CONFOUNDING FACTORS AND FICTIONS OF COUNTING

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INTRODUCTION

In *Crime Is Not the Problem: Lethal Violence in America*, Franklin Zimring and Gordon Hawkins present their view that the various wars against crime in the United States have aimed at the wrong target.[1] They argue that we should be attempting to reduce lethal violence specifically, rather than crime in general, and that we should look outside the criminal justice system to address the special American problem of lethal violence.

Zimring and Hawkins maintain that Americans really fear lethal violence, but that because of "categorical contagion," the public views crime in general as our problem.[2] In what amounts to a bait-and-switch operation, ordinary people come to believe criminals are largely like Willie Horton, though there are no solid grounds for believing that the makings and breakings of violent offenders resemble the making or breaking of common criminals.

Zimring and Hawkins rest their position that lethal violence, rather than crime in general, is a problem in America on two additional grounds. First, they present evidence that although homicide rates are extremely high, rates of nonlethal crimes are not particularly high in America.[3] Second, they present evidence that homicide rates are not well correlated with rates for other crimes across nations or through time.[4]

There is much to be said for the conclusion drawn by Zimring and Hawkins that we should be attempting to reduce lethal violence. That conclusion can and should be supported by moral arguments. I think they are also right that reducing lethal violence will require going beyond the criminal justice system.[5]

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1. FRANKLIN E. ZIMRING & GORDON HAWKINS, CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA (1997).
2. *Id.* at 12-13.
3. *See id.* at 51-72.
4. *See id.*
5. *See id.* at 157-216.

There is much to be said, as well, for the clever and informative ways in which Zimring and Hawkins introduce and analyze rates of crime and violence. Yet, as Plato pointed out in *Theatetus*, the difference between knowledge and right opinion lies in having good reasons for beliefs that are true.[6] With some trepidation and a great deal of humility, therefore, I propose a critical examination of the empirical grounds upon which the authors choose to rest their thesis.

In the pages that follow, my attention focuses on six issues. The order is roughly that of their presentation by Zimring and Hawkins. The issues involve the use of fear as a basis for targeting change, the use of data from the Uniform Crime Reports for comparisons across time and place, and evaluation of incarceration as a means for preventing violence. I discuss crime rates in terms of how they confound the size of offending groups with the number of crime incidents, and how they fail to distinguish between many crimes being committed by few offenders and few crimes being committed by many offenders. I consider alternative interpretations of the relation between nonlethal crimes and lethal crimes. And finally, I suggest that the proposed explanation for violence in America is too narrow, though Zimring and Hawkins have done a great service by critically evaluating current policies and practices regarding lethal violence.

I. CRIME IS NOT THE PROBLEM

Let me first consider the primary assumption that Zimring and Hawkins use to support their position that crime (in general) is not the problem. The assumption is implied in chapter 1, "What Americans Fear."[7] There, Zimring and Hawkins link lethal violence "to the subjective dimensions of fear in urban America."[8] The authors imply endorsement of the argument that the occurrence of fear justifies an attack on the causes of that fear.[9]

Zimring and Hawkins present no argument to support their judgment that fearing something legitimates eliminating that which is feared, but the assumption deserves examination. Many

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6. THE DIALOGUES OF PLATO, *Theatetus* 202c (R. Jowett trans. 1953).
7. *See* ZIMRING & HAWKINS, *supra* note 1, at 3-20.
8. *Id.* at 3.
9. *See id.* at 3-20.

people are afraid to travel, to try new foods, to meet new people, or to "face the truth." Nevertheless, there are good grounds for encouraging travel and adventures as well as a willingness to accept even unfavorable information. During wartime, soldiers are trained to overcome their fears in order to carry out their duties, and Hamlet was not railing against conscience when he claimed it made cowards of us all. One might argue that fear of lethal violence should be countered by training in techniques for managing fears or by learning to accept the inevitability of death, rather than by reducing lethal violence.

Zimring and Hawkins note "the importance people attach to personal survival," the "lack of commensurate compensation," and "the degree to which potential victims feel they can control the risks of becoming victims" to support their view that "lethal violence is the most frightening threat in every modern industrial nation."[10]

Apart from the issue of whether fear justifies destroying the source of fear, there are reasons to question whether Zimring and Hawkins correctly identify lethal violence as the primary source of fear. Survey evidence suggests that fear of burglary is more widespread than is fear of personal violence.[11] Other evidence, as well, undermines the argument.

If lethal violence were the primary source of fear, then fear should be greatest among those most likely to be victims of lethal violence. In fact, fear is not greatest among those at greatest risk. Rather, women and those over sixty seem to be the groups who are most fearful.[12] The most likely victims of lethal violence, on the other hand, are young urban males whose lifestyles

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10. *Id.* at 9.

11. See Terance D. Miethe, *Fear and Withdrawal from Urban Life*, 539 ANNALS AM. ACAD. POL. & SOC. SCI. 14 (1995), for a summary.

12. *See* Robert L. Akers et. al, *Fear of Crime and Victimization Among the Elderly in Different Types of Communities*, 25 CRIMINOLOGY 487 (1987); Frank Clemente & Michael B. Kleiman, *Fear of Crime in the United States: A Multivariate Analysis*, 56 SOC. FORCES 519 (1977); James Garofalo, *Victimization and the Fear of Crime*, 16 J. RES. IN CRIME & DELINQUENCY 80 (1979); Meithe, *supra* note 11; Charles E. Silberman, *Fear, in* 2 CRIMINOLOGY REV. Y.B. 367 (Egon Bittner & Sheldon L. Messinger eds. 1980); WESLEY G. SKOGAN & MICHAEL G. MAXFIELD, COPING WITH CRIME: INDIVIDUAL AND NEIGHBORHOOD REACTIONS (1981); Mark C. Stafford & Omer R. Galle, *Victimization Rates, Exposure to Risk, and Fear of Crime*, 22 CRIMINOLOGY 173 (1984); Mark Warr, *Fear of Victimization: Why Are Women and the Elderly More Afraid?* 65 SOC. SCI. Q. 681 (1984); Mark Warr, *Dangerous Situations: Social Context and Fear of Victimization*, 68 SOC. FORCES 891 (1990).

indicate unusual fearlessness.[13] They exhibit what Elijah Anderson refers to as the code of the streets: "They often lead an existential life that may acquire meaning only when faced with the possibility of imminent death. Not to be afraid to die is by implication to have few compunctions about taking somebody else's life."[14]

Zimring and Hawkins conclude that fear of lethal violence is the most severe of fears.[15] This conclusion overlooks patterns of suicide linked with some kinds of illness, risks of torture, subjugation to rape, and martyrdom for faith. These are instances in which individuals seem to be faced with real choices among fears. Many times, the choices seem to indicate a preference for death.

Zimring and Hawkins write that fear of strangers is greater than fear of friends or domestic partners.[16] This claim appears to assert that, faced with a choice, people would prefer to face danger from domestic partners. Yet the plausibility of the claim rests on confounding prevalence with intensity. There are fewer people who have a partner they might fear than there are people who might fear strangers, because not everyone has a partner. Yet among those who both fear strangers and have grounds for fearing a domestic partner, the former clearly should not be the greater fear.[17] Indeed, many runaway children provide *prima facie* behavioral testimony that fear of violence in the home is greater than fear of violence from strangers.

In short, I have suggested that reducing fear of lethal violence need not depend on reducing lethal violence itself, and that if one were to accept the argument that fear ought to be minimized, life would lose much of its interest. I have also suggested that violence from strangers, though more widespread than domestic violence, is not as profound. Therefore, the desire

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13. *See* LISA D. BASTIAN & MARSHALL M. DEBERRY, JR., U. S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES (1994); CRAIG A. PERKINS, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, AGE PATTERNS OF VICTIMS OF SERIOUS VIOLENT CRIME (1997); ALBERT J. REISS, JR., & JEFFREY A. ROTH, UNDERSTANDING AND PREVENTING VIOLENCE fig.2-1 (1993).

14. Elijah Anderson, *Violence and the Inner-City Street Code, in* VIOLENCE AND CHILDHOOD IN THE INNER CITY 1, 25 (Joan McCord ed. 1997).

15. *See* ZIMRING & HAWKINS, *supra* note 1, at 8-9.

16. *See id.* at 10.

17. See Elizabeth A. Stanko, *Women, Crime, and Fear,* 539 ANNALS AM. ACAD. POL. & SOC. SCI. 46 (1995), for evidence that women are less likely to be victimized by strangers than by acquaintances.

to reduce lethal violence, one that I share with Zimring and Hawkins, must rest on grounds other than those of fear.

II. USING UNIFORM CRIME REPORTS TO STUDY LETHAL VIOLENCE

Zimring and Hawkins contrast the very high rates of homicide in the United States with the reasonably "normal" rates for nonlethal crimes.[18] They use data from the Federal Bureau of Investigation ("FBI") Uniform Crime Reports ("UCR") as the foundation for showing homicide trends in the United States and as basis for cross-cultural comparisons.[19] By doing so, they appear to give the UCR greater validity than the data deserve.

The FBI collects homicide records based on police investigations. These data exclude deaths caused by negligence, suicide, or accident, and justifiable homicides, which are the killings of felons by law enforcement officers in the line of duty or by private citizens.[20]

In addition to the stipulated exclusions, at various times, intentional killings of Chinese workers, sheepherders, American Indians, Blacks, Mexicans, Mormons, and infants have not been considered criminal homicides.[21] Until recently, some states endorsed the killing of wives caught in adultery and the intentional killing of thieves.[22] Roger Lane reports that police, prosecutors, or grand juries "routinely dismissed an absolute majority of known killers without formal trials" in Houston, Texas, as recently as 1969.[23]

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18. *See* ZIMRING & HAWKINS, *supra* note 1, at 61-72.

19. *See id.*

20. *See* BUREAU OF JUSTICE STATISTICS, U. S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1995, at 644 (Kathleen Maguire & Ann L. Pastore eds. 1996) [hereinafter SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1995].

21. *See* Joe B. Frantz, *The Frontier Tradition: An Invitation to Violence, in* A HISTORY OF VIOLENCE IN AMERICA 127, 127-54 (Hugh Davis Graham & Ted Robert Gurr eds., 1960); Theodore Hershberg, *Free Blacks in Antebellum Philadelphia, in* THE PEOPLES OF PHILADELPHIA: A HISTORY OF ETHNIC GROUPS AND LOWER-CLASS LIFE, 1790-1940, at 111, 111-33 (Allen F. Davis & Mark H. Haller eds. 1973); RICHARD HOFSTADTER, THE AGE OF REFORM: FROM BRYAN TO F.D.R. (1955); W. EUGENE HOLLON, FRONTIER VIOLENCE: ANOTHER LOOK (1974); Roger Lane, *Criminal Violence in America: The First Hundred Years,* 423 ANNALS AM. ACAD. POL & SOC. SCI. 1, 1-13 (1976).

22. *See* ROGER LANE, MURDER IN AMERICA: A HISTORY 301 (1997).

23. *Id.* at 301-02.

Zimring and Hawkins acknowledge the flexible boundaries between justified and unjustified lethal violence in discussing what they call "the paradox of the justified use of force."[24] Boundaries marking specific types of violent acts as criminal have changed through time and differ across cultures. The issue of flexible boundaries, therefore, has implications also for considering the historical changes and cross-cultural differences in crime rates discussed by Zimring and Hawkins.

Whether a particular death has been accidental or intentional, justifiable or unjustifiable, can well be a matter of unsupported judgment. Early in the twentieth century, dead infants found on urban streets were generally classified as accidental deaths. Today, in the United States, similarly discarded infants are considered to be victims of criminal homicide. A person killed in a drunken brawl or by an automobile may have been murdered or could have been a victim of an accident; the decision to count or not to count such events as prosecutable homicides may not rest on empirical evidence.

Plausibly, one could argue that those countries that accept violence as natural are the ones most likely to attribute questionable deaths to accidents. If so, the flexibility of boundaries for homicide would have muted differences in the homicide rates to which Zimring and Hawkins point in urging that greater attention be given to reducing lethal violence in America.[25]

Another nontrivial difficulty associated with using FBI sources to evaluate the causes of lethal violence is the problematic way in which population figures are computed. The estimated population over which criminal rates are measured depends on census data, and census data undercount the poor and the transient. Further, census figures do not incorporate recurrent migrations. For example, a recurrent exchange between suburbs and center city on weekdays alters the racial composition of Washington, D.C. Commuters swell the population of New York City in the evenings and weekends as well as during daytime working hours. Crime and violence counts are, in general, located where bodies are found, but the base population over which they are calculated depends on a person's domicile.

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24. ZIMRING & HAWKINS, *supra* note 1, at 161.
25. *See id.* at 34-50.

Thus, crime rates may reflect patterns of recurrent, temporary population shifts.

In addition to the sometimes questionable judgments of those who classify deaths and the dubious accuracy of the base populations from which rates of crime and violence are calculated, the UCR rests on incomplete records. Records are incomplete because individuals fail to report crimes in which they have been victimized; because even when they know about crimes, police sometimes fail to record the events; and because some jurisdictions fail to transmit their crime data to the central FBI records.

Submission of crime data to the central FBI files depends, in part, on how crime information might affect politically sensitive figures as well as on inefficiencies in local police departments. Between 1933 and 1945, only sixteen states and the District of Columbia reported regularly. Even after World War II, reporting continued to be problematic. In 1988, for example, no data were available from Florida and Kentucky; in 1991, no data were available from Iowa; in 1993, complete data were not available for Illinois and Kansas; and in 1994, complete data were not available for Illinois, Kansas, and Montana.[26]

In part to balance information reported by police with information gathered from victims, the federal government conducts an annual household survey based on a representative sample of housing units in the United States.[27] Respondents, who must be at least twelve years old, are asked to recall crimes they have experienced during the prior six months.

In 1994, only 64.4% of the 795,030 respondents over the age of eleven who reported being victims of a robbery in which property was taken said they had reported the incident to the police.[28] Among the 2,477,940 victims of aggravated assault,

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26. *See* SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1995, *supra* note 20; BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1994 (Kathleen Maguire & Ann L. Pastore eds.,1995).

27. For a history and critique of the National Crime Victimization Surveys, see Robert F. Meier & Terance D. Miethe, *Understanding Theories of Criminal Victimization*, *in* 17 CRIME AND JUSTICE: A REVIEW OF RESEARCH 459 (1993). For an example of the survey, one that includes a description of methods, see BASTIAN & DEBERRY, *supra* note 13.

28. *See* SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1995, *supra* note 20, at 250, tbl.3.38.

51.6% said they had reported the incident to the police.[29] And among the 4,250,850 respondents reporting they had been victims of thefts in which they had lost at least $250, 57.9% reported the incident to the police.[30]

If reporting rates were lower in the United States than in other industrialized countries, the comparisons of official rates across countries for nonlethal crimes would appear to be more similar than they are in fact. Reporting rates are partially driven by the availability of insurance to cover losses, by the severity of damage resulting from the crimes, and by beliefs about the probable police response to reporting.[31]

The International Crime Survey ("Survey"), carried out under the auspices of the United Nations, with interviews of residents over the age of fifteen, yields some evidence about crimes that are and those that are not reported to police.[32] According to the Survey, crime reporting in several industrialized countries was more complete than it was in the United States. Those countries that had the highest rates for reporting crimes to the police were Scotland, France, New Zealand, Switzerland, Sweden, England, and Belgium.[33]

Reporting rates varied by type of crime, with theft of a car being the most likely to be reported. In the nine countries technologically advanced enough to allow the Survey to use computer-assisted telephone interviews, over 80% of burglary victims, approximately 53% of the robbery victims, and about 38%

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29. *See id.*

30. *See id.*

31. *See id.*; PATRICIA MAYHEW & JAN J.M. VAN DIJK, CRIMINAL VICTIMISATION IN ELEVEN INDUSTRIALISED COUNTRIES: KEY FINDINGS FROM THE 1996 INTERNATIONAL CRIME VICTIMS SURVEY (1997) [hereinafter CRIME VICTIMS SURVEY]; Jan J.M. van Dijk & Patricia Mayhew, *Criminal Victimisation in the Industrialised World: Key Findings of the 1989 and 1992 International Crime Surveys, in* INTERNATIONAL CONFERENCE ON UNDERSTANDING CRIME: EXPERIENCES OF CRIME AND CRIME CONTROL 1, 1-49 (Anna Alvazzi del Frate et al. eds., 1993) [hereinafter UNDERSTANDING CRIME]; JAN J.M. VAN DIJK ET AL., EXPERIENCES OF CRIME ACROSS THE WORLD: KEY FINDINGS FROM THE 1989 INTERNATIONAL CRIME SURVEY (2d ed. 1991).

32. *See id.*

33. *See* van Dijk & Mayhew, *supra* note 31, at 33. According to the 1996 survey, reporting rates in the United States had increased (to 59%), whereas they had declined for Scotland (to 54%), France (to 49%), Switzerland (to 52%), Sweden (to 54%), and England/Wales (to 54%). No information was available for New Zealand in 1996, and in Belgium police reporting rates had increased (to 68%). *See* MAYHEW & VAN DIJK, CRIME VICTIMS SURVEY, *supra* note 31, at app.4, tbl.9.

of the assault victims in 1991 said they had reported the crimes to police.[34]

As Zimring and Hawkins note, types of crime are not similarly distributed in different industrial nations. Their argument that nonviolent crime is not the problem rests partly on the similarity between the United States and other industrialized countries in terms of rates for theft and burglary.

To check whether the comparisons of official crime rates are affected by reporting differences, types of crimes for which respondents were victims should be controlled. Such comparisons are possible for some crimes reported both by the National Crime Victimization Survey ("NCVS") in the United States and the British Crime Survey ("BCS") in England and Wales.

According to the BCS for 1995, the police learned of 84.2% of the burglaries with loss and 52.1% of the burglaries with no loss.[35] Comparable figures from the NCVS show that 53.0% reported completed burglary and 37.9% reported attempted burglary in 1994.[36] Relative to Great Britain, therefore, the official U.S. rates undercount burglary to a greater extent.[37] Thus the comparison of cross-cultural reporting to police hint at a greater difference in nonlethal crimes than that revealed by official figures.

In sum, the Federal Bureau of Investigation's UCR records provide a questionable foundation for developing policies about real rates of serious crimes. I have noted the evaluative nature of criteria used in the identification of intentional homicides and suggested that these might have unduly minimized the amount of lethal violence in America. I have also pointed out problems linked with the way the FBI computes crime rates. These include the fact that the denominator is based on census counts, counts that under-enumerate the poor and the transient and that ignore

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34. Aad van der Veen, *Aspects of Reliability: The 1:5 Year Ratio, in* UNDERSTANDING CRIME EXPERIENCES OF CRIME AND CRIME CONTROL 153, 157 fig.3 (Anna Alvazzi del Frate et al. eds., 1993).

35. *See* CATRIONA MIRRLEES-BLACK, ET AL., THE 1996 BRITISH CRIME SURVEY, ENGLAND AND WALES, 61, tbl.A2.3. (1996).

36. *See* SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1995, *supra* note 20.

37. Crime classifications for robbery and theft are differently organized in the BCS and the NCVS. Therefore, reporting rates depend on how the more global categories are composed. In the BCS, for theft, the rates vary from a high of 97.5% for theft of motor vehicles to a low of 29.6% for "other personal theft." In the NCVS, they vary from a high of 92.4% for theft of motor vehicles to a low of 13% for thefts under $50.

effects of recurrent, temporary migrations. The FBI reports estimate figures in the face of incomplete reporting by the police, but cannot overcome the sizeable and variable effects of failures to report crimes to the police. These effects have unknown consequences for comparisons across time and space.

III. EVALUATING INCARCERATION

Zimring and Hawkins criticize the policy of combating violent crime by expanding imprisonment. To make their point, they develop a clever measure based on the proportion of inmates who were convicted for violence. In what Charles L. Stevenson dubbed a "persuasive definition,"[38]—one that seems to be descriptive but actually is prescriptive—they call this index a measure of efficiency. This efficiency rate declines as incarceration rates increase.

Zimring and Hawkins observe that the most serious and violent crimes tend to result in imprisonment regardless of whether policy calls for extensive or restrictive use of incarceration. When a larger proportion of offenders are imprisoned, the imprisoned core of serious and violent offenders is augmented by those convicted for crimes of lesser severity. Of course, Zimring and Hawkins are correct in this observation. Nevertheless, incarceration for crimes that are not the most serious and violent may be efficient.

If the only purpose of incarceration were retributive, decreasing the criminal homicide proportion of incarcerated criminals might demonstrate misplaced effort. But incarceration also is supposed to prevent violence.

Violent criminals tend to have previously committed nonviolent crimes. For example, Jan M. Chaiken and Marcia R. Chaiken found that violent inmates in California, Texas, and Michigan claimed to have committed more than three times as many burglaries as those whose most serious offense was burglary.[39] Per-Olof H. Wikström found that 93% of the violent recidivist criminals in Sweden committed mostly nonviolent crimes.[40] Marc LeBlanc and Marcel Fréchette reported that

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38. CHARLES L. STEVENSON, ETHICS AND LANGUAGE 210 (1944).

39. *See* Jan M. Chaiken & Marcia R. Chaiken, *Crime Rates and the Active Criminal*, *in* CRIME AND PUBLIC POLICY 11, 24 (James Q. Wilson ed., 1983).

40. *See* PER-OLOF H. WIKSTRÖM, URBAN CRIME, CRIMINALS, AND VICTIMS: THE

criminal activities of males in Montreal became sequentially more serious.[41] Marvin E. Wolfgang, Terence P. Thornberry, and Robert M. Figlio found a similar pattern in Philadelphia.[42] Analyses of criminal data for all males born in Copenhagen between 1944 and 1947 were summarized by Patricia Guttridge, William Gabrielli, Jr., Sarnoff A. Mednick, and Katherine Tellmann van Dusen: "Every type of crime is more likely to be committed by someone who also is responsible for a violent crime. Even the one-time violent offender is likely to have committed 3.66 property offenses."[43]

I do not mean to imply that there is a solution to the ethical or empirical issues surrounding selective incapacitation, but rather, that the inefficiency noted by Zimring and Hawkins could actually serve the goal of preventing lethal violence. Because violent criminals tend also to commit nonviolent crimes, targeting criminals only after they are known to be violent may be a tactical error.

IV. INTERPRETING CRIME RATES

Zimring and Hawkins interpret crime rates as though each reported crime offense represented a unique criminal. For example, the authors attack the argument that "the reason the United States suffers particularly from violent crime is that America has so many criminals."[44] Referring to the similarity in rates of theft for Sydney, Australia, and Los Angeles, California, they conclude: "The supply of thieves in the two communities would seem to be at rough parity."[45] Again, in their summary:

> Rates of common property crimes in the United States are comparable to those reported in many other Western industrial nations . . . . [Thus] [t]his penchant for violence cannot be a natural result of a high volume of either crime or crimi-

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SWEDISH EXPERIENCE IN AN ANGLO AMERICAN COMPARATIVE PERSPECTIVE (1991).

41. *See* MARC LEBLANC & MARCEL FRÉCHETTE, MALE CRIMINAL ACTIVITY FROM CHILDHOOD THROUGH YOUTH: MULTILEVEL AND DEVELOPMENTAL PERSPECTIVES (1989).

42. *See* MARVIN E. WOLFGANG ET AL., FROM BOY TO MAN, FROM DELINQUENCY TO CRIME (1987).

43. PATRICIA GUTTRIDGE ET AL., PROSPECTIVE STUDIES OF CRIME AND DELINQUENCY 218 (1983).

44. ZIMRING & HAWKINS, *supra* note 1, at 15.

45. *Id.*

> nals. If it were, other developed nations with high crime rates would share our higher rate of violence."[46]

Yet official crime rates represent a confounding of the size of offending groups with the number of different crimes committed by particular individuals and with the number of different people committing single crimes. Each of these dimensions affects the way in which crime rates represent numbers of criminals.

Explaining the importance of co-offending to understanding crime rates, Albert J. Reiss, Jr. wrote: "Any criminal incident involves one or more crimes or offenses, one or more offenders, and, consenting and public-order crimes excepted, one or more victims."[47] He found that slightly under one-half (49.4%) of the incidents of burglary in Peoria, Illinois, between 1971 and 1978 were committed by two or more offenders.[48] Two-thirds (66.8%) of the burglary offenders committed their crimes with an accomplice.[49] Using data from the Bureau of Justice Statistics for the United States, Reiss showed that although slightly under one-half (48.5%) of the incidents of robbery in 1984 were committed by two or more offenders, almost three-quarters (73.3%) of the robbers had committed their crimes with at least one accomplice.[50]

The assumption that each crime incident is committed by a different individual, corrected by information on co-offending, can be used to compute what might be called "inflation rates" for crime incidents. The reports[51] on burglaries in Peoria and robberies throughout the United States can be used to compare their inflation rates. The 306 burglaries (in Peoria) appear on the records of 467 burglars,[52] for an inflation rate of 467:306 or 1.53. The 1,149,000 robberies (in the United States) appear on the records of 2,215,272 robbers,[53] for an inflation rate of 1.93. The inflation rate ratios suggest that in the United States, robbery rates inflate robberies to a greater extent than official burglary rates do for burglaries.

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46. *Id.* at 19.
47. Albert J. Reiss, Jr., *Co-Offending and Criminal Careers*, *in* 10 CRIME AND JUSTICE 117, 120 (Michael Tonry & Norval Morris eds., 1988).
48. *See id.* at 121 tbl.1.
49. *See id.*
50. *See id.* at 122 tbl.2.
51. *See* Reiss, *supra* note 47.
52. *See id.* at 121 tbl.1.
53. *See id.* at 122 tbl.2.

Reiss also analyzed crime incidents in relation to the size of offending groups.[54] He did so for all National Crime Surveys from July 1, 1972, to December 31, 1975, in which the number of offenders was reported. Those data suggest that crimes of violence (robbery and assault) tend to have higher inflation rates than crimes against property (burglary and larceny). In addition, crimes with weapons tend to have higher inflation rates than crimes without weapons.[55]

Table 1[56]

Crime	Number of Incidents	Number of Offenders	Inflation Ratio
Robbery			
With weapon	758	1780	2.3
No weapon	603	1429	2.4
Serious assault, theft			
With weapon	519	1488	2.9
No weapon	71	179	2.5
Serious assault, no theft			
With weapon	1339	3537	2.6
No weapon	244	480	2.0
Burglary	861	1297	1.5
Larceny>$99	330	522	1.6

Our own data, based on witnesses, complainants, co-offenders, and police records, confirm a view that the ratio of offenders to crime incidents is greater for violent crimes than for nonviolent ones. We found that among a randomly selected sample of juvenile offenders in Philadelphia, Pennsylvania, those who

54. *See* Albert J. Reiss, Jr., *Understanding Changes in Crime Rates, in* INDICATORS OF CRIME AND CRIMINAL JUSTICE: QUANTITATIVE STUDIES 11, 11-17 (Stephen E. Fienberg & Albert J. Reiss, Jr. eds., 1980).

55. *See infra* Table 1.

56. Adapted from Reiss, *supra* note 54, at tbl.2.

commit at least some of their crimes in groups are the most violent.[57]

The high rates of co-offending among violent criminals raise doubts about whether a policy of incarcerating violent offenders reduces violence. If crimes of violence are committed by many, only some of whom are incarcerated, the remainder may well continue their predatory behavior.

Differences in co-offending could also alter results of cross-national comparisons in crimes. Jerzy Sarnecki studied co-offending patterns among juveniles in an industrial town in southern Sweden.[58] The 575 delinquents in his sample were recorded for having committed 1,432 offenses, with an average of 1.9 juveniles participating in each. The 411 males in the London cohort studied by Reiss and David P. Farrington committed 214 offenses prior to the age of 17, with an average of 2.2 offenders in these offenses.[59] The Philadelphia sample of 400 juvenile delinquents, chosen by randomly selecting 200 for a solo offense and 200 for a co-offense, resulted in a pool of 1,752 offenses, for an average of 2.01 participants.[60] These numbers suggest that co-offending may be more than a trivial blip affecting comparative crime analyses.

In addition to confounding the number of offenders with the number of crimes, crime rates confuse frequency of offending by individual offenders with the proportion of a population that has committed at least one offense. For example, if 100 violent crimes are reported in a year for a population of 5,000 people, the crime rate per thousand of 20 might represent the activities of between 1 and 100 individuals. In terms of fear, policy implications, and reasonable theories of etiology, it makes a good deal of difference whether a few people committed many crimes or a relatively large group of people committed few crimes. In fact, most studies of the issue have shown J-curves indicating that the vast majority of

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57. *See* Joan McCord & K. P. Conway, Age, Crime, and Co-Offending (paper presented at the American Society of Criminology meetings, Chicago, Nov. 20-23, 1996) (on file with author); Joan McCord & K. P. Conway, *Patterns of Juvenile Delinquency and Co-Offending, in* ADVANCES IN CRIMINOLOGICAL THEORY (E. Waring et al. eds., forthcoming 1998) [hereinafter *Patterns*].

58. *See* JERZY SARNECKI, DELINQUENT NETWORKS (1986).

59. *See* Albert J. Reiss, Jr. & David P. Farrington, *Advancing Knowledge About Co-Offending: Results From a Prospective Longitudinal Survey of London Males*, 82 J. CRIM. L. & CRIMINOLOGY 360, 372 (1991).

60. *See* McCord & Conway, *Patterns*, *supra* note 57.

criminals commit only one or two crimes and that a small minority (around 10%) account for the majority of crimes.

To address these different dimensions of criminality, criminologists have recently begun to compute prevalence rates and individual offending rates, *lambdas*.[61] Probably the best-known data for analyzing individual offending rates are in a study of inmates in California, Michigan, and Texas who reported on their own criminal histories.[62] These data show slightly higher individual offending rates for burglary than for robbery, with sizeable variations among the states. For example, *lambda* among prison inmates in California was 8.0 for robbery and 9.8 for burglary; *lambda* among prison inmates in Texas was 3.2 for robbery and 3.6 for burglary.[63]

Richard Block analyzed cross-cultural evidence on incidence and prevalence from the International Crime Survey.[64] Discrepancies between these measures were greatest among countries that had the highest prevalence rates. To put the matter differently: countries that had the highest proportions of their population victimized at least once also were the most likely to have populations who were multiply victimized. The United States had a larger difference between prevalence and incidence for nonlethal assault, threat, and burglary than any of the other countries measured.[65] Thus multiple victimization, rather than a category spread, may partially account for the degree of fear engendered by crime in America.

Without additional information about the underlying composition of crime rates, whether the United States has more (or less) crime, more (or fewer) criminals than other industrialized nations, remains unclear.

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61. *See* Jacqueline Cohen, *Research on Criminal Careers: Individual Frequency Rates and Offense Seriousness, in* 1 CRIMINAL CAREERS AND "CAREER CRIMINALS" 292-418 (Alfred Blumstein et al. eds., 1986) [hereinafter CRIMINAL CAREERS]; Christy A. Visher & Jeffrey A. Roth, *Participation in Criminal Careers, in* 1 CRIMINAL CAREERS 211-91.

62. *See* Chaiken & Chaiken, *supra* note 39; Christy A. Visher, *The Rand Inmate Survey: A Reanalysis, in* 2 CRIMINAL CAREERS 161-211.

63. *See* Cohen, *supra* note 61.

64. *See* Richard Block, *Measuring Victimisations Risk: The Effects of Methodology, Sampling, and Fielding, in* UNDERSTANDING CRIME 163.

65. Australia, Canada, Finland, Norway, Spain, France, Belgium, Switzerland, West Germany, Netherlands, Northern Ireland, Scotland, England & Wales. *See id.* at 177-72 & figs.2-3.

V. CORRELATION AND CAUSATION

Zimring and Hawkins claim that if the problem of lethal violence is related to the problem of crime more generally, then crime and homicide rates should be highly correlated. "If the volume of crime is not a good predictor of trends in homicide," they write, "then there is no good reason to regard a society's lethal violence as a byproduct of its crime rate."[66]

Yet causally connected events might not track for many reasons. The average age for theft is around 17 years and the average age for assault is around 24. Even if those who commit assault on strangers are largely a proper subset of those who steal, waves of large and small birth cohorts would yield a low correlation between crime rates for theft and for assault.[67]

Zimring and Hawkins compare homicide rates to those for "other" index crimes. This introduces several confounding factors. Improvements in medicine and medical delivery systems noticeably affect homicide rates. Additionally, as noted above, homicide rates reflect attitudes toward certain classes of people and relationships. On the other hand, police reputation, competence, and availability affect the official rates for other index crimes to a much greater extent than they do homicide rates.

The first victim survey showed that reporting of homicides and reporting of other serious crimes reflect different pressures. Through a survey carried out by the National Opinion Research Center in 1965 and 1966, researchers discovered from interviews with 10,000 randomly selected adult informants that about one-half the crimes of violence—except for homicide—had been reported to police. In fact, the survey produced lower rates of homicide than those from the official UCR.[68]

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66. ZIMRING & HAWKINS, *supra* note 1, at 21.

67. Assume present age-related crime rates. Approximately 17 years after many male babies were born, theft rates would be high, though assault rates would be unaffected. If a small birth cohort followed seven years later, then seven years after the unusually high theft rates, there would be unusually low theft rates, but because the older cohort had been around for 24 years, assault rates would be high.

68. PHILIP H. ENNIS, CRIMINAL VICTIMIZATION IN THE UNITED STATES: A REPORT OF A NATIONAL SURVEY (1967). The anomaly of reports on homicide could be attributed to errors in police reports, problems with third-person reports on homicides, or sampling artifacts in the victim survey. Subsequent national victimization studies have not inquired about homicides.

Zimring and Hawkins show that crime and homicide rates are correlated only in the United States, and only since 1961. Possibly, though Zimring and Hawkins do not discuss the possibility, general crime rates and lethal violence track well when they do because there is a connection between them, a connection in recent years in the United States that is not present everywhere or all the time.

There might be a connection between nonviolent and violent crimes because criminals in the United States tend to see violence as a solution to particular frustrations or as an added attraction to their high-risk behavior. These features could be due to the ways in which violence has been used in the United States, to the ready availability of violent models, or to a myriad of other catalytic conditions that are missing elsewhere. It is a mistake to dismiss the possibility of a connection between criminal behavior generally and lethal violence in particular—in the United States at a particular time —on the grounds that they are not correlated elsewhere or always.

We ought not regard correlations as sufficient grounds for selecting or rejecting the existence of particular links. Indeed, Zimring and Hawkins make this point when discussing contingent causality in relation to illicit drugs and violent deaths later in the book, when presenting their favored explanations for lethal violence.

It would be foolish to argue that lethal violence can be completely explained in terms of the causes of nonviolent crimes, but if the causes of nonviolent crimes are among the necessary causes of violent crimes, it may be inappropriate to disregard the common causes in favor of only the distinguishing ones.

VI. IN CONCLUSION: THEORY BUILDING AND THEORY TESTING

Zimring and Hawkins claim that high rates of lethal violence in the United States are not a consequence of greater domestic or barroom arguments in the United States as compared with either England or Australia. They produce no evidence, electing instead to rely on a guess "that the rate of domestic argument is similar in England and in the United States, and that the rate of barroom arguments is as high in Sydney as in Los Angeles."[69]

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69. ZIMRING & HAWKINS, *supra* note 1, at 62.

I do not know whether they are right, but it seems inappropriate to discard the possibility that economic, political, and social differences account for some of the differences in violence. One might ask, for example, why British bobbies did not carry guns until recently and why British soccer games encourage fan violence.

Within the United States, rates of homicide seem to be patterned by what has been termed a southern "Culture of Honor."[70] Unlike European and Australian cities, many cities in the United States have been gutted. In the United States, but not in Europe, the government supported mortgage and taxing policies that helped to move the affluent away from the cities. In the United States, but not in Europe, public housing has been left largely to local options and public schooling is predominantly supported locally.

Crime Is Not the Problem is organized to suggest that facts will be marshaled in order to determine a theory; that they have been used to test existing theory and found it wanting. Actually, however, theory has been used to identify a particular array of facts and to decide how those ought to be interpreted.

I do not mean to suggest that there is something wrong with using theory to identify salient facts and to provide them an interpretation. Such a selection is necessary. As Nelson Goodman pointed out several decades ago, only theory can distinguish among the infinite number of possible interpretations available for any set of empirical data.[71] I do suggest, however, that data have been too narrowly selected and that a broader attack on lethal violence—an attack that aimed at social justice and that would include socialization practices—might be more likely to be successful.

If the prevalence of nonlethal robbery, theft, and burglary significantly reduce the quality of life among Americans, then it would be a mistake to denigrate crime as the problem. Yet Zimring and Hawkins have rightly turned our thoughts toward asking how to reduce lethal violence, and they have correctly doubted that increasing incarceration, especially for drug crimes, is a useful approach to improving the lives of Americans.

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70. *See* FOX BUTTERFIELD, ALL GOD'S CHILDREN: THE BOSKET FAMILY AND THE AMERICAN TRADITION OF VIOLENCE (1996); RICHARD E. NISBETT & DOV COHEN, CULTURE OF HONOR: THE PSYCHOLOGY OF VIOLENCE IN THE SOUTH (1996).

71. *See* NELSON GOODMAN, FACT, FICTION & FORECAST (1955).