

SOME REMARKS ON CRIME, VIOLENCE, HISTORY, AND CULTURE

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INTRODUCTION

*Crime Is Not the Problem: Lethal Violence in America*¹ is a rich, important, and stimulating book. It is a real addition to our knowledge and understanding of the crime problem in this country. I would add that it makes a real contribution to the public debate on the subject, except that (alas) there is no public debate on crime worthy of the name; there is public whooping and shouting and posturing, but very little that one could call honest debate, at least not outside of academic circles.

One of the main arguments of this admirable book is that the “crime problem” in America has been misconceived. Contrary to what most people think, the American crime problem is nothing special, if you measure (say) ordinary property crimes. Most readers will be surprised, I am sure, to read that the chances of having your wallet stolen or your house burgled are as great in London as in New York, if not more so, and as great in Sydney, Australia as in Los Angeles, if not more so.² What America does have is a *violence* problem, and in particular, a problem of lethal violence. Americans are killing each other at a rate that dwarfs the rates in the countries we like to compare ourselves to—the wealthy industrial countries of Europe and elsewhere.³

This is an important point, and it has, potentially at least, important implications for policy, for what we can and should do about crime. My remarks are not by way of criticism, but only by way of supplement and rumination. I would like, primarily, to raise a few questions and add a few remarks about American violence in historical and cross-cultural perspective.

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1. FRANKLIN E. ZIMRING & GORDON HAWKINS, *CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA* (1997).

2. *See id.* at 4-7 & figs.1.1, 1.2.

3. *See id.* at 7-8 & fig.1.3. For another, somewhat less incisive view of the cross-national comparisons, see James Lynch, *Crime in International Perspective*, in *CRIME* 11, 11-21 (James Q. Wilson & Joan Petersilia eds., 1995).

The first point has to do with the historical data on American violence. Zimring and Hawkins do not deal with homicide or violence in the nineteenth century, but they do introduce data on the twentieth century. This data shows that homicide rates were quite low in 1900 (under 2 per 100,000); rose to a rather dramatic peak around 1930 (about 9 per 100,000); sank to a kind of trough in the 1950s and 1960s (between 4 and 5 per 100,000); skyrocketed to a high of 10.7 per 100,000 in 1980; and have remained very high since then (fluctuating between 8 and 10 per 100,000).⁴ They have, of course, dipped noticeably in recent years, but that is another story.⁵

The best evidence—admittedly it is not that good—about homicide rates in the nineteenth century suggests that rates were generally declining during that century.⁶ In other words, based on the available data for homicide rates in the nineteenth and twentieth centuries, it seems that the United States has had two rather serious bursts of killing, both in the twentieth century. I want to come back to this point, however, and argue that it may be somewhat misleading; and that it does not necessarily tell the whole story about American violence.⁷

On the second point: Comparison with foreign countries is the essence of the argument that Zimring and Hawkins make. But, they mainly compare us with Western Europeans and the Japanese. If you throw in Latin America, Eastern Europe, and Africa, the picture gets even cloudier than before. It turns out that America is not the world's capital of violent crime (at least among those countries that have statistics worth looking at). It is somewhere in the middle. There are countries that are far worse: Mexico, for example, has a violent crime rate of 17.1 per 100,000, about double the United States' rate; and Colombia has a fearful rate of 49 per 100,000.⁸ There are other countries that also have very high rates: Russia, and South Africa, to mention two examples.⁹ On the other hand, it is *not* correct to say that

4. See ZIMRING & HAWKINS, *supra* note 1, at 57-58 & fig.4.5.

5. See, e.g., Michael Cooper, *New York City Takes Bows As Homicide Rate Plunges*, N.Y. TIMES, Jan. 1, 1997, § 1, at 43.

6. See Eric Monkkonen, *Homicide over the Centuries*, in LAWRENCE M. FRIEDMAN & GEORGE FISHER, *THE CRIME CONUNDRUM: ESSAYS ON CRIMINAL JUSTICE* 163 (1997); ROGER LANE, *MURDER IN AMERICA* 92-214 (1997).

7. See *infra* Part IV.

8. See ZIMRING & HAWKINS, *supra* note 1, at 53 fig. 4.1, 54 fig. 4.2.

9. See *Violent Crime Doubles in Russia*, REUTERS N. AM. WIRE, Oct. 30, 1992;

third-world countries are violent countries. Many of them are not. Nor do the examples of Colombia or Mexico mean that Latin-America is a hotbed of violence. Uruguay and Argentina are high by international standards, but much lower than the United States; and Peru, somewhat surprisingly, has a rate as low as Italy (2.2 per 100,000), if the official statistics are to be believed.¹⁰

There are some countries where the rates are, under one definition of the situation, truly astronomical. In the United States, rates have not gone higher than 11 per 100,000.¹¹ Can you imagine what the rates would be in places like Bosnia or Rwanda if we counted the massacres there as murders (which, of course, in a real sense they are)? The world is full of societies where death squads roam the streets, and where men, women, and children are slaughtered wholesale. Algeria, Liberia, Sierra Leone are three examples: there is, in fact, a long and terrible list. It is a luxury to use a narrow, *legal* definition of murder. Finland and the United States can afford to do so. The murder rate in, say, Hitler's Germany or under Pol Pot would be staggering, except for the even more revolting fact that the killing was not defined as murder, but as high state policy.

I. KILLING VERSUS MURDER

The point I am making here is quite simple: lethal violence and *criminal* lethal violence are not at all the same thing. The definition of "murder" is not constant. It fluctuates over time. And it fluctuates from place to place.

This brings me back to the historical point. Roger Lane recently published an excellent study, which he calls *Murder in America*.¹² In fact, contrary to what the title might imply, this book goes well beyond "murder" as it is defined in state penal codes; it deals with deliberate killings of all sorts. Some of these killings were defined as murder, and some were not. Some were punished, and some were not. Lane, for example, talks about capital punishment, about vigilante killing and the victims of lynch mobs and urban riots, about suicide rates, and even about

Peter Hawthorne, *Freedom Stained by Violence: The New South Africa Struggles with a Wave of Crime and Vigilantism*, TIME (int'l ed.), Sept. 2, 1996, at 31.

10. See ZIMRING & HAWKINS, *supra* note 1, at 53 fig. 4.1; 54 fig. 4.2.

11. See *id.* at 57-58.

12. See LANE, *supra* note 6.

the death toll in the Civil War. The implicit point is a good one: "murder" and "manslaughter," as crimes, are much narrower concepts than we might want to work with, if our goal is to track the history or prevalence of violence of all sorts in society. A society can be, in fact, quite violent, even though the "homicide" rate is extremely low.

A young law teacher once made a similar point to me. I had been giving a talk at his school, and I carelessly made a remark something to the effect that violent crime was less common in the nineteenth century than it is now. He reminded me that "crime" was a fairly constricted way of looking at the problem of violence. Under slavery, the masters and overseers were allowed to "punish" slaves who did something wrong (or, in practice, whenever they felt like it). The punishment was usually whipping. It could be quite severe, and sometimes even deadly.¹³ Some masters and mistresses were extremely cruel; some were not. But this violence was simply not considered criminal, either legally or socially. In general, until well into the nineteenth century, the criminal justice system often used forms of punishments that excoriated the human body. Whipping, branding, mutilation (cutting off the ears of criminals), and even castration were methods of punishing the guilty in the colonial period.¹⁴

These acts of violence were not crimes at all, but the very opposite: the strong arm of the law. Southerners tended to defend the cruelty and violence of slavery as legitimate measures necessary to uphold the institution.¹⁵ To be sure, there are cases on record in which masters were held to answer for killing a slave—in some instances, masters were tried, convicted, and punished for these offenses.¹⁶ But these were exceptional cases. They came up out of incidents that were absolutely egregious—cases which shocked the neighbors. Only the most

13. There is a substantial literature on the criminal law of slavery, and, of course, on slavery in general. See, e.g., PHILIP J. SCHWARZ, *TWICE CONDEMNED: SLAVES AND THE CRIMINAL LAWS OF VIRGINIA, 1705-1865* (1988); DANIEL J. FLANIGAN, *THE CRIMINAL LAW OF SLAVERY AND FREEDOM, 1800-1868* (1987).

14. See generally LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* ch.2 (1993).

15. See THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW 1619-1860* ch.12 (1996).

16. See MICHAEL STEPHEN HINDUS, *PRISON AND PLANTATION: CRIME, JUSTICE AND AUTHORITY IN MASSACHUSETTS AND SOUTH CAROLINA, 1767-1878*, at 133-34 (1980); see also MORRIS, *supra* note 15, at ch.7; SCHWARZ, *supra* note 13, at 79.

“atrocious or public murders, frequently committed by men of low standing,” ever brought about such convictions.¹⁷ One must remember that it took an outraged white to set the machinery of justice in motion. The slaves themselves had no right to complain.

There is also the problem of domestic violence. Some men certainly beat their wives in the nineteenth century; we have no idea how often, or whether husbands were more violent in the nineteenth century than they are now.¹⁸ Many men (and women) disciplined their children severely. Some of this spanking and whipping would almost certainly be considered child abuse today. I suspect that the grimmer sorts of child abuse—battering or torturing children to death—were rarer in the nineteenth century than in our contemporary world; but we have no real way of knowing this.

Rape rates are another closed book. In the first place, until we began to have victimization studies, there was no reliable information on rape rates; the numbers reported to the police were a small fraction of the actual rapes that occurred.¹⁹ And it was difficult to convict: in New York, as late as 1969, there were 2,415 complaints of rape, 1,085 arrests, and only 18 convictions.²⁰ In part, too, rape has always been a matter of definition. The marital exemption, for example, meant that no matter what a husband did to his wife, she had no right to claim she was raped.²¹ Under slavery, a slave had no right at all to complain that a white man had raped her; and even in those cases in which the rapist was another slave, complaints were exceedingly rare.²² Complaints by black women or by women who could be defined as “loose” were not likely to go anywhere.²³ Consequently, we simply

17. See HINDUS, *supra* note 16, at 134.

18. See ELIZABETH PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* app.B at 217-25 (1987).

19. See FRIEDMAN, *supra* note 14, at 215-17.

20. See DEBORAH L. RHODE, *JUSTICE AND GENDER* 246 (1989).

21. The exemption has been either removed entirely or substantially defanged in most states. California, for example, recognizes rape by a spouse, but distinguishes in some rather minor procedural ways between marital rape and non-marital rape. See CAL. PENAL CODE § 262 (West Supp. 1998).

22. See MORRIS, *supra* note 15, at 304-07; see also SCHWARZ, *supra* note 13, at 156.

23. Harry Kalven, Jr. and Hans Zeisel, in their classic study, *The American Jury*, found that juries in rape cases tended to acquit the defendant whenever there

do not know anything about the long-term curve of incidence of rape and other crimes of sexual violence.

This leaves us, of course, with homicide as the only crime we can actually measure—the only one we can say something plausible about, as far as the ebbs and flows are concerned. And even for homicide, the information we have is mostly for the *crime* of homicide, that is, acts of killing that get so defined. Whether other forms of private violence follow the curve for homicide is something we can only guess at. I think it is plausible to think so, at least for violent assaults—that is, for attacks on the body that *could* have resulted in death,²⁴ but happened not to. But plausible is not the same as true. Whether rape rates track homicide rates is something we simply do not know—at least not for the past.

It would be interesting, too, to know more than we do about the *types* of homicide. Who killed whom, and why? Men kill their wives; barroom brawlers kill each other; gangs kill members of other gangs; robbers kill store clerks. These are socially and politically very different kinds of crime. There is no reason not to believe that they vary greatly over time. Infanticide is probably much rarer today than it was in, say, nineteenth-century England, or perhaps in colonial America.²⁵ It is much less ruinous today for an unmarried woman to give birth to a child; there is less, then, of the kind of desperation that led very poor women to kill their own newborn babies.

We do, however, have information about some forms of lethal violence, the kinds that had official recognition—executions, for example. Despite the best efforts of people in Texas, this kind of killing is not as common today as it was in the past. There was a “spectacular drop” after American independence and a steady decline in the nineteenth century; by 1900 the figure was “well below” 2 per 100,000, and executions were even rarer in the East and Middle West.²⁶ We also have rough guesses and some data

was any suggestion of “contributory behavior” on the victim’s part. See HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* 249-55 (1966).

24. As Roger Lane has pointed out, advances in medicine mean that many victims of assault who would have died in the nineteenth century survive today. See LANE, *supra* note 6, at 239-42. This higher survival rate lowers the homicide rate. I have no idea by how much, but I doubt if the effect is very large.

25. See generally PETER C. HOFFER & N.E.H. HULL, *MURDERING MOTHERS: INFANTICIDE IN ENGLAND AND NEW ENGLAND, 1558-1803* (1981).

26. See LANE, *supra* note 6, at 197.

about what we might call semi-official violence. Vigilantism is a good example of this phenomenon.²⁷ The vigilantes had their golden age in the period after the Civil War and before 1900, particularly in the Western states. What the vigilantes did was never actually legal—certainly not the various “necktie parties” and other games they played. But, officials either winked at, connived at, or tolerated the vigilantes. Nobody was ever punished for joining a vigilante group. In fact, the vigilantes have always had their defenders—men like Hubert Bancroft and Thomas Dimsdale, who wrote paeans of praise for the lovable and salutary “roughnecks.”²⁸

The same official toleration, alas, smothered any attempts to control or outlaw lynching. The dark peak of lynch law was reached in the late-nineteenth and early-twentieth centuries. Lynching took place mostly in the South (almost 3,000 victims between 1889 and 1918) and most of the victims (about seventy-eight percent, according to one account) were black.²⁹ Typically, the victim was a black man accused of murdering or raping a white. Lynch mobs were vicious, brutal, direct, and extremely overt. Nobody bothered with masks or disguises. Whites “of all classes came from miles away to participate in the spectacle, sometimes with their children and picnic supplies in tow”; indeed, sometimes “children might be given the day off from school to attend.”³⁰ Nobody, or hardly anybody, was ever punished for taking part in a lynching, even for the most cold-blooded killings. Indeed, the lynchers were community heroes. They were enforcing a “code” that the law was too slow, too flabby, or too fussy to enforce with the vigor white southerners thought necessary.

Police brutality, on the other hand, was more covert, and not usually lethal. But nobody doubts that it was common. Some of it was just a kind of “rough justice”—beating up bums, thieves,

27. There is a large volume of literature on the vigilante movement. See, e.g., RICHARD MAXWELL BROWN, *STRAIN OF VIOLENCE: HISTORICAL STUDIES OF AMERICAN VIOLENCE AND VIGILANTISM* (1975); FRIEDMAN, *supra* note 14, at ch.8.

28. See HUBERT HOWE BANCROFT, *POPULAR TRIBUNALS* (1887). The name says it all—Bancroft wrote enthusiastically about the vigilantes. Thomas J. Dimsdale was also a leading contemporary defender of their behavior. See THOMAS J. DIMSDALE, *THE VIGILANTES OF MONTANA* (1866).

29. See NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *THIRTY YEARS OF LYNCHING IN THE UNITED STATES, 1889-1918*, at 29 (1919).

30. MARTHA HODES, *WHITE WOMEN, BLACK MEN: ILLICIT SEX IN THE 19TH CENTURY SOUTH* 176 (1997).

and other lowlifes. Some of it was the "third degree"—using torture to extract information and confession.³¹ Probably most people in the nineteenth century—nice, middle-class people—approved of a certain amount of police brutality. They considered it a kind of necessary evil: You had to fight fire with fire.

These official and semi-official violent acts of course raised political and policy issues. There were investigations, complaints, and denunciations of police brutality.³² There was also a strong anti-lynching campaign, spearheaded by irate black leaders. But the policy issues were not the same issues that violence raises today. Most of the people who suffered from official violence were weak, poor, and unpopular. The victims of lynch mobs were black. The victims of the vigilantes were criminals or trouble-makers. Official violence did not affect the middle class, by and large. It did not impinge on the interests of respectable people. Indeed, it often seemed to *enhance* those interests.

One point should be emphasized, however. The violence problem is not the same as the violent *crime* problem. Violence is violence; but violence is only a crime when society and the penal code define it as such.

II. IS THERE A TRADITION OF VIOLENCE?

There is certainly no shortage of explanations for what causes American lethal violence. It is easy to show that most of these explanations are wrong or too simple; and I will not bother to repeat the arguments. I do want to deal briefly with one of these theories, however, because it is overtly historical. This is the theory, or argument, or assertion, that blames modern violence on a "tradition" or a "history" of violence in the United States. This is something we also often hear from ordinary people; and there are frequent references to the frontier tradition, and so on, in the

31. See ERNEST J. HOPKINS, *OUR LAWLESS POLICE* 189-94 (1931).

32. For example, the so-called Lexow Committee issued a report in 1895 that excoriated the police of New York City for the "appalling outrages" visited on people in the "humbler walks of life," who were "abused, clubbed and imprisoned, and even convicted of crime on false testimony by policemen and their accomplices." *Report of the Special Committee Appointed to Investigate the Police Department of the City of New York*, S. 63, 1st Legis. Sess. 25 (N.Y. 1895), reprinted in I NEW YORK CITY POLICE CORRUPTION INVESTIGATION COMMISSIONS, 1894-1994 (Gabriel Chin ed., 1997).

literature.³³ I have, in the last section, briefly discussed violence in the American past. Does the violence of the past have any connection with criminal violence of the present?

To begin with, in my view, "history" or "tradition" is never a good explanation of anything. If some situation or event rooted in history or tradition seems to have uncanny survival power, we always, always, have to ask: Why? After all, most of the old traditions do not survive. And if we ask why something does survive, that means we are looking for a contemporary answer and not a historical one. Thus, even if we have had a violent past, that tells us nothing about why we have a violent present. In any event, other countries have had violent traditions—Japan to take an obvious example, and England for another—and they have simply outgrown them. Why not the United States?

We can therefore reject the most simple-minded appeals to history or tradition. We have to reject the frontier idea, too. In any event, why Dodge City or Tombstone should lead to a flock of murders in Detroit is not immediately obvious. And there is also the question whether the frontier was really all that violent. Some respectable historians have argued that frontier violence has been grossly exaggerated; that these were not really violent places at all.³⁴

Nonetheless, we do have to recognize that the United States has apparently been more violent than, say, England, for quite a long time. And we have to recognize persistent regional differences. Lethal violence is not a problem in Maine or North Dakota, but it is a problem in Texas. The South is more violent than the rest of the country.³⁵ Even the high-volume murder spots in the North are urban centers where people originally from the South are concentrated. Is there something in southern culture—southern male culture, to be more precise—which breeds violence?

33. See, e.g., FOX BUTTERFIELD, *ALL GOD'S CHILDREN: THE BOSKET FAMILY AND THE AMERICAN TRADITION OF VIOLENCE* (1995).

34. See generally Roger D. McGrath, *Gunfighters, Highwaymen and Vigilantes: Violence on the Frontier* 266-71 (1984); see also JOHN P. REID, *POLICING THE ELEPHANT: CRIME, PUNISHMENT AND SOCIAL BEHAVIOR ON THE OVERLAND TRAIL* 73-90 (1997) (on the lack of lawlessness in the wagon trains, even though they were quite beyond the reach of "law and order").

35. See RICHARD E. NISBETT & DOV COHEN, *CULTURE OF HONOR: THE PSYCHOLOGY OF VIOLENCE IN THE SOUTH* ch.2 (1996).

Perhaps there is. A number of scholars have pointed to the southern "honor" code, a peculiarly macho ethos that goes back pretty far in time.³⁶ Dueling was much more common in the South than in the North, and lasted longer. Southern men were supposed to defend themselves, their honor, their integrity. The criminal law reflected this ethos. At common law, if a person attacked you, you had a duty to retreat—to run to safety. If you simply stood your ground and killed that person, you could not claim you killed in self-defense. This rule was abandoned in many of the American states; and Richard Maxwell Brown, for one, thinks this was significant in condoning homicide and legitimizing a culture of manly violence.³⁷ I do not think the way the doctrine is formulated makes much of a difference;³⁸ even the southern states differ among themselves on this issue.³⁹ But the underlying idea is, I think, somewhat symptomatic. A true man does not run; he fights. Here the law mirrors a rather exaggerated male code of behavior, and it is that code which might just possibly be a fertile source of violence.

But why should these patterns be so persistent? Why have they survived? This is another and more difficult question. Also, a male honor code can certainly lead to violence, but such a code often dictates a circumscribed, patterned, almost ritualistic kind of violence. Dueling is the archetype. Nobody gets killed in a duel but the duelers. The violence is, in a sense, voluntary. You can opt in, or you can opt out. What people are frightened of today is involuntary violence. They are afraid of violence which has burst out of its boundaries—its ritual, patterned forms—and threatened "innocent" people outside of the circle of participants. This is quite different from a code of honor and revenge.

36. See, e.g., EDWARD L. AYERS, *VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY AMERICAN SOUTH* ch.1 (1984); NISBETT & COHEN, *supra* note 35, at 1-2. Nisbett and Cohen even report on experimental evidence, which tends to show that southern (male) students take insults much more seriously than northern (male) students (the experiments were conducted at the University of Michigan). See *id.* at ch.4.

37. See RICHARD MAXWELL BROWN, *NO DUTY TO RETREAT: VIOLENCE AND VALUES IN AMERICAN HISTORY AND SOCIETY* 157 (1991).

38. Even states which insist on a duty to retreat give you the duty only if you can retreat in perfect safety—not an easy thing to do when a gun is staring you in the face. See, e.g., HAW. REV. STAT. § 703-304 (1997); 18 PA. CONS. STAT. § 505 (1988).

39. See, e.g., ALA. CODE § 13A-3-23 (1996); GA. CODE ANN. § 16-3-21, -23 to -24 (1997); MISS. CODE ANN. § 97-3-15 (1998).

III. THE ANATOMY OF FEAR

The high rates of violent crime (including lethal violence) have become a major political issue in America. They are also a national issue. In the nineteenth century, presidents did not talk about crime when they addressed Congress on the state of the union. Crime was a state matter. That changed somewhat in the twentieth century. Prohibition, very notably, injected the federal government strongly into law enforcement. Prohibition was part of the political background that led President Hoover to appoint the so-called Wickersham Commission, the first national commission to deal with the issue of crime.⁴⁰ But, basically, it was after the Second World War that crime became a national issue—and this coincided with the second upsurge in lethal violence.⁴¹

Crime is most definitely a political issue today, nationally and locally. People are afraid of crime—terrified in fact. They may be exaggerating the danger, but it is important to understand the roots of their fear. Crime is terrifying not only because there is a lot of it, but also because much of it seems completely unavoidable. You can run, but you cannot hide. Other aspects of crime are avoidable, but at what seems to be a high, almost unacceptable cost. Climbing a mountain is a very dangerous hobby, but I can avoid the danger by staying away from mountains. Much of the ruckus over violent crime comes from the sense that there is no sanctuary. Stranger violence is what people fear most—and as soon as we enter a “public environment,” we lose a lot of our power to “screen out undesirable social contacts.”⁴² Even the most innocuous setting can turn into a minefield: a disgruntled employee “goes postal” and shoots up a store; a crazed man kills passengers on a suburban train; an ex-convict kidnaps a young girl from her own bedroom and murders her. These are truly terrifying events, because they suggest that nobody is safe *anywhere*. These particular types of crime are, in fact, pretty uncommon, but they send chills down our spine. They

40. The Wickersham Commission was the National Commission on Law Observance and Enforcement; the chair was former Attorney General George Wickersham. Its fourteen reports, published in 1931, were “the first comprehensive survey of American criminal justice at the national level.” SAMUEL WALKER, *POPULAR JUSTICE: A HISTORY OF AMERICAN CRIMINAL JUSTICE* 173 (1980).

41. On the growth of the national aspect of criminal justice, see FRIEDMAN, *supra* note 14, at 273-76.

42. See ZIMRING & HAWKINS, *supra* note 1, at 203.

could happen to anyone. They come out of nowhere. The result is fear, anger, frustration, and political pressure to do something to fix the situation.

Is the subjective feeling of insecurity justified? Are we more at risk than we were in the nineteenth century? This is another one of those questions that cannot be easily answered. In part, it depends on who "we" are—presumably the middle class. It may be that the *demand* for safety and security has risen a lot faster than the supply. One thing does seem obviously true: violent people are more mobile than they were a century ago. They have "wheels," to use the current slang. They also have guns. Barriers between classes and neighborhoods have broken down. The violent or dangerous classes do not stay where they belong. They have invaded our space, or at least much of our space. More and more people are retreating to gated communities or the equivalent.

But not all of us want to live in a gated community. And some people who live in these communities probably wish they did not have to. Many people who live in apartments in big cities with deadbolts, an alarm system, a doorman, and elaborate screening devices, are probably unhappy with their situation, too. It is certainly true that you can still avoid the worst dangers by staying home at night or by surrounding yourself with all kinds of protective armor. But these are real costs and real burdens—and not just in dollars. One motto of some anti-rape groups is "take back the night." It is a good slogan. Why should the night belong to thugs and rapists? Why can't the nice people stroll around in the park on a summer night or go jogging? People in Italy or China do. Why can't we? Questions like these also lead to rage and frustration, and to demands on the political system to do something to fix the problem.

IV. WHEN THE LID IS OFF

I return now, briefly, to another aspect of the work of Zimring and Hawkins—the comparison between the United States and other countries. As we saw, there are countries, besides the United States, where the rate of lethal violence is extremely high.⁴³ Why should this be the case? Why is the violent crime

43. See *supra* INTRODUCTION.

rate so high in Russia, and in South Africa, to take two prominent examples?

Of course, we are operating in the realm of speculation. But one obvious answer—which of course may be totally wrong—is that these societies are undergoing revolutionary change. South Africa was a kind of democracy for white people, but definitely not for the black masses. For the black masses, it was a dictatorship, and a racist one at that. Russia (or the former Soviet Union) was a dictatorship for just about everybody. Now in both cases, the lid is off.

Does this suggest something about the United States as well? Perhaps it does. It may suggest something about the urban black underclass. Less obviously, it suggests something about whites as well: the decline of a kind of subtle dictatorship of culture and class. We live in a period of individualism, mobility, and permissiveness—a regime of (apparent) choice.⁴⁴ For millions of people who would once have been tamed, subdued, or even repressed and suppressed, the lid is now more or less off.

I repeat that this is pure speculation. It does not tell us much, if anything, about Mexico or Colombia; every country may have its special features, its own dynamics, its own brew of violence and crime. There are also countries where violence becomes a way of life—where kids are trained to be killers, and grow quite adept at their trade. There are the beginnings of a cross-cultural literature on violence and crime. It would be useful to see more.

Violence also breeds violence. If a social setting is “disordered,” it is likely to produce violence; and the violence comes to be seen as necessary—if only in self-defense. At this point, according to Zimring and Hawkins, the “law will be forced to regard a large proportion of . . . violent acts as justifiable or excusable.”⁴⁵ More important, people may come to regard violent acts as legitimate. The social situation then generates, perhaps, a kind of vicious circle, an upward spiral of violence.⁴⁶

Of course, most people are not violent, even when the lid is off—not Americans (African American or otherwise), not Rus-

44. See generally LAWRENCE M. FRIEDMAN, *THE REPUBLIC OF CHOICE: LAW, AUTHORITY, AND CULTURE* (1990).

45. See ZIMRING & HAWKINS, *supra* note 1, at 192.

46. By the same token, if (for whatever mysterious reason) the social setting becomes *less* disordered, violence might spiral downward.

sians, not South African blacks, or Colombians or Mexicans. Taking off the lid may be a condition for an outbreak of lethal violence, but it is not a sufficient condition; not even close. There must be other factors—crucial factors. These are factors, no doubt, of culture and socialization. For one thing, why is it the newly liberated *men* who do almost all of the killing? Why is murder not an equal opportunity crime, as far as gender is concerned? Why don't women kill? Apartheid, communism, and slavery were just as cruel to women as they were to men, if not more so.

V. WHAT IS TO BE DONE?

Zimring and Hawkins have written a strong work of scholarship. But it also has a definite policy bent. If we do as Zimring and Hawkins would like us to do, and start thinking in terms of lethal violence instead of "crime" in general, they think we might change our tactics in some significant ways. We might, for example, reexamine our gun policy, although this seems a real non-starter, politically and practically speaking. We might also start asking whether it really does make sense to lock up so many prisoners.⁴⁷ As Zimring and Hawkins point out, the "war on crime" has led to a tremendous explosion of imprisonment; over a million men and women are locked up, and most of these are nonviolent offenders.⁴⁸ After all, most murderers "will already be in prison before a crime crackdown, and the bulk of the additional resources invested in prison expansion will go to offenses of less seriousness."⁴⁹ As far as lethal violence is concerned, the "incapacitation" effect of all those men in prison is rather dubious.⁵⁰

Many people think our current policies are rather hysterical reactions to the tremendous fear, rage, and frustration over lethal

47. See FRANKLIN L. ZIMRING & GORDON HAWKINS, PRISON POPULATION AND CRIMINAL JUSTICE POLICY IN CALIFORNIA 65-71 (1982). Marc L. Miller argues, among other things, that the prison-building binge hurts the rest of the state budget. See Mark L. Miller, *Cells vs. Cops vs. Classrooms*, in THE CRIME CONUNDRUM, *supra* note 6, at 127; see also Alfred Blumstein, *Prisons*, in CRIME, *supra* note 3, at 387.

48. See ZIMRING & HAWKINS, *supra* note 47, at 29-40.

49. ZIMRING & HAWKINS, *supra* note 1, at 182.

50. See FRANKLIN E. ZIMRING & GORDON HAWKINS, INCAPACITATION: PENAL CONFINEMENT AND THE RESTRAINT OF CRIME (1995); see also John Donahue, *Some Perspective on Crime and Criminal Justice Policy*, in THE CRIME CONUNDRUM, *supra* note 6, at 45, 52-55.

violence. There is, in fact, a broad public consensus about crime: people feel we are not tough enough, and that we have to get tougher.⁵¹ Zimring and Hawkins disagree. They suggest that these emotions are somewhat irrational—that the fear of (violent) crime is overdone.⁵² After all, many more people die in auto accidents than in armed robberies; the danger of getting “wasted” by a burglar or robber is really quite small.⁵³ I agree, but I think Zimring and Hawkins tend to overlook one rather significant point. Very few robbers kill; but many robbers have guns. Getting robbed in the United States is a much more terrifying and traumatic experience than, say, falling victim to a British or Finnish pickpocket. I am amazed how many people, in and out of California, are terrified of earthquakes. Their chances of dying in an earthquake are miniscule. But earthquakes are sudden and unpredictable; they behave in what seem to be irrational and monstrous ways. For many people, the fear of crime has something of the same quality.

I am not sure I can say these people are foolish or misguided. Even if only one driver in a million is apt to pull out an automatic weapon if you honk your horn at him, the fear engendered by these few people can hang over the highway like a deadly fog. And fear of this sort contributes to the fatal brew of emotions that puts pressures on the political system. These pressures, in turn, lead the system to concoct punitive and self-defeating policies. Zimring and Hawkins recognize this point. They refer to the case of the Louisiana man who killed a Japanese tourist, and then was absolved on the grounds of self-defense: our situation has transformed “what the citizens of other countries might regard as paranoia into a belief that a Louisiana jury might regard as reasonable.”⁵⁴ Since outlaws have guns, the police must have them too, and this leads to a kind of arms race. The police kill with their guns, and they also get killed by gunmen.

What is to be done? James Q. Wilson feels that Zimring and Hawkins dodge some of the issues, and that their conclusions are flabby and not very helpful.⁵⁵ But it is hard to know what to

51. See KATHRYN TAYLOR GAUBATZ, *CRIME IN THE PUBLIC MIND* 6-7 (1995).

52. See ZIMRING & HAWKINS, *supra* note 1, at 11-14.

53. See *id.* at 45-46, 69.

54. See *id.* at 161.

55. See James Q. Wilson, *Hostility in America*, *NEW REPUBLIC*, Aug. 25, 1997, at 38 (review of ZIMRING & HAWKINS, *supra* note 1).

suggest. As I have already indicated, there does not seem to be much of a future in gun control. It would probably be a good thing if policy makers and enlightened citizens read books like the one Zimring and Hawkins have written. It would probably be even better if they paid some attention to what they read; but this seems to be, I am afraid, a rather forlorn hope at the present time. Wilson thinks it took "several centuries of tough rule, brutal punishment and the inculcation of class-based values" to bring England to the fortunate situation it is in today, as far as homicide is concerned.⁵⁶ If so, then the situation in this country is fairly hopeless, and not only because we do not want to wait three centuries. There is, after all, no future for the kind of "class-based values" I think he is referring to. The cultural roots of crime are not that easy to rip out of their moorings.

On the other hand, there may be cause for optimism. The crime rate is dropping—especially, and strikingly, the rate of lethal violence. A lot of people are taking credit for this improvement: police chiefs talk about their wonderful policies, and some people even think we have locked up so many criminals that there is a shortage of criminals on the streets. But nobody really knows why the lethal crime rate has gone down. Some diseases, even social diseases, sometimes go into remission. Until a better explanation comes along, this will have to do.

56. Wilson, *supra* note 55, at 41.