD, R. C. and CLARKE, C. R. (1985) 'When Courts and Experts Disagree: Discordance Between Insanity Recommendations and Adjudications.' *Law and Human Behavior*, Vol. 9, No. 4, pp. 385-95.

HUDSON, B. (1987) *Justice Through Punishment: A Critique of the "Justice" Model of Corrections.* Basingstoke: MacMillan Education.

ICKES, W. and LAYDEN, M. A. (1978) 'Attributional Styles', pp. 119-52 in J. H. Harvey, W. Ickes and R. F. Kidd (eds) *New Directions in Attribution Research: Vol. 2.* Hillsdale, New Jersey: Lawrence Erlbaum Associates.

IRWIN, J. (1970) *The Felon.* Englewood Cliffs, N.J.: Prentice-Hall.

JACKSON, J. K. (1954) 'The Adjustment of the Family to the Crisis of Alcoholism', pp. 56-71 in E. Rubington and M.S. Weinberg (eds) *Deviance: The Interactionist Perspective. Third Edition.* New York: MacMillan.

JACOB, T. and SEILHAMER, R. A. (1982) 'The Impact on Spouses and How They Cope', pp. 114-27 in J. Orford and J. Harwin (eds) *Alcohol and the Family.* London: Croom Helm.

JACOBS, J. B. (1989) *Drunk Driving: An American Dilemma.* Chicago: University of Chicago Press.

JASPARS, J. (1983) 'The Process of Casual Attribution in Common Sense', pp. 28-44 in M. Hewstone (ed) *Attribution Theory: Social and Functional Extensions.* Oxford: Basil Blackwell.

JASPARS, J., FINCHAM, F. and HEWSTONE, M. (eds) (1983) *Attribution Theory and Research: Conceptual, Developmental and Social Dimensions.* London: Academic Press.

JELLINEK, E. M. (1960) *The Disease Concept of Alcoholism.* Newhaven, Connecticut: Hill House Press.

JUPP, V. (1989) *Methods of Criminological Research.* London: Unwin Hyman.



- KANTOR, G. K. and STRAUS, M. A. (1987) 'The "Drunken Bum" Theory of Wife Beating.' *Social Problems*, Vol. 34, No. 3, pp. 213-30.
- KAPLAN, J. (1983) *The Hardest Drug: Heroin and Public Policy*. Chicago: University of Chicago Press.
- KATZ, J. (1982) 'The Attitudes and Decisions of Probation Officers.' *Criminal Justice and Behavior*, Vol. 9, No. 4, pp. 455-75.
- KELLEY, H. H. (1967) 'Attribution in Social Psychology.' *Nebraska Symposium on Motivation*, Vol. 15, pp. 192-238.
- KESSEL, N. and WALTON, H. (1989) *Alcoholism. Second Edition*. London: Penguin Books.
- KING, M. (1981) *The Framework of Criminal Justice*. London: Croom Helm.
- KISSIN, B. and BEGLEITER, H. (eds) (1976) *The Biology of Alcoholism: Vol. 4: Social Aspects of Alcoholism*. New York: Plenum.
- KITTRIE, N. N. (1971) *The Right to be Different: Deviance and Enforced Therapy*. Baltimore: John Hopkins.
- KONECNI, V. J. and EBBESEN, E. B. (1982) 'An Analysis of the Sentencing System', pp. 293-332 in V. J. Konecni and E. B. Ebbesen (eds) *The Criminal Justice System. A Social-Psychological Analysis*. San Francisco: W. H. Freeman and Company.
- KONECNI, V. J. and EBBESEN, E. B. (eds) (1982) *The Criminal Justice System: A Social Psychological Analysis*. San Francisco: W. H. Freeman and Company.
- KONECNI, V. J. and EBBESEN, E. B. (1982) 'Social Psychology and the Law: The Choice of Research Problems, Settings, and Methodology', pp. 27-44 in V. J. Konecni and E. B. Ebbesen (eds) *The Criminal Justice System: A Social-Psychological Analysis*. San Francisco: W. H. Freeman and Company.
- LADOUCEUR, P. and TEMPLE, M. (1985) 'Substance Use Among Rapists: A Comparison with Other Serious Felons.' *Crime and Delinquency*, Vol. 31, No. 2, pp. 269-94.

- LANG, A. R. (1981) 'Drinking and Disinhibition: Contributions from Psychological Research', pp. 48-90 in R. Room and G. Collins (eds) *Alcohol and Disinhibition: Nature and Meaning of the Link*. Rockville, Maryland: U.S. Department of Health and Human Services.
- LANG, A., SEARLES, J., LAUERMAN, R. and ADESSO, V. (1980) 'Expectancy, Alcohol, and Sex Guilt as Determinants of Interest in and Reaction to Sexual Stimuli.' *Journal of Abnormal Psychology*, Vol. 89, pp. 644-53.
- LANGER, E. J. (1978) 'Re-thinking the Role of Thought in Social Interaction', pp. 35-58 in J. H. Harvey, W. Ickes and R. F. Kidd (eds) *New Directions in Attribution Research: Vol. 2*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- LATANE, B. and DARLEY, J. M. (1970) *The Unresponsive Bystander: Why Doesn't He Help?* New York: Appleton-Century-Crofts.
- LATTIMORE, P. and WITTE, A. (1986) 'Models of Decision Making Under Uncertainty: The Criminal Choice', pp. 129-55 in D. B. Cornish and R. V. Clarke (eds) *The Reasoning Criminal*. New York: Springer-Verlag.
- LAWRENCE, J. A. (1984) 'Magisterial Decision-making: Cognitive Perspectives and Processes Used in Courtroom Information Processing', pp. 319-31 in D. J. Muller, D. E. Blackman and A. J. Chapman (eds) *Psychology and Law: Topics from an International Conference*. Chichester: John Wiley and Sons.
- LAWRENCE, J. and HOMEL, R. (1986) 'Sentencing in Magistrates' Courts: The Magistrate as Professional Decision-maker', pp. 151-89 in I. Potas (ed) *Sentencing in Australia: Issues, Policy and Reform*. Canberra: Australian Institute of Criminology.
- LEHMAN, W. (1990) 'Alcoholism, Freedom and Moral Responsibility.' *International Journal of Law and Psychiatry*, Vol. 13, Nos. 1-2, pp. 103-21.
- LEJEUNE, R. (1977) 'The Management of a Mugging.' *Urban Life*, Vol. 6, No. 2, pp. 123-48.

- LEJEUNE, R. and ALEX, N. (1973) 'On Being Mugged: The Event and its Aftermath.' *Urban Life and Culture*, Vol. 2, No. 3, pp. 259-87.
- LENDER, M. E. and MARTIN, J. K. (1982) *Drinking in America: A History*. New York: Free Press.
- LETKEMANN, P. (1973) *Crime as Work*. Englewood Cliffs, New Jersey: Prentice-Hall.
- LIPETZ, M. J. (1980) 'Routine and Deviations: The Strength of the Courtroom Workgroup in a Misdemeanour Court.' *International Journal of the Sociology of Law*, Vol. 8, No. 1, pp. 47-60.
- LLOYD-BOSTOCK, S. (1983) 'Attributions of Cause and Responsibility as Social Phenomena', pp. 261-89 in J. Jaspars, F. Fincham and M. Hewstone (eds) *Attribution Theory and Research: Conceptual, Developmental and Social Dimensions*. London: Academic Press.
- LLOYD-BOSTOCK, S. M. A. (1988) *Law in Practice: Applications of Psychology to Legal Decision Making and Legal Skills*. Leicester: The British Psychological Society and Routledge Ltd.
- LOEBER, R. and DISHION, T. (1983) 'Early Predictors of Male Delinquency: a Review.' *Psychological Bulletin*, Vol. 94, pp. 68-99.
- LUCKENBILL, D. F. (1977) 'Criminal Homicide as a Situated Transaction.' *Social Problems*, Vol. 25, pp. 176-86.
- LUCKENBILL, D. F. (1980) 'Patterns of Force in Robbery.' *Deviant Behavior*. Vol. 1, Nos. 3-4, pp. 361-78.
- LUDWIG, A. M. (1988) *Understanding the Alcoholic's Mind: The Nature of Craving and How to Control It*. Oxford: Oxford University Press.
- McBARNET, D. J. (1983) *Conviction: Law, The State and the Construction of Justice*. London: MacMillan.
- McCAGHY, C. H. (1968) 'Drinking and Deviance Disavowal: The Case of Child Molesters.' *Social Problems*, Vol. 16, No. 1, pp. 43-49.
- McCARTY, D. (1985) 'Environmental Factors in Substance Abuse: The Microsetting', pp. 247-81 in M. Galizio and S.

- A. Maisto (eds) *Determinants of Substance Abuse: Biological, Psychological and Environmental Factors*. New York: Plenum Press.
- McCORD, W. and McCORD, J. (1962) 'A Longitudinal Study of the Personality of Alcoholics', pp. 413-30 in D. J. Pittman and C. R. Snyder (eds) *Society, Culture and Drinking Patterns*. New York: Jhon Wiley and Sons, Inc.
- McDONNELL, R. and MAYNARD, A. (1985) 'The Costs of Alcohol Misuse.' *British Journal of Addiction*, Vol. 80, No. 1, pp. 27-35.
- McHUGH, P. (1970) 'A Common-Sense Perception of Deviance', pp. 151-80 in H. P. Dreitzel (ed) *Recent Sociology No. 2: Patterns of Communicative Behaviour*. New York: MacMillan.
- McLEAN, I. (1987) *Public Choice: An Introduction*. Oxford: Basil Blackwell.
- McCLEARY, R. (1978) *Dangerous Men: The Sociology of Parole*. Beverley Hills: Sage.
- McWILLIAMS, W. W. (1986) *The English Social Enquiry Report: Development and Practice*. PhD. Thesis. Faculty of Law, University of Sheffield: Centre For Criminological and Socio-legal Studies, Faculty of Law.
- McCALL, G. J. (1969) 'Data Quality Control in Participant Observation', pp. 128-41 in G. J. McCall and J. L. Simmons (eds) *Issues in Participant Observation: a Text and Reader*. Reading, Mass.: Addison-Wesley.
- McCALL, G. J. (1969) 'The Problem of Indicators in Participant Observation Research', pp. 230-38 in G. J. McCall and J. L. Simmons (eds) *Issues in Participant Observation: a Text and Reader*. Reading, Massachusetts: Addison-Wesley.
- McCALL, G. J. (1975) *Observing the Law: Applications of Field Methods to the Study of the Criminal Justice System*. Rockville, Maryland: National Insitute of Mental Health.

- MCCALL, G. J. and SIMMONS, J. C. (eds) (1969) *Issues in Participant Observation: A Text and Reader*. Reading, Mass.: Addison-Wesley.
- MACANDREW, C. and EDGERTON, R. B. (1969) *Drunken Comportment: A Social Explanation*. London: Nelson.
- MACKAY, R. D. (1990) 'The Taint of Intoxication.' *International Journal of Law and Psychiatry*, Vol. 13, Nos. 1-2, pp. 37-48.
- MAGUIRE, M. (1982) *Burglary in a Dwelling: The Offence, The Offender and the Victim*. London: Heinman.
- MAGUIRE, M., PINTER, F and COLLIS, C. (1984) 'Dangerousness and the Tariff: The Decision-making Process in Release from Life Sentences', *British Journal of Criminology*, Vol. 24, No. 3, pp. 250-68.
- MAISTO, S. A., GALIZIO, M. and CAREY, K. B. (1985) 'Individual Differences in Substance Abuse: An Introduction', pp. 3-9 in M. Galizio and S. A. Maisto (eds) *Determinants of Substance Abuse: Biological, Psychological, and Environmental Factors*. New York Plenum Press.
- MANDLER, J. M. (1984) *Stories, Scripts and Scenes: Aspects of Schema Theory*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- MARLATT, G., DEMMING, B. and REID, J. (1973) 'Loss of Control Drinking in Alcoholics: An Experimental Analogue.' *Journal of Abnormal Psychology*, Vol. 81, pp. 233-41.
- MARS G. (1987) 'Longshore Drinking, Economic Security and Union Politics in Newfoundland', pp. 91-101 in M. Douglas (ed) *Constructive Drinking: Perspectives on Drink From Anthropology*. Cambridge: Cambridge University Press.
- MARSH, A., DOBBS, J. and WHITE, A. (1986) *Adolescent Drinking: A Survey Carried Out on Behalf of the Department of Health and Social Security and the Scottish Home and Health Department*. London: H.M.S.O.

- MARSH, P. and CAMPBELL, A. (1979) *Final Report to Whitbread Ltd.* Oxford: C.V.R.C.
- MARSH, P. and PATON, R. (1986) 'Gender, Social Class and Conceptual Schemas of Aggression', pp. 59-85 in A. Campbell and J. J. Gibbs (eds) *Violent Transactions: The Limits of Personality.* Oxford: Basil Blackwell.
- MARSHALL, M. (1981) '"Four Hundred Rabbits": An Anthropological View of Ethanol as a Disinhibitor', pp. 186-204 in R. Room and G. Collins (eds) *Alcohol and Disinhibition: Nature and Meaning of the Link.* Rockville, Maryland: U.S. Department of Health and Human Services.
- MAYFIELD, D. 'Alcoholism, Alcohol Intoxication and Assaultive Behavior.' *Diseases of the Nervous System*, Vol. 37, pp. 228-91.
- MAYHEW, P., CLARKE, R. V. G., STURMAN, A. and HOUGH, J. M. (1976) *Crime as Opportunity.* London: H.M.S.O.
- MAWBY, R. I. and GILL, M. L. (1987) *Crime Victims: Needs, Services and the Voluntary Sector.* London: Tavistock.
- MEEHL, P. E. (1973) *Psychodiagnosis: Selected Papers.* Minneapolis: University of Minnesota Press.
- MEEHL, P. E. (1977) 'Law and the Fireside Inductions: Some Reflections of a Clinical Psychologist', pp. 10-28 in J. L. Tapp and F. J. Tapp (eds) *Law, Justice and the Individual in Society: Psychological and Legal Issues.* New York: Holt, Rinehart and Winston.
- MENDELSON, J. H. and MELLO, N. K. (1979) 'One Unanswered Question about Alcoholism.' *British Journal of Addiction*, Vol. 74, No. 1, pp. 11-14.
- MEYERS, A. R. (1984) 'Drinking, Prolem Drinking and Alcohol-related Crime Among Older People', pp. 51-65 in E. S. Newman, D. J. Newman and M. L. Gewirtz (eds) *Elderly Criminals.* Cambridge, Mass.: Oelgeschlager, Gunn and Hain.
- MILESKI, M. (1969) *Courtroom Encounters: an Observation Study of a Lower Criminal Court.* Yale: Yale Law School.
- MILLER, B. A. and WELTE, J. W. (1986) 'Comparisons of

Incarcerated Offenders According to Use of Alcohol and/or Drugs Prior to Offense.' *Criminal Justice and Behavior*, Vol. 13, No. pp. 336-92.

- MINOR, W. W. (1980) 'The Neutralization of Criminal Offense.' *Criminology*, Vol. 18, No. 1, pp. 103-20.
- MINOR, W. W. (1981) 'Techniques of Neutralization: A Reconceptual and Empirical Examination.' *Journal of Research in Crime and Delinquency*, Vol. 18, No. 2, pp. 295-318.
- MITCHELL, C. N. (1988) 'The Intoxicated Offender - Refuting the Legal and Medical Myths.' *International Journal of Law and Psychiatry*, Vol. 11, No. 1, pp. 77-103.
- MITCHELL, C. (1990) 'Intoxication, Criminality, and Responsibility.' *International Journal of Law and Psychiatry*, Vol. 13, Nos. 1-2, pp. 1-7.
- MORGAN, P. (1981) 'Alcohol, Disinhibition, and Domination: A Conceptual Analysis', pp. 405-19 in R. Room and G. Collins (eds) *Alcohol and Disinhibition: Nature and Meaning of the Link*. Rockville, Maryland: U.S. Department of Health and Human Services.
- MORRIS, A. (1987) *Women, Crime and Criminal Justice*. Oxford: Basil Blackwell.
- MORRIS, A. and GILLER, H. (1987) *Understanding Juvenile Justice*. London: Croom Helm.
- MOSCOVICI, S. (1981) 'On Social Representations', pp. 181-209 in J. P. Forgas (ed) *Social Cognition: Perspectives on Everyday Understanding*. London: Academic Press.
- MOSCOVICI, S. and HEWSTONE, M. (1983) 'Social Representations and Social Explanations: From the "Naive" to the "Amateur" Scientist', pp. 98-125 in M. Hewstone (ed) *Attribution Theory: Social and Function Extensions*. Oxford: Basil Blackwell.
- MOSHER, J. F. (1981) 'Alcohol: Both Blame and Excuse for Criminal Behavior', pp. 437-59 in R. Room and G. Collins (eds) *Alcohol and Disinhibition: Nature and Meaning of the Link*. Rockville, Maryland: U.S. Department of Health and Human Services.

- MULLER, D. J., BLACKMAN, D.E., and CHAPMAN, A. J. (eds) (1984) *Psychology and Law: Topics From an International Conference*. Chichester: John Wiley and Sons.
- MUNGHAM, G. (1976) 'Youth in Pursuit of Itself', pp. 82-104 in G. Mungham and G. Pearson (eds) *Working Class Youth Culture*. London: Routledge and Kegan Paul.
- MUNGHAM, G. and PEARSON, G. (eds) (1976) *Working Class Youth Culture*. London: Routledge and Kegan Paul.
- MUNRO, A. K. (1972) *Autobiography of a Thief*. London: Michael Joseph.
- MURPHY, D. (1983) *Alcohol and Crime*. London: H.M.S.O.
- MURPHY, D. J. I. (1986) *Customers and Thieves: An Ethnography of Shoplifting*. Aldershot: Gower.
- NAPLEY, D. (1983) *The Technique of Persuasion: Third Edition*. London: Sweet and Maxwell.
- NEWMAN, E. S., NEWMAN, D. J. and GEWIRTZ, M. L. (eds) (1984) *Elderly Criminals*. Cambridge, Mass.: Oelgeschlager, Gun and Hain.
- NISBETT, R.E and WILSON, T. D. (1977) 'Telling More Than We Can Know: Verbal Reports on Mental Processes.' *Psychological Review*, Vol. 84, No. 3, pp. 231-59.
- NUSBAUMER, M. R. (1983) 'Responses to Labeling Attempts: Deviant Drinkers' Pathways of Label Manipulation.' *Deviant Behavior*, Vol. 4, Nos. 3-4, pp. 225-39.
- NUSBAUMER, M. R., MAUSS, A. L. and PEARSON, D. C. (1982) 'Draughts and Drunks: The Contributions of Taverns and Bars to Excessive Drinking in America.' *Deviant Behavior*, Vol. 3, No. 4, pp. 329-58.
- ORCUTT, J. D. (1976) 'Ideological Variations in the Structure of Deviant Types: A Multivariate Comparison of Alcoholism and Heroin Addiction.' *Social Forces*, Vol. 55, No. 2, pp. 419-37.
- ORFORD, J. (1980) 'Understanding Treatment: Controlled Trials and Other Strategies', pp. 143-61 in G. Edwards and M. Grant (eds) *Alcoholism Treatment in Transition*. London: Croom Helm.



- ORFORD, J. and HARWIN, J. (eds) (1982) *Alcohol and the Family*. London: Croom Helm.
- PALEY, J. and LEEVES, R. (1982) 'Some Questions ABOUT the Reverse Tarrif.' *British Journal of Social Work*, Vol. 12, No. 4, pp. 363-80.
- PALMERINO, M., LANGER, E. and MCGILLIS, D. (1984) 'Attitudes and Attitude Change: Mindlessness - Mindfulness Perspective', pp. 179-95 in J. R. Eiser (ed) *Attitudinal Judgement*. New York: Springer-Verlag.
- PALYS, T. S. and DIVORSKI, S. (1984) 'Judicial Decision-making: An Examination of Sentencing Disparity Among Canadian Provincial Court Judges', pp. 333-44 in D. J. Muller, D. E. Blackman and A. J. Chapman (eds) *Psychology and Law: Topics From an International Conference*. Chichester: John Wiley and Sons.
- PARKER, H. (1974) *View From the Boys: A Sociology of Downtown Adolescents*. Newton Abbot: David and Charles.
- PARKER, H, CASBURN, M. and TURNBULL, D. (1981) *Receiving Juvenile Justice: Adolescents and State Care and Control*. Oxford: Basil Blackwell.
- PARKER, H., SUNMER, M. and JARVIS, G. (1989) *Unmasking the Magistrates: The "Custody or Not" Decision in Sentencing Young Offenders*. Milton Keynes: Open University Press.
- PARTRICK, J. (1973) *A Glasgow Gang Observed*. London: Eyre Methuen.
- PEARCE, I. and WAREHAM, A. (1977) 'The Questionable Relevance of Research into Social Enquiry Reports.' *The Howard Journal*, Vol. 16, No. 2, pp. 97-108.
- PEELE, S. (1990) 'Does Addiction Excuse Thieves and Killers from Criminal Responsibility?' *International Journal of Law and Psychiatry*, Vol. 13, Nos. 1-2, pp. 95-101.
- PENNINGTON, D. C. and LLOYD-BOSTOCK, S. (1987) 'Introduction: Issues and Problems in The Psychology of Sentencing', pp. 1-9 in D. C. Pennington and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.

- PENNINGTON, D. C. and LLOYD-BOSTOCK, S. (eds) (1987) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.
- PERNANEN, K. (1976) 'Alcohol and Crimes of Violence', pp. 351-444 in B. Kissin and H. Begleiter (eds) *The Biology of Alcoholism: Vol. 4: Social Aspects of Alcoholism*. New York: Plenum.
- PERNANEN, K. (1982) 'Theoretical Aspects of the Relationship Between Alcohol Use and Crime', pp. 1-69 in J. J. Collins (ed) *Drinking and Crime: Perspectives on the Relationships Between Alcohol Consumption and Criminal Behaviour*. London: Tavistock.
- PERVIN, L. (1986) 'Persons, Situations, Interactions: Perspectives on a Recurrent Issue', pp. 15-26 in A. Campbell and J. J. Gibbs (eds) *Violent Transactions: The Limits of Personality*. Oxford: Basil Blackwell.
- PETERSON, W. J. and MAXWELL, M. A. (1958) 'The Skid Road "Wino".' *Social Problems*, Vol. 5, No. 4, pp. 308-16.
- PFUHL, E. J. (1980) *The Deviance Process*. New York: D. Van Nostrand.
- PHILLIMORE, P. (1979) 'Dossers and Jake Drinkers: The View from One End of Skid Row', pp. 29-48 in T. Cook (ed) *Vagrancy: Some New Perspectives*. London: Academic Press.
- PHILLIPS, L. and VOTEY, H. L. Jr. (1981) *The Economics of Crime Control*. Beverley Hills: Sage.
- PICKLES, J. (1987) *Straight From the Bench. Is Justice Just?* London: Phoenix House.
- PITTMAN, D. J. and GORDON, C. W. (1958) 'Criminal Careers of the Chronic Drunkenness Offender', pp. 535-46 in D. J. Pittman and C. R. Snyder (eds) *Society, Culture and Drinking Patterns*. New York: John Wiley and Sons, Inc.
- PITTMAN, D. J. and HANDY, W. (1964) 'Patterns in Aggravated Assault.' *Journal of Criminal Law, Criminology and Police Science*, Vol. 55, No. 4, pp. 462-70.
- PITTMAN, D. J. and SNYDER, C. R. (eds) (1962) *Society, Culture and Drinking Patterns*. New York: John Wiley and Sons, Inc.

- PLANT, M. A. (1976) 'Young Drug and Alcohol Casualties Compared: Review of 100 Patients at a Scottish Psychiatric Hospital.' *British Journal of Addiction*, Vol. 71, No. 1, pp. 31-43.
- PLANT, M. A. (1981) 'Risk Factors in Employment', pp. 18-33 in B. D. Hore and M. A. Plant (eds) *Alcohol Problems in Employment*. London: Croom Helm.
- POLICH, J. M. (1979) 'Alcohol Problems Among Civilian Youth and Military Personnel', pp. 59-86 in H. T. Blane and M. E. Chafetz (eds) *Youth, Alcohol and Social Policy*. New York: Plenum Press.
- POLICH, J. M. (1980) 'Patterns of Remission in Alcoholism', pp. 95-112 in G. Edwards and M. Grant (eds) *Alcoholism Treatment in Transition*. London: Croom Helm.
- POTAS, I. (ed) (1986) *Sentencing in Australia: Issues, Policy and Reform*. Canberra: Australian Institute of Criminology.
- RADA, R. T. (1975) 'Alcoholism and Forcible Rape.' *American Journal of Psychiatry*, Vol. 132, No. 4, pp. 444-6.
- RALPHS, E. and NORMAN, G. (1987) *The Magistrate as Chairman*. London: Butterworths.
- RAYMOND, A. (1975) *Breathalyzed Drivers - To Court or Clinic?* Melbourne: Australian Road Research Board.
- RAYNOR, P. (1980) 'Is There Any Sense in Social Inquiry Reports?' *Probation Journal*, Vol. 27, No. 3, pp. 78-84.
- RIX, K. J. B. (1981) 'Alcohol Problems in the Fishing Industry in North-East Scotland', pp. 77-104 in B. D. Hore and M. A. Plant (eds) *Alcohol Problems in Employment*. London: Croom Helm.
- ROBERTS, C. (1987) 'The Probation Officer's Dilemma: Preparing Social Inquiry Reports', pp. 88-103 in D. C. Pennington and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.
- ROBERTS, C. F., GOLDING, S. L. and FINCHAM, F. D. (1987) 'Implicit Theories of Criminal Responsibility: Decision

- Making and the Insanity Defense.' *Law and Human Behavior*, Vol. 11, No. 3, pp. 207-232.
- ROEBUCK, J. and JOHNSON, R. (1962) 'The Jack-of-all-Trades Offender: A Comparative Study.' *Crime and Delinquency*, Vol. 8, pp. 172-81.
- ROEBUCK, J. and JOHNSON, R. (1962) 'The Negro Drinker and Assaulter as a Criminal Type.' *Crime and Delinquency*, Vol. 8, No. 1, pp. 21-33.
- ROIZEN, R. (1981) 'Loosening Up: General-Population Views of the Effects of Alcohol', pp. 236-55 in R. Room and G. Collins (eds) *Alcohol and Disinhibition: Nature and Meaning of the Link*. Rockville, Maryland: U.S. Department of Health and Human Services.
- ROLOFF, M. E. and BERGER, C. R. (eds) (1982) *Social Cognition and Communication*. Beverley Hills: Sage.
- ROMAN, P. M. (1982) 'Situational Factors in the Relationship Between Alcohol and Crime', pp. 143-51 in J. J. Collins (ed) *Drinking and Crime: Perspectives on the Relationships Between Alcohol Consumption and Criminal Behaviour*. London: Tavistock.
- ROMAN, P. M. and TRICE, H. M. (1968) 'The Sick Role, Labelling Theory, and the Deviant Drinker.' *The International Journal of Social Psychiatry*, Vol. 14, No. 4, pp. 245-51.
- ROOM, R. (1980) 'Treatment-seeking Populations and Larger Realities', pp 205-25 in G. Edwards and M. Grant (eds) *Alcoholism Treatment in Transition*. London: Croom Helm.
- ROOM, R. and COLLINS, G. (eds) (1981) *Alcohol and Disinhibition: Nature and Meaning of the Link*. Rockville, Maryland: U.S. Department of Health and Human Services.
- ROSECRANCE, J. (1985) 'The Probation Officers' Search for Credibility: Ball Park Recommendations.' *Crime and Delinquency*, Vol. 31, No.4, pp. 539-54.
- ROSS, H. L. (1975) 'Does Threat of Jail Deter Scandinavia's Drinking Drivers?' *Traffic Safety*, Vol. 10, pp?

- ROSS, H. L. and FOLEY, J. P. (1987) 'Judicial Disobedience of the Mandate to Imprison Drunk Drivers.' *Law and Society Review*, Vol. 21, No. 2, pp. 315-23.
- ROSS, R. R. and LIGHTFOOT, L. O. (1985) *Treatment of the Alcohol-abusing Offender*. Springfield: Charles C. Thomas.
- ROWE, A. R. and TITTLE, C. R. (1977) 'Life Cycle Changes and Criminal Propensity.' *Sociological Quarterly*, Vol. 18, pp. 223-36.
- ROYAL COLLEGE OF PHYSICIANS (1987) *A Great and Growing Evil: The Medical Consequences of Alcohol Abuse*. London: Tavistock.
- RUBACK, R. B. and HOPPER, C. H. (1986) 'Decision Making by Parole Interviewers: The Effect of Case and Interview Factors.' *Law and Human Behavior*, Vol. 10, No. 3, pp. 203-14.
- RUBINGTON, E. (1958) 'The Chronic Drunkenness Offender', pp. 269-76 in M. B. Clinard and R. Quinney (eds) *Criminal Behavior Systems: A Typology*. New York: Holt, Rinehart and Winston.
- RUBINGTON, E. (1978) 'Variations in Bottle-gang Controls', pp. 383-91 in E. Rubington and M. S. Weinberg (eds) *Deviance: The Interactionist Perspective. Third Edition*. New York: MacMillan.
- RUBINGTON, E. and WEINBERG, M. S. (eds) (1978) *Deviance: The Interactionist Perspective. Third Edition*. New York: MacMillan.
- RUMGAY, J. (1990) 'Taking Rehabilitation Out of After-care? The Post-release Supervision of Young Adult Offenders.' *British Journal of Criminology*, Vol. 30, No. 1, pp. 36-50.
- RUSH, C. and ROBERTSON, J. (1987) 'Presentence Reports: The Utility of Information to the Sentencing Decision.' *Law and Human Behavior*, Vol. 11, No. 2, pp. 147-55.
- RYCKMAN, R., BURNS, M. and ROBBINS, M. (1986) 'Authoritarianism and Sentence Strategies for Low and

- High Severity Crimes.' *Personality and Social Psychology Bulletin*, Vol. 12, pp. 227-35.
- SADAVA, S. W. (1987) 'Interactional Theory', pp. 90-130 in H. T. Blane and K. E. Leonard (eds) *Psychological Theories of Drinking and Alcoholism*. New York: Guilford Press.
- SALES, B. D. (ed) (1977) *Perspectives in Law and Psychology: Vol. 1: The Criminal Justice System*. New York: Plenum Press.
- SAMUELS, A. (1987) 'Consistency in Sentencing', pp. 66-74 in D. C. Pennington, and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.
- SANDERS, J. and HAMILTON, V. L. (1987) 'Is There a "Common Law" of Responsibility? The Effect of Demographic Variables on Judgments of Wrongdoing.' *Law and Human Behavior*, Vol. 11, No. 4, pp. 277-97.
- SARAT, A. (1977) 'Studying American Legal Culture: An Assessment of Survey Evidence.' *Law and Society Review*, Vol. 11, pp. 427-88.
- SCHAFER, S. (1968) *The Victim and His Criminal: A Study in Functional Responsibility*. New York: Random House.
- SCHEFF, T. J. (1966) 'Typification in the Diagnostic Practices of Rehabilitation Agencies', pp. 139-47 in M. B. Sussman (ed) *Sociology and Rehabilitation*. Cleveland: American Sociological Association.
- SCHEFF, T. J. (1968) 'Negotiating Reality: Notes on Power in the Assessment of Responsibility.' *Social Problems*, Vol. 16, No. 1, pp. 3-17.
- SCHNEIDER, J. W. (1978) 'Deviant Drinking as Disease: Alcoholism as a Social Accomplishment.' *Social Problems*, Vol. 25, pp. 361-72.
- SCHUCKIT, M. A. (1980) 'Charting What has Changed', pp. 59-78 in G. Edwards and M. Grant (eds) *Alcoholism Treatment in Transition*. London: Croom Helm.
- SCOTT, M. B. and LYMAN, S. M. (1968) 'Accounts.' *American Sociological Review*, Vol. 33, No. 1, pp. 46-62.

- SCOTT, R. A. (1970) 'The Construction of Conceptions of Stigma by Professional Experts', pp. 255-90 in J. D. Douglas (ed) *Deviance and Respectability: The Social Construction of Moral Meanings*. New York: Basic Books.
- SCULLY, D. and MAROLLA, J. (1984) 'Convicted Rapists' Vocabulary of Motive: Excuses and Justifications.' *Social Problems*, Vol. 31, No. 5, pp. 530-44.
- SCULLY, D. and MAROLLA, J. (1985) '"Riding the Bull at Gilley's": Convicted Rapists Describe the Rewards of Rape.' *Social Problems*, Vol. 32, No. 3, pp. 251-63.
- SELLTIZ, C., WRIGHTSMAN, L. and COOK, S. (1976) *Research Methods in Social Relations. Third Edition*. New York: Holt, Rinehart and Winston.
- SEMIN, G. R. and MANSTEAD, A. S. R. (1983) *The Accountability of Conduct: A Social Psychological Analysis*. London: Academic Press.
- SHAMBLIN, D. H. (1990) 'The Vocational Rehabilitation of Alcoholics: A Research Note on the Bureaucratization of Deviance.' *Deviant Behavior*, Vol. 11, No. 1, pp. 45-59.
- SHAPLAND, J. (1979) 'The Construction of a Mitigation', pp. 152-64 in D. P. Farrington, K. Hawkins and S. M. Lloyd-Bostock (eds) *Psychology, Law and Legal Processes*. London: MacMillan.
- SHAPLAND, J. (1981) *Between Conviction and Sentence: The Process of Mitigation*. London: Routledge and Kegan Paul.
- SHAPLAND, J. (ed) (1983) *Decision Making in the Legal System: Issues in Criminological and Legal Psychology*, No. 5. Leicester: British Psychological Society.
- SHAPLAND, J. (1987) 'Who Controls Sentencing? Influences on the Sentencer', pp. 77-87 in D. C. Pennington and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.
- SHAPLAND, J., WILLMORE, J. and DUFF, P. (1985) *Victims in the Criminal Justice System*. Aldershot: Gower.

- SHARP, D. and LOWE, G. (1989a) *Asking Young People Why They Drink*. Paper Delivered to British Psychological Society, Scottish Branch Annual Conference, Sept. 1-3.
- SHARP, D. and LOWE, G. (1989b) *Teenage Alcohol Expectancies: How They Change with Age, Experience and Imagined Amount Drunk*. Paper Delivered to British Psychological Society, London Conference, Dec. 19-20.
- SHAVER, K. G. (1985) *The Attribution of Blame: Causality, Responsibility, and Blameworthiness*. New York: Springer-Verlag.
- SHELDON, B. (1978) 'Theory and Practice in Social Work: A Re-examination of a Tenuous Relationship.' *British Journal of Social Work*, Vol. 8, No. 1, pp. 1-22.
- SHER, K. J. (1987) 'Stress Response Dampening', pp. 227-71 in H. T. Blane and K. E. Leonard (eds) *Psychological Theories of Drinking and Alcoholism*. New York: Guilford Press.
- SHINER, R. A. (1990) 'Intoxication and Responsibility.' *International Journal of Law and Psychiatry*, Vol. 13, Nos. 1-2, pp. 9-35.
- SHOVER, N. (1974) '"Experts" and Diagnosis in Correctional Agencies.' *Crime and Delinquency*, Vol. 20, No. 4, pp. 347-58.
- SHOVER, N. (1983) 'The Later Stages of Ordinary Property Offender Careers.' *Social Problems*, Vol. 31, No. 2, pp. 208-18.
- SHOVER, N. (1985) *Aging Criminals*. Beverley Hills: Sage Publications.
- SILLARS, A. L. (1982) 'Attribution and Communication: Are People "Naive Scientists" or Just Naive?' pp. 73-106 in M. E. Roloff and C. R. Berger (eds) *Social Cognition and Communication*. Beverley Hills: Sage.
- SLOAN, T. S. (1986) *Deciding: Self-deception in Life Choices*. London: Methuen.
- SMITH, D. I. and BURVILL, P. W. (1987) 'Effect on Juvenile Crime of Lowering the Drinking Age in Three Australian



- States.' *British Journal of Addiction*, Vol. 82 pp. 181-88.
- SMITH, J. C. and HOGAN, B. (1982) *Criminal Law*. London: Butterworths.
- SNOW, D. A., BAKER, S. G. and ANDERSON, L. (1988) 'On the Precariousness of Measuring Insanity in Insane Contexts.' *Social Problems*, Vol. 35, No. 2, pp. 192-6.
- SNOW, D. A., BAKER, S. G., ANDERSON, L. and MARTIN, M. (1986) 'The Myth of Pervasive Mental Illness Among the Homeless.' *Social Problems*, Vol. 33, No. 5, pp. 407-23.
- SNYDER, M. L., STEPHAN, W. G. and ROSENFELD, D. D. (1978) 'Attributional Egotism', pp. 91-117 in J. H. Harvey, W. Ickes and R. F. Kidd (eds) *New Directions in Attribution Research: Vol. 2*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.
- SOFTLEY, P. (1980) 'Sentencing Practice in Magistrates' Courts.' *The Criminal Law Review*, pp. 161-7.
- SOKOLOW, L., WELTE, J. HYNES, G. and LYONS, J. (1981) 'Multiple Substance Use by Alcoholics.' *British Journal of Addiction*, Vol. 76, No. 2, pp. 147-58.
- SOMMER, R., BURSTEIN, E. and HOLMAN, S. (1988) 'Tolerance of Deviance as Affected by Label, Act, and Actor.' *Deviant Behavior*, Vol. 9, No. 2, pp. 193-207.
- SPENCER, J. W. (1983) 'Accounts, Attitudes, and Solutions: Probation Officer-Defendant Negotiations of Subjective Orientations.' *Social Problems*, Vol. 30, No. 5, pp. 570-81.
- STALANS, L. J. and DIAMOND, S. S. (1990) 'Formation and Change in Lay Evaluations of Criminal Sentencing: Misperception and Discontent.' *Law and Human Behavior*, Vol. 14, No. 3, pp. 199-214.
- STANLEY, S. J. and MURPHY, M. B. (1984) *Inner London Probation Service: Survey of Social Enquiry Reports*. London: Inner London Probation Service.
- STEFFENSMEIER, D. J. and TERRY, R. M. (1973) 'Deviance and Respectability: an Observational Study of Reactions to Shoplifting.' *Social Forces*, Vol. 51, pp. 417-26.

- STEPHAN, E. (1989) 'The Prediction of Drunken Driving Offences', pp. 53-69 in H. Wegener, J. Losel and J. Haisch (eds) *Criminal Behavior and the Justice System: Psychological Perspectives*. New York: Springer-Verlag.
- STOCKDALE, E. and DEVLIN, K. (1987) *Sentencing*. London: Waterlow Publishers.
- STONE, G. P. (1962) 'Drinking Styles and Status Arrangements' pp. 121-40 in D. J. Pittman and C. R. Snyder (eds) *Society, Culture and Drinking Patterns* New York: John Wiley and Sons, Inc.
- SUDNOW, D. (1965) 'Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office.' *Social Problems*, Vol. 12, No. 3, pp. 255-76.
- SUSSMAN, M. B. (ed) (1966) *Sociology and Rehabilitation*. Cleveland: American Sociological Association.
- SUTTON, S. (1987) 'Social-psychological Approaches to Understanding Addictive Behaviours: Attitude - Behaviour and Decision-making Models.' *British Journal of Addiction*, Vol. 82, No. 4, pp. 355-70.
- SWIDLER, A. (1986) 'Culture in Action: Symbols and Strategies.' *American Sociological Review*, Vol. 51, No. 2, pp. 273-86.
- SYKES, G. M. and MATZA, D. (1957) 'Techniques of Neutralization: a Theory of Delinquency.' *American Sociological Review*, Vol. 22, No. 6, pp. 664-70.
- TAPP, J. L. and LEVINE, F. J. (eds) (1977) *Law, Justice and the Individual in Society: Psychological and Legal Issues*. New York: Holt, Rinehart and Winston.
- TAJFEL, H. and FORGAS, J. P. (1981) 'Social Categorization: Cognitions, Values and Groups', pp. 113-40 in J. P. Forgas (ed) *Social Cognition: Perspectives on Everyday Understanding*. London: Academic Press.
- TARLING, R. (1979) *Sentencing Practice in Magistrates' Courts*. London: H.M.S.O.
- THOMAS, D. A. (1979) *Principles of Sentencing. The Sentencing Policy of the Court of Appeal Criminal Division. Second Edition*. London: Heinemann.

- THORPE, J. (1979) *Social Inquiry Reports A Survey*. London: H.M.S.O.
- TOCH, H. (1986) 'True To You, Darling, in my Fashion: The Notion of Contingent Consistency', pp. 27-39 in A. Campbell and J. J. Gibbs (eds) *Violent Transactions: The Limits of Personality*. Oxford: Basil Blackwell.
- TONRY, M. and MORRIS, N. (eds) (1985) *Crime and Justice: An Annual Review of Research: Vol. 6*. Chicago: University of Chicago Press.
- TURNER, R. H. (1972) 'Deviance Avowal as Neutralization of Commitment.' *Social Problems*, Vol. 19, No. 3, pp. 308-21.
- TVERSKY, A. and KAHNEMAN (1974) 'Judgement Under Uncertainty: Heuristics and Biases.' *Science*, Vol. 184, pp. 1124-31.
- VAILLANT, G. E. (1980) 'The Doctor's Dilemma', pp. 13-31 in G. Edwards and M. Grant (eds) *Alcoholism Treatment in Transition*. London: Croom Helm.
- VAN DUYNE, P. (1987) 'Simple Decision Making', pp. 143-58 in D. C. Pennington and S. Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity*. Oxford: Centre for Socio-legal Studies.
- VIDICH, A. J. (1969) 'Participant Observation and the Collection and Interpretation of Data', pp. 78-87 in G. J. McCall and J. C. Simmons (eds) (1969) *Issues in Participant Observation: A Text and Reader*. Reading, Mass.: Addison-Wesley.
- VINEY, W., WALDMAN, P. and BARCHILON, J. (1982) 'Attitudes Toward Punishment in Relation to Beliefs in Free-will and Determinism.' *Human Relations*, Vol. 35, pp. 939-50.
- VOLPICELLI, J. R. (1987) 'Uncontrollable Events and Alcohol Drinking.' *British Journal of Addiction*, Vol. 82, No. 4, pp. 381-92.
- VON HIRSCH, A. (1976) *Doing Justice*. New York: Hill and Wang.
- WADE, A. L. (1967) 'Social Processes in the Act of Juvenile Vandalism', pp. 94-109 in M. B. Clinard and R. Quinney

- (eds) *Criminal Behavior Systems: A Typology*. New York: Holt, Rinehart and Winston.
- WALLACE, S. E. (1965) *Skid Row as a Way of Life*. Totawa, New Jersey: Bedminster Press.
- WALMSLEY, R. (1986) *Personal Violence*. London: H.M.S.O.
- WALSH, A. (1985) 'The Role of the Probation Officer in the Sentencing Process: Independent Professional or Judicial Hack?' *Criminal Justice and Behavior*, Vol. 12, No. 3, pp. 289-303.
- WALSH, D. (1986) *Heavy Business: Commercial Burglary and Robbery*. London: Routledge and Kegan Paul.
- WASHBROOK, R. A. H. (1977) 'Alcohol Versus Crime in Birmingham, England.' *International Journal of Offender Therapy and Comparative Criminology*, Vol. 21, No. 2, pp. 166-73.
- WEBB, D. and HARDIKER, P. (1983) 'Some Answers About the Reverse Tariff: A reply to Paley and Leeves.' *British Journal of Social Work*, Vol. 13, No. 2, pp. 207-17.
- WECHSLER, H. (1979) 'Patterns of Alcohol Consupmtion Among the Young: High School, College and General Population Studies', in H. T. Blane and M. E. Chaftez (eds) *Youth, Alcohol and Social Policy*. New York: Plenum Press.
- WEGENER, H., LOSEL, F. and HAISCH, J. (eds) (1989) *Criminal Behavior and the Justice System: Psychological Perspectives*. New York: Springer-Verlag.
- WEINER, N. A. and WOLFGANG, M. E. (eds) (1989) *Pathways to Criminal Violence*. London: Sage.
- WEISNER, C. and ROOM, R. (1984) 'Financing and Ideology in Alcohol Treatment.' *Social Problems*, Vol. 32, No. 2, pp. 167-84.
- WEST, D. J. and FARRINGTON, D. P. (1977) *The Delinquent Way of Life: Third Report of the Cambridge Study in Delinquent Development*. London: Heinemann Educational Books.
- WIATROWSKI, M. D., GRISWOLD, D. B. and ROBERTS, M. K. (1981) 'Social Control Theory and Delinquency.' *American Sociological Review*, Vol. 46, No. 5, pp. 525-41.

- WILKINS, L. T. (1964) *Social Deviance: Social Policy, Action and Research*. London: Tavistock.
- WILLIAMS, G. (1983) *Textbook of Criminal Law. Second Edition*. London: Stevens and Sons.
- WILLIS, A. (1983) 'The Balance Between Care and Control in Probation: A Research Note.' *British Journal of Social Work*, Vol. 13, No. 3, pp. 339-46.
- WILSNACK S. C. and WILSNACK, R. W. (1979) 'Sex Roles and Adolescent Drinking', pp. 183-224 in H. T. Blane and M. E. Chafetz (eds) *Youth, Alcohol and Social Policy*. New York: Plenum Press.
- WILSON, C. (1982) 'The Impact on Children', pp. 151-66 in J. Orford and J. Harwin (eds) *Alcohol and the Family*. London: Croom Helm.
- WILSON, G. T. 'Cognitive Processes in Addiction.' *British Journal of Addiction*, Vol. 82, No. 4, pp. 343-53.
- WILSON, J. Q. and LOURY, G. C. (eds) (1987) *From Children to Citizens: Vo. II: Families, Schools and Delinquency Prevention*. New York: Springer-Verlag.
- WISEMAN, J. P. (1970) *Stations of the Lost: The Treatment of Skid Row Alcoholics*. Englewood Cliffs, New Jersey: Prentice-Hall.
- WOODS, S. C. and MANSFIELD, J. G. 'Ethanol and Disinhibition: Physiological and Behavioral Links', pp. 4-23 in R. Room and G. Collins (eds) *Alcohol and Disinhibition: Nature and Meaning of the Link*. Rockville, Maryland: U. S. Department of Health and Human Services.
- WRIGHT, R. and WEST, D. J. (1981) 'Rape - A Comparison of Group Offences and Lone Assaults.' *Medicine, Science and the Law*, Vol. 21, No. 1 pp. 25-30.
- YODER, R. and MOOR, R. 'Characteristics of Convicted Drunken Drivers.' *Quarterly Journal of Studies on Alcohol*, Vol. 34, pp. 927-36.
- ZILLMAN, D. (1978) 'Attribution and Misattribution of Excitatory Reactions', pp. 335-68 in J. H. Harvey, W. Ickes and R. F. Kidd (eds) *New Directions in Attribution*

*Research: Vol. 2.* Hillsdale, New Jersey: Lawrence Erlbaum Associates.

ZIMRING, F. E. (1981) 'Kids, Groups and Crime: Some Implications of a Well-known Secret.' *Criminal Law*, Vol. 72, No. 3, pp. 867-85.

ZINBERG, N. E. (1984) *Drug, Set and Setting: The Basis for Controlled Intoxicant Use.* New Haven: Yale University Press.

ZUCKER, R. A. (1979) 'Developmental Aspects of Drinking Through the Young Adult Years', pp. 91-146 in H. T. Blane and M. E. Chafetz (eds) *Youth, Alcohol and Social Policy.* New York: Plenum Press.