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A COMMON SENSE APPROACH TO CRIME CONTROL

Arval A. Morris*


The presidential campaign of 1968 had two basic issues: the Vietnam War and Law and Order. Of the two issues the War in Vietnam was the more important; but it was not debated because it had already been discussed ad nauseam, because President Johnson had announced his decision to retire from public office and his decision to stop the bombing of North Vietnam, because peace negotiations in Paris had started, and because the peace negotiations allowed each of the presidential aspirants to wrap himself in patriotism and bypass the issue of the Vietnam War on the ground that ill-considered or poorly-informed campaign statements could only impede the progress of the Paris peace talks thereby harming America's fighting men by prolonging an already overly prolonged war. With the issue of Vietnam safely anesthetized, the remaining, basic issue of the 1968 presidential campaign was Law and Order.

The issue of Law and Order turned out to be a renamed version of Barry Goldwater's 1964 campaign slogan: "crime in the streets." But "crime-in-the-streets" is not a Nanny-coo. It is a military slogan, a battle cry; and it was not sloughed off in 1968's raucus shuffle of presidential politics. On the contrary, Law and Order was exploited to the hilt. George C. Wallace moulded his entire campaign around this issue, and Richard M. Nixon planned to, and did, give it a huge part of his time and rhetoric. Mr. Nixon's opening salvo came on August 8, 1968, in Miami when he accepted his party's Presidential nomination and delivered what he described beforehand as "the most

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important speech of my life.” For him America’s problem was crime, and candidate Nixon’s solution was a simple one, easily understood by voters: “If we are to restore order and respect for law in this country, there’s one place we’re going to begin: We’re going to have a new Attorney General of the United States.”\(^1\) Thus, the bugaboo issue of the 50’s—that of being “soft on communism”—was finally dropped, and the cry now was that the incumbents in general, and Attorney General Ramsey Clark in particular, had been “soft on crime.” Ignoring the fact that, in this country, criminal law enforcement is primarily a job for local authorities, candidate Nixon, in his first major campaign speech on crime, September 29, 1968, repeated his charge that National officials had been “soft on crime,” and revealed what he meant by Law and Order when he said:\(^2\)

Some have said that we are a sick society . . . . We’re sick, all right, but not in the way they mean. We are *sick* of what has been allowed to go on in this nation for too long. Under the stewardship of the present Administration, crime and violence . . . have increased ten times faster than population.

. . . .

Now by way of excuse, the present Administration places the blame on poverty . . . . But poverty is only one contributing factor . . . . The truth is that we will reduce crime and violence when we enforce our laws—when we make it less profitable, and a lot more risky, to break our laws. One lesson has not been lost on the criminal community. Today only one in every eight crimes results in conviction and punishment. Today an arrest is made in only one in every five burglaries. Today an arrest is made in less than a third of reported robberies. Today it is comparatively safe to break the law. Today all across the land guilty men walk free from hundreds of courtrooms. Something has gone terribly wrong in America.

With these words candidate Nixon charged that America’s sickness could be cured by law enforcement, and that the police, prosecutors and courts were not doing their jobs. Later, the implication changed and an accusing finger was pointed at our courts, especially the Supreme Court of the United States. They were the real culprits because

2. *Id.* at 25-26.
their decisions had shackled the police and prosecutors while coddling criminals. That Law and Order had become a popular issue after the 1964 presidential campaign and after the ghetto riots of 1966 and 1967 was also perceived by Congress: it enacted the Omnibus Crime Control and Safe Streets Act of 1968.³

By the time the election returns were in, and Richard M. Nixon was declared the thirty-seventh President of the United States by seven-tenths of one percent, some observers of American social life contended that the Law and Order issue had aroused far more fear and had set the stage for repression rather than having opened discussion about the basic requisites needed for a just society and a just legal order. In cities of more than a half million population, 40 percent of the residents now say that they are afraid of crime. One third of the American people are afraid to walk alone at night through their cities. Gun sales have soared, and the best estimate is that ninety million guns are in private hands. Today, there are millions of housewives and other women and men in this country who have never so much as fired a gun, but whose hearts are filled with fear and whose minds are filled with visions of shooting fantasies drawn from T-V's violent cowboys, soldiers, gangsters, policemen, private eyes, and secret-service men in Brooks Brothers suits.

Suburban whites filled with fear and ignorance have rapidly organized themselves into police support and vigilante groups. They fail to realize that over 4 million of the nearly 4.5 million index crimes (willful homicide, forcible rape, aggravated assault, robbery, burglary, theft of $50 or over and motor vehicle theft) that were known to the police in 1968 occurred in cities, and that today's willful homicide rate is well below that of 1933. Fearful of racial assaults, most white Americans in cities and suburbs ignore the fact that blacks and not whites are the primary victims of crimes committed by blacks. Furthermore, fearful city dwellers and suburbanites fail to realize that blacks are victimized by crime far more frequently than are whites. For example, the President's Crime Commission found that in Chicago a black man is six times more often a victim of crime than a white man, and that a black woman is victimized nearly eight times as often as a white

³ For discussion about this act and the events surrounding its passage see, R. HARRIS, THE FEAR OF CRIME (1969).
woman. Finally, it should be noted that the risk of serious attack coming from a stranger on the street is only one-half the risk of such attack coming from spouses, family members, friends or acquaintances, and that the closer the relationship the greater the hazard.

Taken together, murders involving spouse killing spouse, parent killing child, other family killings, romantic triangles and lovers’ quarrels, and arguments between those previously acquainted with one another account for about 80 percent of all homicides in America.\(^4\)

Nevertheless, fear has swept across our land and its fervent cry is "Law and Order." There is the fear of crime and the fear of the fear of crime, the fear of black men and the fear of robust expressions of differences of opinions and styles of life. Fear and widespread anxiety create a climate hospitable to harsh solutions and repression, and repression flourishes because ordinary men give way to their fears and because politicians create and manipulate fear to achieve repression and their own political ends. In some areas of our country the American dream is turning into a nightmare.

Given this milieu that surrounds current discussions about crime and the control of crime in this country, it is with good reason that Norval Morris\(^5\) and Gordon Hawkins\(^6\) entitled their excellent, new book: *The Honest Politician's Guide to Crime Control*. They correctly see that America's problems are two: we must reduce the fear of crime as well as crime itself. The authors eschew all simple-minded solutions to the problems of crime, especially those that are wrapped up in the slogan "Law and Order." Instead, their cure for crime is "not a sudden potion nor a lightning panacea but rather a legislative and administrative regimen which would substantially reduce the impact of crime."\(^7\) What then, is the honest politician's guide to crime control?

Before a rational program can exist, the aims of the program must be formulated and clearly set forth. What are the appropriate aims

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of the criminal law; or, put another way, under what circumstances it is proper to use the criminal law to regulate human conduct? For Morris and Hawkins the proper aims of the criminal law are “to protect the citizen's person and property, and to prevent the exploitation or corruption of the young and others in need of special care or protection.” Given their clear statement of the proper functions of the criminal law, the authors set forth their “first principle of our cure for crime: we must strip off the moral excrescences on our criminal justice system so that it may concentrate on the essential.” Thus, one way of getting rid of crime is to get rid of that part of the criminal law which exceeds its proper limits, and which is usually enforced at the cost of neglecting its primary tasks.

THE CRISIS OF OVERCRIMINALIZATION

American criminal law is highly moralistic; it is enforceable only in an uneven, sporadic and discriminatory way. In significant part it seeks to coerce men to virtue by using the police to regulate their private moral conduct. It is greatly in need of change. More than three-fourths of all the people locked up in local jails are drunks, vagrants, mentally ill or defective, or social misfits of other kinds. The criminal law is a singularly inept instrument for achieving social virtue. In addition, our moralistic criminal law is extraordinarily costly because it frequently creates that which it seeks to eliminate (e.g. drug use by creating circumstances of great profit for organized crime) and because it directs law enforcement away from its basic tasks. Moreover the morality sought by the criminal law has not been a consistent morality. For example, in 1810, a man in South Carolina could own, whip and sell slaves, as well as split up and destroy slave families, but if he uttered a blasphemy in a public place, he committed a crime; in 1910, a woman could drink as much whiskey as she wanted, but she could not vote nor appear in public in a one-piece bathing suit; in 1920, she could vote and appear in public in a one-piece bathing suit, but she committed a crime if she drank whiskey. The simple fact is that

most of our criminal laws concerning drunkenness, narcotics, gambling and sexual behavior, and a good deal of them concerning juvenile delinquency are highly moralistic, wholly misguided and ought to be repealed. The crime of drunkenness presents an excellent example of the problems created by overcriminalization.11

Over two million arrests each year—one out of every three arrests made in this country—are for the crime of public drunkenness. This represents more arrests than for any other crime. One-half of all persons who commit misdemeanors commit the crime of public drunkenness. Additionally, we don’t know how many people are picked up for public drunkenness but charged with some other crime, but we do know that, in 1968, six hundred thousand arrests were made for disorderly conduct (second only to drunkenness) and that ninety-nine thousand arrests were made for vagrancy. The arrests made for drunkenness alone tally more than twice the number of arrests made for the combined total of the seven serious crimes which the FBI calls its “Index crimes” (willful homicide, forcible rape, aggravated assault, robbery, burglary, theft of $50 or over and motor vehicle theft).

The estimated cost of handling each drunkenness case—arrest, court, jail time—is $50 per arrest. Conservatively estimated, that means we spend about $100 million per year for our use of the criminal law to handle drunk offenders, and this figure does not include a penny spent for rehabilitative treatment or subsequent prevention of drunkenness, which are the realistic ways to approach this problem. Furthermore, the great number of drunkenness arrests overload police capacities and jails, as well as clog the courts. A good example of the way overcriminalization, in this case public drunkenness, interferes with proper police activity comes from a study of Washington, D.C. during a nine-month period. A special tactical police force unit officially created “to combat serious crime” made 44 percent of its arrests for drunkenness. In another city 95 percent of the short-term prisoners were drunkenness offenders.

The fact is that the criminal law has not been effective in enforcing morality or in deterring public drunkenness, and its jail sentences have not rehabilitated the chronic offenders. The criminal law is a singularly

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inept tool to cope with public drunkenness. The only thing it accomplishes is the temporary removal of people believed to be unseemly to the public. Moreover, what little is accomplished by the criminalization of drunkenness is done at the cost of using money and manpower that could better be employed on behalf of the proper tasks of criminal law enforcement. The obvious point is to repeal the crime of public drunkenness. Authors Morris and Hawkins suggest responsible and workable programs through which persons drunk in public can properly be handled by personnel other than those engaged in criminal law enforcement.

The evils of overcriminalization, illustrated here by the crime of public drunkenness, have also been shown by Morris and Hawkins in their case against other crimes such as: narcotics and drug abuse, gambling, disorderly conduct and vagrancy, abortion and certain sex behavior crimes such as adultery, fornication, illicit cohabitations, statutory rape, bigamy, incest, sodomy, homosexuality, prostitution, pornography and obscenity. In these instances the authors' recommendations either discard the crime altogether, or create a new one no broader than that needed to vindicate the essential interest at stake, while ridding the statute books of useless overcriminalization. An example of the latter approach is statutory rape. The authors recognize that:

It is proper for the criminal law to seek to protect children from the sexual depradations of adults, and adults and children from the use of force, and certain types of fraud in sexual relationships. Further, there is some justification for the use of the criminal law to suppress such kinds of public sexual activity or open sexual solicitation as are widely felt to constitute a nuisance or an affront to dignity. But beyond this, in a post-Kinsey and post-Johnson and Masters age, we recognize that the criminal law is largely both unenforceable and ineffective, and we think that in some areas the law itself constitutes a public nuisance.

They note that statutory rape is usually a felony and that the stat-
utory age of consent varies from ten years of age (Florida, South Dakota and New Mexico) to eighteen (New York and thirteen states) but is twenty-one in Tennessee. As they say, these "variations must confuse the divining rod of the natural lawyer!" Furthermore, the maximum penalties range from death in fifteen states to ten years imprisonment in New York. Morris and Hawkins prescribe that "the offense of statutory rape should clearly be abolished." This would leave the crime of rape on the statute books, but it would be Viking rape, not statutory rape. Furthermore, the authors would create a new crime—adult sexual intercourse with a minor—to cover situations where consent has been given, but for reasons of personality growth and development, or other reasons, it is believed that the immature—say, under sixteen—should be protected by the criminal law from acts of sexual intercourse where there is a significant disparity of age between the male and female. This crime would not apply to similarly-aged youth who engage in sexual experimentation. Of course, "an abuse of a relation of trust or dependency should be regarded as an aggravating circumstance." This approach enables the authors to deal with the crime of incest, an ecclesiastical offense, which can also be abolished because the only legitimate interest to be vindicated by incest statutes is the interest already protected by the authors' new statute: adult sexual intercourse with a child.

If the recommendations of Morris and Hawkins were followed—as they should be—police could be removed from many areas where they unsuccessfully try to regulate private conduct. The police would then be free to devote much more attention to their primary task of reducing serious crimes against persons and property.

A COOL LOOK AT THE CRIME STATISTICS

Periodically, newspaper headlines scream at a reader: "Crime At New All-Time High," or "First Year of Sixties Recorded New All-Time High," or "In 1961 a 3 Percent Increase over Previous All-Time

18. MORRIS & HAWKINS, at 16.
19. MORRIS & HAWKINS, at 17.
20. Id.
21. Another excellent book covering these areas but published after the authors' book went to press is H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION (1968).
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High.” These statements come from the *Uniform Crime Reports* (UCR) published annually by the FBI. In 1961, the UCR dropped the “all-time high” language, but from 1962 to 1968 it was repeatedly reported that crime was rampant and dangerously on the increase, with annual increases ranging from 6 to 17 percent. In 1968, for example, it was reported that the risk of being a victim of a serious crime had risen 71 percent since 1960. These statements have been picked up and used by politicians for their own ends, and have created as an unfortunate by-product an intense public hysteria about crime and its supposed massive increases. How accurate are the crime statistics? Does America really face a “rising tide of crime and anarchy?”

In light of the above quotations, the first consideration that Morris and Hawkins present is that the “general crime picture” painted for the “general reader” by the FBI’s UCR “is far from general; it is highly selective and invariably emphasizes increases in serious crimes.” Second, it is not always possible to “distinguish between the statements of fact as providing hard objective data and the dicta as expressions of mere opinion.” Also, there are problems of interpretation; for example, the UCR for 1960 which stated that the “first year of the sixties recorded a new all-time high, with 98 percent more crime than in 1950.” Morris and Hawkins’ response to this statement is that:

Such a statement is patently liable to mislead any “general reader” who fails to reflect that there was a substantial increase in the United States population between 1950 and 1960. When the crime rates, *i.e.*, crimes per 100,000 inhabitants, are calculated and adjustments necessary for valid comparison are made, the actual increase was only 22 percent. And this increase was almost entirely confined to property offenses. In relation to population, murder remained unchanged, and in proportion, aggravated assault and robbery decreased.

It is even more important to note that the figures on which these statements are based are not figures for criminal acts that occurred but for “crimes which are counted by the police as they become known to them.” Moreover surveys carried out for the President’s Crime Commission confirmed what a variety of earlier

23. Morris & Hawkins, at 32.
studies had indicated, that the actual amount of crime is several times that reported and recorded in the UCRs. Thus, to infer from an increase in reported crime that there is "98 percent more crime" is to take a wild leap in the dark.

On the basis of the President's Commission figures it would be possible for the amount of forcible rape reported to increase by 250 percent, for reported burglaries to increase by 200 percent, for reported aggravated assaults and larcenies of $50 and over to increase by 100 percent—all without any increase in the amount of crime committed. It is perfectly possible that the substantial changes and developments in reporting and estimating and recording procedures which occurred between 1950 and 1960 merely brought out into the light more of what is called the dark figure of crime and thus produced an increase purely statistical in character without any real increase in crime having taken place at all. Yet all the statements in the UCRs about increases in the volume of crime suggest that the FBI accepts the specious assumption, made by the nineteenth-century Belgian pioneer criminal statistician Adolphe Quetelet, that the amount of known crime bears a constant relation to the amount unknown.

The point is that we simply do not have any reliable measure of the actual amount of crime in our society. What we have is some notion of reported crime as it has been reported to the FBI by the 8,000 local police agencies that account for 92 percent of our population. But the relationship between reported and unreported crime remains a mystery. Thus, it is possible for reported crime to increase (UCRs) and actual crime to decline; we simply do not know.

A postwar study of crimes of violence in England\(^2\) shows that the amount of reported crime can increase because of factors other than more efficiency or uniformity in formal reporting procedures. For example, emergency telephone systems or more radio-equipped police officers can account for more previously unrecorded crimes becoming recorded. The same can be true whenever a change takes place in police attitudes, especially toward ghetto residents, and police officers begin to report what previously they may have ignored. A change in police attitudes can come about because the public has become fearful of crime and less tolerant of it. A change of public attitudes can also result in the public reporting more crime. The result of each of these

\(^{25}\) Morris & Hawkins, at 33.
circumstances can be that there is a net, statistical increase in crime, although perhaps fully artificial. We simply do not know. It is quite consistent with the crime statistics to posit an improvement instead of a decline in our standards of behavior over the past few years.

The basic truth is that "we lack reliable methods for measuring the volume of crime" and Morris and Hawkins apply this statement "to both the UCRs and to all presently available victim studies." Their overall conclusion on the accuracy of the crime statistics is that the regularly published UCR percentage changes in the volume of crime from one year or decade to another can serve no purpose beyond alarming and frightening the public, and facilitating congressional acceptance of FBI budgetary requests.

Although the crime statistics are not reliable, Morris and Hawkins argue for the reasonableness of the view that both the volume and the rate of crime in America has increased, and will continue to increase unless their recommended preventive measures are followed. Their argument does not entail that our standards of behavior are degenerating, nor that criminal anarchy is upon us. Rather, their argument assumes that our standards remain constant. They rely on four areas of evidence for their view about increasing crime: size and structure of population, urbanization and increased affluence.

Assuming that the proportion of crimes to the population remains stable then, obviously, each year that population increases the amount of crime would also increase. Thus, if there were 150 million people in the United States in 1950 and approximately 200 million in 1968, all other things being equal, we should expect about a twenty-five percent increase in the total amount of crime. This would be "normal." Consequently, as our population increases (approaching 275 to 300 million by around year 2000), we can expect the total amount of crime to increase.

The changing age structure of American population is even more important than increases in our population. All of our statistics show that the ages most prone to crime in this country are from 15 to 24

26. Id.
27. MORRIS & HAWKINS, at 34.
with the incidence of crime increasing in the under 15 years of age; this is the high-risk group.

Because of the unusual birth rate in the post-war years the size of this group has been increasing much faster than other groups in the population and will continue to grow disproportionately for at least fifteen more years.\textsuperscript{28}

Thus, the total volume of crime can grow without any increase in the crime rate for any given age group. Furthermore, since black mothers have a higher fertility rate than white mothers, there are proportionately more young blacks between the ages of 15 to 24 than there are whites. In fact, one-half of our black Americans is under twenty-four years of age. Thus, it will be "normal" to record a greater, proportionate share of crime committed by blacks rather than whites. This should not surprise anyone so long as our legislators fail to create effective programs to deal with the needs of youth and the black ghettos.

Equally important is population distribution. With very few exceptions rates for most crimes are highest in the big cities, and the average rates increase progressively as cities become larger. For some reason population density is usually associated with increasing serious-crime rates.

The average rate for those offenses (willful homicide, forcible rape, aggravated assault, robbery, burglary, theft of $50 and over and motor vehicle theft) are at least twice as great in cities of more than one million as in the suburbs or rural areas.\textsuperscript{29}

This ingredient must be combined with the fourth factor: that as societies grow more affluent, especially those having an uneven distribution of affluence, the amount of crime tends to increase. And finally we have to add the basal element of fear, because as put by the President’s Commission on Crime:\textsuperscript{30}

As the level of sociability and mutual trust is reduced, streets and public places can indeed become more dangerous. Not only will there be less people abroad but those who are abroad will manifest a fear and a lack of concern for each other.

\textsuperscript{28} MORRIS & HAWKINS, at 35.
\textsuperscript{29} MORRIS & HAWKINS, at 36.
\textsuperscript{30} MORRIS & HAWKINS, at 37.
Thus, Morris and Hawkins conclude that America is in for an increase in total crime, and we would be surprised if that did not occur.

Enough has been written so it now can be seen that given the crime-producing forces currently at work in our society, there is little possibility of dealing with them adequately or responsibly with any program rolled out of the “Law and Order” slogan. Neither strict law enforcement by police officers nor strict constructions by judges will do the basic job; each is irrelevant to the fundamental problems. This is not to say that proper law enforcement is immaterial, but only to say that it does not cope with the roots of our crime problems. What we need is a broad, legislative program constructively aimed at youth, slums and the other basic, crime-producing forces. That is why Morris and Hawkins produced their book for the honest politician and not the judge; it is up to him to produce the needed legislative programs.

While space demands preclude my setting forth or criticizing their many constructive suggestions, the authors are quite correct in their estimate that at least five percent of the budget should be appropriated immediately to devise and evaluate alternative legislative strategies for repressing, controlling, and preventing crime within America’s context of a growing and changing population. In the long run, an adequate legislative program dedicated to eliminating the roots of crime could easily cost 20 percent of our gross national product, and that, of course, would require Americans to change their national priorities. Indeed, the modest proposal of Morris and Hawkins will test whether we are really serious about reducing crime in the United States or whether we are simply given over to verbalisms, and are, in fact, “soft on crime.”

REHABILITATION, PREVENTIVE DETENTION AND ORGANIZED CRIME

What most Americans do not understand about our prison system of corrections is that in most cases it is not only the enemy of the prisoner, but it is also the enemy of American Society. Our prison system of corrections is failing in very basic ways. As the President’s Crime Commission reported: “for the bulk of offenders . . . institu-
tional commitments can cause more problems than they solve." Can it truly be said of our present correctional system that because of the treatment it gives, it makes American communities safer from crime? I think the answer is obvious: No. This is because the available "treatment" in most penal institutions consists of little more than socially isolating a prisoner and then varying the conditions of custody from "regular" to "tight security" or "solitary." Prisoners are not prepared by our prisons to assume a meaningful role in society upon release, and many do not. The only thing surprising about recidivism, given our correctional system, is that people should be surprised by it. The system is also needlessly expensive. On an average day our correctional system handles about 1.3 million Americans, and it has 2.5 million admissions each year. The annual budget is over a billion dollars. I think we need to rethink the whole question of our correctional system in America. Morris and Hawkins do not state that they know our prison system is failing, but they do set forth several constructive proposals, one of which will be mentioned here: a community treatment program.

Their proposal confronts one of the basic conflicts in our traditional correctional thinking. The first purpose of any correctional system is to make communities safer by reducing crime. How can this best be achieved? On the one hand, we impose social isolation on a criminal by locking him up tightly behind prison walls and bars. Prison is expulsion from the group; banishment. We believe this example will be a deterrent to others. But, on the other hand, most prisoners are released and are returned to society. All the evidence we have indicates that if we preserve and strengthen a prisoner's family relationships and if we create and preserve a prisoner's community relationships, then we will have the best chance for his finding a constructive place in society on release, and his avoidance of subsequent crime. Thus, the dilemma posed for criminal corrections is whether to isolate or not to isolate?

On the basis of the results shown by the California Youth Authority's Community Treatment Project—now in its seventh year—and

31. MORRIS & HAWKINS, at 122.
32. MORRIS & HAWKINS, at 120-23.
33. MORRIS & HAWKINS, at 121-22:
   There, after initial screening which excludes some 25 percent of the males and
for other reasons, Morris and Hawkins opt for social continuity, and propose that instead of isolating prisoners we set up community treatment with "supervision" as our most used criminal sanction. So far, community treatment programs have proved more effective and cheaper than prisons. They offer counseling, therapy, school tutoring services and other rehabilitation according to an inmate's needs. On his release, a prisoner already has stabilized family, group and community relations. They support his new life, and the likelihood of further crime is probably diminished further than our present correctional system diminishes it. Of course, the authors do not offer community treatment programs as the only correctional tool. Prisons, in a different form, would still have to be available for criminals who cannot benefit from immediate community treatment. But here too, the authors have several splendid and constructive suggestions, e.g., the hostel and full-wages prison systems, which, if followed, would enable 5 to 10 percent of the girls because of the serious nature of their offenses, mental abnormality, or strenuous community objections to direct release, convicted juvenile delinquents have been assigned on a random basis to either an experimental group or a control group. Those in the experimental group are returned to the community and receive either singly or in combination such treatments as intensive individual counseling, group counseling, group therapy, family counseling, school tutoring services, and involvement in various other group activities. Each delinquent in this group is treated according to a custom-tailored plan implemented at a level of high intensity with a ratio of one staff member to twelve youths. The youths in the control group are assigned to California's regular institutional treatment program. The findings of this research so far reveal that only 28 percent of the experimental group have had their paroles revoked as compared with 52 percent in the control group which was institutionalized and then returned to the community under regular parole supervision.

The results of this experiment have somewhat more positive implications than the comparative studies we have referred to above.

The saving in public money is certainly substantial. The cost of the California Community Treatment Project per youth is less than half the average cost of institutionalizing an offender. Moreover the program is now handling a group larger than the population of one of the new juvenile institutions that the California Youth Authority is building. An investment of some $6 to $8 million is thus obviated. At the same time the program offers not merely "equal protection to the public" but, at less than half the price, much more effective protection than the traditional methods.

34. For additional discussion see, Silving, Toward a Contemporary Concept of Criminal Justice, 4 ISRAEL L. REV. 479 (1969).

Although four-fifths of the correctional budget is spent and nine-tenths of the correctional employees work in penal institutions, only one-third of all offenders are confined in them; the remaining two-thirds are under supervision in the community.

MORRIS & HAWKINS, at 134. But, supervisory services are, for the most part, "grossly understaffed, almost always underpaid, and too often undertrained." Id., at 135.
our criminal correctional system to achieve its prime goal at much less cost.

I find much in this valuable book to heed and admire, but there are at least two suggestions that give me pause: preventive detention and organized crime.

Bail serves the affluent who are accused of crime. The authors correctly point out that there are thousands of persons in this country who are so poor that they cannot raise bail, and therefore are kept in jail pending trial. This fact was stated by President Johnson when he signed the 1966 Bail Reform Act:

He [the accused] does not stay in jail because he is guilty. He does not stay in jail because any sentence has been passed. He does not stay in jail because he is any more likely to flee before trial. He stays in jail for one reason only—because he is poor.

Many are innocent:

It has been estimated that 40 percent or more of the jail population is made up of unconvicted defendants. A large proportion of these, from 40 to 60 percent, will later be released without being convicted.

Furthermore, many who are later convicted are given sentences shorter than those already served while they awaited trial. The indignities and social injustices heaped upon these Americans are manifold, consisting, in part, of regimented living, surveillance, physical searches, inadequate visitors' facilities, crowded cells and almost complete isolation from the outside world. Finally, it has been estimated by the VERA Foundation Manhattan Bail Bond Project in New York City that the unnecessary cost incurred by retaining those who cannot raise bail but who otherwise would appear for trial is $50 million per year. Thus, Morris and Hawkins have good reason when they decree that "the money bail system shall be abolished."

The trouble is that the authors go on to embrace the notion of preventive detention. Commendably, they try to narrow it by stating that "pretrial detention should be reduced to the minimum possible,"

36. As quoted in Morris & Hawkins, id.
37. Morris & Hawkins, at 112.
and they quote the President’s Crime Commission Report to describe the minimum: “the relatively small percent of defendants who present a significant risk of flight or criminal conduct before trial.”

But once the principle is approved, there is no reason to believe its application will only be to the very few. The category has already been broadened by two identical Bills (one currently introduced in the House and the other in the Senate) requested by President Nixon as part of his Law and Order package, and drafted and supported by the Department of Justice. The heart of both Bills is a provision that allows jailing an accused whenever a judicial officer, after a hearing, determines that incarceration is necessary to “assure the safety of any other person or the community.” After this decision has been made an accused may be remanded to custody for a period not exceeding sixty days, after which, if he is still untried, he is entitled to a reconsideration of his custody, but, of course, there is little reason to believe that spending sixty days in jail will alter a magistrate’s view of the accused as a person too dangerous to be at large.

Pretrial detention would be less objectionable, but still unacceptable, if only those who were accused of crime and who also fit the Crime Commission’s narrow description were the only ones actually incarcerated. But we all know that many more will be locked up if preventive detention is allowed to operate. Justices of the peace, police magistrates and judges will jail defendants they believe to be dangerous, but what will be the accuracy of their predictions? The methods and data for predicting dangerousness have not been developed. One recent study of the judicial capacity to predict dangerousness states:

There is, in fact, no reliable set of criteria for predicting dangerousness. Some judges interviewed believe that they could tell intuitively whether or not a person was dangerous. One judge likened the procedure to playing the violin. One judge referred to the “dark glasses, green pants,” the “fourteenth street crowd.” Another judge relied on the defendant's attitude, whether he showed

38. Morris & Hawkins, at 114.
remorse. Still another judge based his determination on whether he thought the defendant was telling the truth.

Under preventive detention no one will know the number of judicial predictions that were in error because defendants will not be released, and there will be no way to tell whether they would or would not have committed a crime.\textsuperscript{42} Furthermore, different magistrates and judges having differing values and personalities will differ in the accuracy of their predictions. It should not be overlooked that President Nixon's proposal for preventive detention allows an accused to be jailed in order to "assure the safety of . . . the community." One wonders how magistrates might apply such a provision to ghetto residents during a riot.

Given our present state of knowledge, any recommendation of preventive detention is a mistake, and should be recognized as such. We simply do not have accurate and reliable methods or data for predicting dangerousness. Until they are developed any scheme of preventive detention will necessarily operate on substantial prejudice. Serious and irreparable injustices and unequal protection of the laws would be the inevitable result.

I am also troubled by the authors' recommendations on Organized Crime. Morris and Hawkins assert that the belief in the existence of an organized crime syndicate is "one of the most seductive and persistent of . . . myths."\textsuperscript{43} They do not say there is no organization; only that there is not sufficient evidence of a single, unitary organization. Thus, they believe it mythical to hold "that behind the diverse phenomena of crime there exists a single, mysterious, omnipotent organization which is responsible for much of it."\textsuperscript{44} Their view is based on a review of the little available evidence that tends to show the existence of a single, organized crime network, including the Valachi papers and evidence about the Mafia and the Cosa Nostra. They conclude that we have to face the fact that quite apart from the paucity and dubious character of the available evidence it is inherently im-

\textsuperscript{42}. On these problems generally see, \textit{Hearings on Amendments to the Bail Reform Act Before the Subcommittee on Constitutional Rights of the Senate Judiciary Comm.}, 91st Cong., 1st Sess. (1969).
\textsuperscript{43}. \textit{Morris & Hawkins}, at 203.
\textsuperscript{44}. \textit{Id}.
\textsuperscript{45}. \textit{Morris & Hawkins}, at 234.
probable that organized crime is for the most part in the hands of a monolithic nationwide crime syndicate, controlled by a single “commission.”

Given their fundamental view that monolithic, organized crime is a myth, the authors seek to deal with polycentrically organized crime, which they do by removing the criminal laws which both stimulate and protect it. Thus, our authors are led to the naive view that all we need do is to repeal the criminal laws that make the profits for fully or semi-organized crime—gambling, narcotics, and prostitution primarily—and that will basically take care of the matter. Of course, the authors do not stop here, they also suggest better ways for handling these substantive matters than we currently use. New techniques should be implemented as we repeal the many unneeded criminal laws.

The authors are without substantial fault up to this point. But, that is not all there is to the matter. A partially or a fully organized crime group will not abandon its prior successful ways of making large amounts of money if its immediate sources of profit are removed. These organized groups will try to locate other sources such as loan sharking, infiltration of legitimate business, etc. Therefore, I can agree with Morris and Hawkins that we should repeal the criminal laws that create a profit for organized crime, but I cannot follow them when they recommend that, one year after the unneeded criminal laws have been repealed, “all special organized crime units in federal and state justice and police departments shall be disbanded.” To the contrary, I think we must keep a firm grip on the underworld.

CONCLUSION

While I differ with the authors on several matters, the overwhelming bulk of this book and its recommendations are sound. They should be implemented by every American state. Perhaps one point stands out above all others. We now have a fund of scholarly knowledge about crime control which if acted upon responsibly would reduce crime and the fear, suffering and unhappiness brought on by crime. Morris

46. Morris & Hawkins, at 203.
47. For example, see their discussion on the need and justification for compensating victims of crime; also note the Symposium on Governmental Compensation for Victims of Violence in 43 So. Cal. L. Rev. 1 (1970).
and Hawkins have distilled the very best thinking on the subject of crime control, and they have expressed it in plain, readable words. In addition, they have brought a large measure of common sense to the area of crime control. The authors’ hard sense and cogent arguments make this book, along with Herbert Packer’s, *The Limits of the Criminal Sanction* (1968), one of the two best treatises on crime to come off the press in recent years. There is no longer a need to call for yet another study before legislative action. Morris and Hawkins have given us an intelligent, effective and humane prescription of precisely what we must do with our system of criminal correction. What we need are honest politicians to legislate overdue programs if we really want to cut our luxurious crime rates. The key is political responsibility. Now is the time not only for every politician, but for every citizen to read this enlightened book.