CRIME IS NOT THE PROBLEM: A REPLY

FRANKLIN E. ZIMRING* AND GORDON HAWKINS**

INTRODUCTION

Our first priority here is to report the enormous pleasure we take in the fact of this Symposium and in the rich variety of responses to the book that this occasion has elicited. The serious attention of colleagues is the most important reward for any scholarly effort. That an empirical study of crime and crime policy receives this type of attention in an American law school is of special importance to us because we have spent more than a few years trying to establish the value of this work to the policy science of the criminal law.

The interdisciplinary free-for-all in this issue of the *Colorado Law Review* is a version of legal scholarship that deserves a broader constituency than recent history has provided. The disciplines represented in this effort included law, history, operations research, sociology, psychology, and political science. To review the draft papers in this Symposium is to learn a great deal about violence in America.

One remarkable and encouraging lesson from this collection is the tension between the major arguments in *Crime Is Not the Problem: Lethal Violence in America* and a variety of disciplinary traditions and ideological perspectives. Our attention has been directed to conflicts between our findings and established theories of delinquency and crime,[1] cultural and historical explanations of violence,[2] individually based theories of etiology,[3] and even

---

* Professor of Law and Director of the Earl Warren Legal Institute, University of California, Berkeley; B.A., Wayne State University; J.D., University of Chicago.

** Senior Fellow at the Earl Warren Legal Institute, University of California, Berkeley; B.A., University of Wales; M.A., University of Sydney.

1. *See generally* Delbert S. Elliott, *Life-Threatening Violence Is* Primarily *a Crime Problem: A Focus on Prevention*, 69 U. COLO. L. REV. 1081 (1998); Gale A. Norton, *Comments on Zimring and Hawkins's,* Crime Is Not the Problem: Lethal Violence in America, 69 U. COLO. L. REV. 1163 (1998).

2. *See generally* Robert J. Cottrol, *Submission Is Not the Answer: Lethal Violence, Microcultures of Criminal Violence and the Right to Self-Defense*, 69 U. COLO. L. REV. 1029 (1998).

3. *See generally* Joan McCord, *Confounding Factors and Fictions of Counting*, 69 U. COLO. L. REV. 927 (1998); Lee N. Robins, Ph.D., *What Determines Rates of*

currently fashionable police strategies of crime control.[4] Many of these conflicts are not about matters of peripheral detail, but are fundamental to theories about the causation and prevention of lethal violence. How then can we regard this dissonance as good news?

First, our reading of these papers suggests that there is a broad consensus among the participants in this Symposium that lethal violence in the United States is a distinctive and distinctively important problem. A surprising amount of the brief we carry in *Crime Is Not the Problem* is not seriously challenged. Second, the very real conflicts that do emerge in the pages of this issue are frequently of a factual character and can therefore be tested and resolved by further empirical work.

Under the proper circumstances, disagreement creates the demand for the research that can resolve conflicting versions of the factual reality of American lethal violence. We hope that this Symposium helps to establish a demand for testing and refining the falsifiable propositions that are the foundation of *Crime Is Not the Problem*.

Our response to the papers in this issue is organized under four headings. The first three parts respond to commentary in the Symposium papers that address specific chapters in the book. To do this, each of the first three parts of the response covers the parallel section of the book. The final section of our comments attempts to glean lessons from some of the broader issues raised in the collected papers.

I. OF CRIME AND LETHAL VIOLENCE

In the first chapter of our book, we argued that what Americans refer to as "fear of crime" is more accurately described as a fear of life-threatening violence.[5] Most crime in the United States and elsewhere is the trespatory taking of property—larceny, housebreaking, and auto theft.[6] The loss of property is never a happy event, but neither is it a source of

---

Homicide Over Time and Place: Can We Find Out? 69 U. COLO. L. REV. 1009 (1998).

4. *See generally* David Garland, *Criminology, Crime Control, and "The American Difference,"* 69 U. COLO. L. REV. 1137 (1998).

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

6. *See id.*

terror and social disorganization. No contrast in recent American history makes this point more clearly than the social reactions to carjacking and to auto theft. Most auto theft does not involve personal contact so there is no direct threat to life and limb. We are angry when our cars are taken from garages and city streets, but we are not terrified. The relatively infrequent acts of carjacking are terrifying events in which personal injuries are often inflicted and the car owner's life is at risk. These are the sorts of loss that insurance cannot fully compensate and government programs cannot remedy. Carjacking is a rare crime, but it is a thousand times more feared than auto theft.

The special vulnerability to life-threatening violence was a premise of our study more than it was a proposition that the book set out to prove empirically. For the most part it is a relatively uncontroversial premise in the commentaries collected here. None of the papers in this issue suggest that car theft and carjacking produce citizen anxieties in anything approaching equal measure. Colorado Attorney General, Gale A. Norton, tells us, for example, that "[f]ear of random violence is what motivates the political system."[7]

Professor Joan McCord suggests that citizen fear of burglary is evidence against the primacy of fear of lethal violence[8] in the United States. In the book, however, we argued that fear of burglary can be rooted in the fear of lethal violence when citizens in high violence environments mistakenly believe that house breaking is the work of violent criminals in the tradition of Willie Horton. This process, known as "categorical contagion," may distort crime-control priorities.[9] The test of this theory, we have suggested, is whether citizens fear burglary in social environments that have high rates of lethal violence more than citizens fear burglary in low homicide environments such as Australia and England.

David Garland, himself a recent British export, suggests that British attitudes toward burglary and other property crimes may be closer than we acknowledge to those in the United States.[10] He emphasizes evidence of public anger in Great Britain at rates of

---

7. Norton, *supra* note 1, at 1165.
8. *See* McCord, *supra* note 3, at 929.
9. ZIMRING & HAWKINS, *supra* note 5, at 13.
10. *See* Garland, *supra* note 4, at 1150-53.

crime and receptiveness to Michael Howard style politics of law-and-order during the 1990s.[11]

We consider the law-and-order political appeals of Mr. Howard in Great Britain to be an experiment, a test of whether American-style populist appeals will work in political environments where the public is angry about crime but not terrified of it. The jury is still out on the extent to which law-and-order populism can be generalized to relatively safe high crime environments, such as Great Britain. Even if American-style politics can thrive where only anger can support it, it does not mean that such anger is the equivalent of the fear we think debilitates much of the United States.[12] The disagreement we have with Professor Garland is thin on factual evidence on both sides of the issue. It is at present a debate in the dark on a rather important question. The cry for more research is, of course, the last refuge of social science scoundrels, but here is one question where such an appeal is justified.

Much more evidence is available on the relationship between crime and lethal violence than on the focus of citizen fear. In the first third of our book, we gathered a wide variety of data in support of the notion that rates of lethal violence are not closely tied to general levels of crime. We showed cities with similar crime rates and vastly different levels of criminal homicide.[13] We found in the United Nations' twenty-nation victim survey only a weak relationship between the rate of crime that a nation displays in relation to other countries and its relative rate of lethal violence.[14] When historical fluctuations in crime rates and rates of lethal violence are tracked, there have been close relationships over time in few of the nations we examined. While every major industrialized country has experienced explosive growth in property crime over the last generation, there has been no general, corresponding trend in homicide rates.[15] Cross-sectionally, we found nations with a tiny fraction of United States homicide rates that nonetheless have levels of property and even minor violent crime that are quite close to those of the United

11. *See id.* at 1151-52.
12. *See id.*
13. *See* ZIMRING & HAWKINS, *supra* note 5, at 34-50.
14. *See id.* at 8.
15. *See id.* at 28.

States.[16] What separates the United States from other developed western nations is not its level of crime, but a relatively thin layer of high lethality violence. This is what we meant by the assertion that crime is not the American problem.

On this central point, some cautionary notes are sounded, but we encounter no general demure on the statistical findings, even from critics, such as Robert J. Cottrol, and Daniel D. Polsby and Don B. Kates, Jr., who have strong interests in avoiding the consequences of a particular emphasis on the causes and prevention of high lethality violence.

Some of the cautions expressed by our critics should be underscored. Professor Garland notes that the survey evidence from twenty countries is based on a single research initiative that was far from methodologically perfect.[17] Like so much of the data marshaled in chapters 1 through 4, these victim survey results have not yet been subject to multiple replications that would ensure their reliability. In an important sense, the evidence reviewed in the first three chapters of our book is a mile wide but only an inch deep. Only repetitions of all the important measurements will solidify the evidence on crime rates and violence.

Criticism of the statistical materials we presented in Section I of the book takes three forms: methodological reservations, the use of statistical counterdemonstrations of the same type as are used in our analysis, and the presentation of different types of statistics which are argued to be inconsistent with the inferences we draw.

A. *Methodological Reservations*

Many of the methodological criticisms made are the standard reservations about the use of crime statistics—underreporting, bias in reporting, and problems with comparability in making comparisons over time and cross-nationally.[18] These are general problems we noted in the book and took care to avoid whenever possible. Our use of the theft larceny category in the analysis of crime trends over time, itself questioned in these pages,[19] for

16. *See id.* at 34-50.
17. *See* Garland, *supra* note 4, at 1157.
18. *See* McCord, *supra* note 3, at 942-43.
19. *See* Elliott, *supra* note 1, at 1084-85.

example, was the best method of avoiding definitional differences and confusions.

The manifold difficulties with using official crime statistics preach caution in the inferences drawn from statistical comparisons, and that was our intention in the book. However, we note that no paper explicitly challenges any specific inference in the book on the basis of the methodological problems cited with the use of crime statistics.

One potential problem identified by Professor McCord is that different proportions of citizen reporting to the police might create comparisons where United States crime rates look low only because victims in the United States do not report as many offenses to authorities as citizens in other nations.[20] This would artificially depress United States rates, particularly in theft, but only where official statistics are employed, as in the city-level comparisons in chapters 1 and 3. However, we doubt that differential underreporting at the city level has introduced a substantial bias in the comparisons we presented. While nonreporting to the police is a substantial phenomenon in the United States, particularly for nonserious offenses, there is no good evidence that underreporting of this type is a distinctively American phenomenon. In any event, the transnational victim survey evidence presented in Figure 1:3 in aggregate form, and more completely in chapter 3, produced crime rate estimates that were not dependant on police statistics and show patterns similar to the official statistical comparisons.[21]

But might the survey data contain its own bias? Professor Garland wonders whether the highest-risk United States citizens might not tell interviewers about less serious attacks while respondents in less violent nations might report such incidents.[22] Perhaps so, but the victim surveys are so completely dominated in every nation by less serious attacks that the differential reporting of those subjected to life-threatening violence would not even appear on the statistical radar screens of such surveys. Moreover, the high rates of nonlife-threatening violence reported in the United States suggest that most respondents do not ignore less serious assaults. These are, after all, the most serious attacks the respondents personally have encountered. Thus, the

---

20. *See* McCord, *supra* note 3, at 933-34.
21. *See* ZIMRING & HAWKINS, *supra* note 5, at 8, 34-50.
22. *See* Garland, *supra* note 4, at 1157.

conclusion we reached in chapter 3 that "[v]ictim survey rates of violent crime are not efficient predictors of rates of lethal violence in a country"[23] is properly cautious.

Then why analyze these deficient data in detail? Because they measure the patterns of low-lethality violence and establish the disjunction between general patterns of violence and the thin layer of high-lethality violence which was our special concern in the book. This gap between general rates of violence and high lethality violence is just as important as the disjunction between overall crime patterns and rates of lethal violence. While the principal error of the American right wing has been the assumption that American lethal violence is an inevitable byproduct of our high rates of crime and large number of criminals, the principal error of the American left has been in assuming that distinctively high rates of lethal violence in the United States are the inevitable spillover from high rates of all kinds of violence.

B. Statistical Counter-Demonstrations

Only one of the Symposium participants attempts an independent test of an hypothesis about the relationship between crime volume and lethal violence. Professor Robert J. Cottrol reports a regression between annual robbery and burglary rates and homicide and rape rates for two periods in the United States: 1937 to 1957 and 1957 to 1993.[24] He observes from these comparisons a significant and close association, particularly in the more recent time period, between rates of at least some non-homicide crimes and of homicide in the United States.[25]

However, it is not clear why Professor Cottrol uses selected individual offenses rather than the index crime rates in his analysis. We pointed out in chapter 2 that the crime-to-homicide relationship had been a close one in the United States between 1961 and 1980.[26] Professor Cottrol could have obtained a high correlation between index crime and homicide trends for his second period even if he had used the broader measures. He does not persuasively explain, however, why he uses two offenses, robbery and burglary, as an index of criminality instead. The

---

23. ZIMRING & HAWKINS, *supra* note 5, at 40.
24. *See* Cottrol, *supra* note 2, at 1044-48.
25. *See id.*
26. *See* ZIMRING & HAWKINS, *supra* note 5, at 22-24.

special problem with comparing robbery to homicide is that robbery is both itself a violent crime and one leading cause of criminal homicide. It is another example of the part-whole correlation problem discussed in chapter 7.[27] Of course, trends in robbery are related to trends in homicide: they are a direct cause of thousands of killings each year in the United States. Burglary is a much less important cause of death, but seems a rather arbitrary proxy for fluctuations in general crime rates.

Professor Cottrol's 1937 to 1957 regression seems even more eccentric to us than the regression for the later period. By mixing in the World War II years, he should guarantee some temporal relationship between crime and homicide because the war years removed a large proportion of young men of crime prone ages. Thus, rates of both homicide and crime should have fallen during those years. Further, Professor Cottrol had seen our analysis in chapter 2 of index crime and homicide over the post-war period prior to conducting the first regression study. For the period 1947 to 1957, we showed that the relationship between index crime rates and homicide is negative.[28] Yet he does not comment on this fact or analyze this period without the confounding war years.

C. *Inconsistent Data*

The statistics the Symposium criminologists[29] most frequently offered as inconsistent with the notion that lethal violence is not an inevitable result of high rates of crime or large numbers of criminal offenders is the mixture of violent and nonviolent criminality that is found at the individual level in criminal offenders. If those who commit murder have previously also committed many other offenses, does that not show that the same factors which cause high or low rates of crime generally will also be the cause of high and low rates of lethal violence?

No, it does not. The issue is important and was the subject of the first appendix in *Crime Is Not the Problem*.[30] The problem is similar to the "stepping stone drug" controversy in substance

---

27. *See id.* at 111-13.
28. *See id.* at 23-24.
29. *See* Elliott, *supra* note 1, at 1083-91; McCord, *supra* note 3, at 936-37.
30. *See* ZIMRING & HAWKINS, *supra* note 5, at 217-18.

abuse studies.[31] The precursor behavior to serious violence in individuals might well be a mix of criminal and other deviant behavior, just as the youths who end up using cocaine have previously tried marijuana at high rates. The relationship in no way indicates causation at the individual level, nor does it mean that the factors which might predict individual involvement are also efficient predictors of the level of a phenomenon in a population. Australians smoke marijuana and take heroin at high rates but have a minimal level of cocaine use.[32] Under these conditions marijuana is not much of a gateway to cocaine. For this reason, we titled the appendix illustrating this point "Explaining Distribution of Violence versus Levels of Violence."[33]

We are certain that persons who commit burglary and robbery are at higher risk than ordinary citizens to commit life-threatening assault in both Great Britain and the United States. But 212,000 robberies and burglaries in London produce a total of seven victim deaths.[34] A smaller volume of robbery and burglary in New York (191,000) produces 378 victim deaths.[35] If the risk of death to innocent victims is the major reason for public concern, the volume of property crime in the two cities is not the best measure of that risk. Crime victims in New York are fifty-four times as likely to get killed than in London.[36] That is what we meant by the shorthand expression, "Crime Is Not the Problem."

D. From Risk Factor to Prevalence?

Why are the factors that predict the relative individual risk of a condition not also an effective predictor of the rate of a particular event in a population? Lee N. Robins, Ph.D., makes this question the center of her fascinating analysis in this Symposium. Having outlined the problems that hinder our ability to use the prevalence of individual risk characteristics to predict future population rates of high lethality violence, she documents an historic increase in conduct disorder in the

---

31. *See* FRANKLIN E. ZIMRING & GORDON HAWKINS, THE SEARCH FOR RATIONAL DRUG CONTROL 71-73 (1992).
32. *See* ZIMRING & HAWKINS, *supra* note 5, at 149 tbl.9.1.
33. *See id.* at 217 app.1.
34. *See id.* at 45 fig.3.6.
35. *See id.*
36. *See id.* at 54.

American population. As a consequence of that shift, she predicts an increase in rates of lethal violence in the United States as a whole.[37]

This analysis is an important contribution to rigorous thought about the link between risk factors and prevalence rates of high-lethality violence. Dr. Robins expresses the courage of her convictions on this issue by expecting trends in violence to track conduct disorder trends over the long term.

We are skeptical, however, that rates of homicide will predictably respond to population rates of conduct disorder once the appropriate time lags are specified. The key problem for us is what Dr. Robins refers to as "rapid changes" in the environments that influence rates of lethal violence.[38] Even if the long-run trend in conduct disorders was a moderately good predictor of rates of general violence, the additional pathways to high lethality violence are so contingent on changing environments that a clear link to homicide rates would be hard to expect. Further, the environmental influences on the character and rate of general violence in a society may also evolve in ways that attenuate the predictive power of conduct disorder as a legacy of future rates of battery and barroom fighting. For example, the social meaning of coming from a single-parent family may change as the number of such families increases, just as the stigma of divorce abated in the last generation.

To test the predictive power of conduct disorder on homicide rates, we would suggest the same transnational strategy that we used in the book to test television ownership effects on lethal violence.[39] Just as a single nation test of television ownership and lagged homicide totals over time cannot control for other temporal trends, so too might trends in violence be responding to other time-dependant variables in a single national test of conduct disorder effects. The distributional character of violence in the Robins analysis makes this possibility less likely, but by no means implausible. If reasonable national level estimates of factors that influence conduct disorder can be identified, why not test the presumed relationship on a multinational basis? Considerable sacrifices will need to be made on data quality on the presumed independent variables, but the time trends in a

37. *See* Robins, *supra* note 3, at 1020-21.
38. *See id.* at 1015.
39. *See* ZIMRING & HAWKINS, *supra* note 5, at 132-36.

number of different countries would be an important new resource for observing the evolution of environments of violence over time.

Quite apart from whether Dr. Robins is correct in the prediction she makes, it seems to us she is exactly right in the way she analyzes the questions that link her work to the concerns of *Crime Is Not the Problem*. This sort of work is the best hope of productive interdisciplinary interchange on the nature of lethal violence.

E. Black Crime or Black Violence?

The final chapter in the first section of the book attempted to recast the debate in the United States about crime and race as a debate about lethal violence and race. Professor Darnell F. Hawkins's paper responding to chapter 5 is another positive model of the kind of response we hoped the book would provoke. Both his criticism of our narrow focus on black-white differences and his suggestions for expanded analysis are on target.[40] One virtue of our limited analysis is that it provoked his more complete account.

Professor James Q. Wilson, by contrast, appears to have misread the intention of chapter 5.[41] The strategic mission of the chapter was to show that lethal violence, not crime generally, is the important distinguishing statistical and behavioral feature of population rates that end up being debated as issues of "black crime." This mischaracterization of the problem is widespread and parallels the mischaracterization of the distinguishing problem in the United States.[42] Indeed, Professor Wilson even labels his criticism of this chapter of the book as the "black problem" in crime![43] This sort of recidivism is disappointing to the authors of a book entitled *Crime Is Not the Problem*.

---

40. *See* Darnell F. Hawkins, *The Nations Within: Race, Class, Region, and American Lethal Violence*, 69 U. COLO. L. REV. 905, 918-25 (1998).

41. *See generally* James Q. Wilson, *Hostility in America: Book Review of* Crime Is Not the Problem, 69 U. COLO. L. REV. 1207 (1998).

42. *See, e.g.*, JAMES Q. WILSON & RICHARD J. HERNSTEIN, CRIME AND HUMAN NATURE 461, 468, 486 (1985); Norval Morris and Michael H. Tonry, *Black Crime, Black Victims, in* THE PURSUIT OF CRIMINAL JUSTICE 279-86 (Gordon Hawkins & Franklin E. Zimring eds., 1984).

43. *See* Wilson, *supra* note 41, at 1212.

F. A Broader Basis for Comparison?

While the comparative materials analyzed in Part I of the book are a major advance over American exceptionalism and selective two-nation comparisons, the sample of nations and historical periods was rather narrow. With regard to the cross-sectional comparisons, our analysis in chapter 4 relied only on those nations in the World Health Organization reports.[44] Yet the United Nations' survey of national homicide rates did form the basis for our comparison of United States rates with reports from countries such as Columbia, Brazil, and Ecuador. Professor Lawrence M. Friedman is certainly correct in his call for a wider variety of comparisons and his recommendations for expansion are good ones.[45]

We regard expanded transnational historical comparisons as hazardous but necessary. Future analysis particularly needs to locate data on nations with high rates of lethal violence and relatively low crime rates. The only example of that pattern in Figure 1.3 of our book was Northern Ireland, hardly a typical or representative nation during the past generation.[46] As statistical reporting systems improve and include a larger number of nations submitting verifiable homicide data, the prospects for such transnational comparisons will improve.

We believe, however, that comparisons over very long time periods that use mortality statistics are likely to encourage false inferences because of changes in the efficacy of medical interventions over time. We are thus less optimistic about comparing death statistics from assaults in late twentieth-century America with much earlier time periods to assess trends in high lethality violence. Most deaths from homicide, even in the 1990s, are the product of ambiguously motivated deadly attacks. Those who kill are usually willing to risk a death but do not pursue the victim's death on a "kill at any cost" basis.[47] Under these circumstances, improved treatment of trauma and infection can have a huge impact on case fatality rates over time. It is difficult to conceive of

---

44. *See* ZIMRING & HAWKINS, *supra* note 5, at 53-54.

45. *See* Lawrence M. Friedman, *Some Remarks on Crime, Violence, History, and Culture*, 69 U. COLO. L. REV. 1121 (1998).

46. *See* ZIMRING & HAWKINS, *supra* note 5, at 8.

47. *See* Franklin E. Zimring, *The Medium Is the Message: Firearms Caliber As a Determinant of Death from Assault*, 1 J. LEGAL STUD. 97 (1972).

a data set that could be used to control for the differences in medical efficacy over a century or more in a developed nation. The inevitable limits to these long-term comparisons are thus substantial.

II. CAUSES AND CORRELATES

The second section of our book was designed to "show how changing the subject from the causation of violence generally to the search for the proximate causes of lethal violence can clarify issues and provide a basis for both science and public policy."[48] A chapter on causal discourse about violence launched this analysis and was followed by chapters on three frequently discussed issues in relation to lethal violence in America: guns, television and mass media, and illicit drugs.

The Symposium session dedicated to this "causes and correlates" section produced three papers, only one of which focuses on aspects of causation, Doctor Robins's analysis previously discussed.[49] Doctor Alfred Blumstein concentrates his attention on gun use in the recent history of homicide in the United States.[50] Professors Daniel D. Polsby and Don B. Kates, Jr.'s paper entitled "American Homicide Exceptionalism" presents itself as a critique of the Zimring and Hawkins's position on firearms and violence in *Crime Is Not the Problem*.[51] One other paper in the Symposium, that of Professor Cottrol, is also devoted to guns and gun control.[52] But none of the collected papers critiques the causal analysis set forth in Section II of the book, and none of the papers provides more than a brief discussion of mass media effects or the relationship between illicit drugs and lethal violence.

It is a testament to the magnetic force of firearms as a topic that it can eclipse such normally hot button issues as television violence and illegal drugs. But this general topical magnetism also seems to have distracted attention from the specifics of our analysis of firearms and lethal violence.

---

48. *See* ZIMRING & HAWKINS, *supra* note 5, at 89.

49. *See supra* notes 37-38 and accompanying text.

50. Alfred Blumstein, *Violence Certainly Is the Problem—And Especially with Hand Guns*, 69 U. COLO. L. REV. 945 (1998).

51. Daniel D. Polsby & Don B. Kates, Jr., *American Homicide Exceptionalism*, 69 U. COLO. L. REV. 969 (1998).

52. Cottrol, *supra* note 2.

The first point we established in chapter 7 was the way in which changing the topic first from crime to violence and then from general violence patterns to lethal violence highlights the role of firearms.[53] Guns play a role in about four percent of index crimes, in about twenty percent of all index crimes of violence, and in seventy percent of all homicides.[54] Switching the subject from crime to lethal violence increases the role of firearms by almost twenty times. After reviewing a number of instrumentality and social affects of firearms on the environment of violence, we concluded that

> Our considerable propensity for violent conflict would be a serious societal problem even if gun availability and use were low. But the very fact that the United States is a high-violence environment makes the contribution of gun use to the death toll from violence very much greater. When viewed in the light of the concept of contributing causation, the United States has both a violence problem and a gun problem, and each makes the other more deadly.[55]

In their critique of chapter 7, Professors Polsby and Kates set forth two competing single-cause accounts: "perpetrator theories" and "instrumentality theories." They wrongly attribute the single-cause instrumentality theory to us: "The strong form of instrumentality theory—the sort championed by Zimring and Hawkins—comes close to denying the relevance of criminal justice policy either as an explanation for given rates of homicide or as a tool for changing those rates."[56]

At no point in the book, however, do we accept the strongest form of instrumentality effect as they define it. Indeed, they would be hard pressed to explain why we devoted an entire chapter[57] to the criminal law as an instrument to prevent lethal violence when, as they say, we come "close to denying the relevance of criminal justice policy" for changing rates of criminal homicide.[58] There seems to us a very wide gap between the views

---

53. *See* ZIMRING & HAWKINS, *supra* note 5, at 107-10.
54. *See id.* at 107 fig.7.1.
55. *Id.* at 123.
56. Polsby & Kates, *supra* note 51, at 971-72
57. *See* ZIMRING & HAWKINS, *supra* note 5, at 159-84.
58. Polsby & Kates, *supra* note 51, at 971-72.

we expressed on firearms and lethal violence and the views that Polsby and Kates attribute to us.

So, we did some empirical research in the manuscript presented by Polsby and Kates at the University of Colorado Symposium. Their thirty-nine page manuscript contains 158 footnotes with over 200 references to published literature. They refer to *Crime Is Not the Problem* nine times in these footnotes and cite earlier works by one or both of us on another three occasions. Yet they do not make even a passing reference to chapter 7 which is entitled "Firearms and Lethal Violence." They even cite Ramsey Clark three times as an illustration of our views, but never cite chapter 7.[59] There is only one word in the English language to describe a 10,000 word critique of a chapter that never cites that chapter and that word is *chutzpah*.

A. *The Ever-Growing Gun Stock*

One factual issue featured in the Polsby and Kates paper deserves mention here because it is treated as so important and because it is such a good example of the myriad of not-quite-facts that inhabit the debate about guns and gun policy. The authors argue that between 1975 and 1994 "Civilian ownership of all kinds of firearms increased by 68.3% . . . and handguns increased by 105.8%. The murder rate [fell by] 6.3%."[60] Accompanying that statement is a table purporting to show a new estimated total level of civilian gun ownership in 1994; this gun stock estimate for 1994 is calculated by adding an estimate of guns existing in 1975, to an estimate of the number of guns introduced into the civilian market in every year since 1975, and the sum of these two is called a new estimated total level of civilian gun ownership.[61]

The assumption here is a variant of the law of the conservation of matter: that handguns can be created but not destroyed. It is a very peculiar assumption about the useful life of handguns. It is also a terrible measure of civilian gun ownership because it can only increase. If the rate at which handguns are introduced

---

59. This analysis of Polsby and Kates's article was based on the draft they presented at the Symposium and that they distributed to the Symposium attendants. Since that draft, references may have been added at the request of the staff at the Colorado Law Review.

60. Polsby & Kates, *supra* note 51, at 985.

61. *See id.* at 984.

into the civilian market were to drop by ninety percent next year, Polsby and Kates's analytical approach would still conclude that total handgun stocks had increased and that handgun ownership rates would also have increased over the period if the population had remained constant.[62] In fact, handguns are lost, destroyed, confiscated, discarded, and otherwise removed from risk in the United States. Furthermore, newer handguns are always more at risk of involvement in crime.[63] These factors might mean that the risk life of a handgun in reality is rather short. If one assumes that the risk life of a handgun is seven years or so, then handgun ownership rates might have peaked in the mid 1970s, seven or eight years after the peak introduction year of new handguns in 1968.

Because there are no good data on the estimated street life of firearms, the only way to estimate trends in gun ownership over time is by resorting to survey research evidence over time. Instead, Polsby and Kates tell us that there were 235,504,001 guns and a gun ownership rate of 904.6 in 1994.[64] Pseudo precision of this kind is usually a warning to consumers of data on crime and violence, in this case a fully-justified warning.

The special focus on handguns, at least in this section of the Polsby and Kates article, is understandable in view of the attributes of American firearms violence. Handguns are many times more likely to be used in interpersonal violence than long guns. For this reason, the better comparison of ownership and violence is handguns rather than all firearms. Yet many of the cross-sectional comparisons used to exonerate rates of firearms ownership as an influence on rates of homicide is ownership of all firearms rather than of just handguns. We wonder whether a sharper focus on firearms of high risk might yield the same results.

Professor Cottrol, like Polsby and Kates, also imagines two competing and mutually exclusive explanations for United States homicide rates: cultural and instrumental theories.[65] His critique of chapter 7 is that it failed to take cultural and historical factors

---

62. *See generally id.*

63. *See* Franklin E. Zimring, *Street Crime and New Guns: Some Implications for Firearms Control*, 4 J. CRIM. JUSTICE, 95 (1976).

64. *See* Polsby & Kates, *supra* note 51, at 984.

65. *See* Cottrol, *supra* note 2.

into sufficient account as an influence on American violence.[66] It was not our intention to downplay the role of cultural values in explaining American lethal violence, but we did wish to specify the type of value that needs the closest scrutiny in the search for American explanations. What chapter 7 would welcome is not a cultural explanation of violence—the willingness to use force to resolve conflict—but a cultural explanation of lethal violence—the willingness to use force that is likely to kill to resolve conflict. We regard cultural values that esteem the use of maximum force not as influences that are independent of the ownership and use of handguns but as factors that are dynamically related to the role of firearms in lethal violence.

The conclusion we announced on this matter is hardly stirring rhetoric:

> The role of gun use as a contributing cause means that the net effect of firearms on violence will depend on the interaction of gun availability with other factors that influence the rate of violent assaults in a society and the willingness of people to use guns in such assaults. So the precise contribution of firearms to the death toll from violence is contingent on many other factors that may influence the number and character of violent attacks.[67]

This conclusion was intended as the opposite of excluding culture and value from the analysis of lethal violence in the United States.

A further issue often arises when terms like "culture" and "tradition" are used to describe the causes of American violence. These terms are often intended to connote immutability, so that a cultural value or tradition of behavior removes the possibility of change. However, as Professor Friedman eloquently reminds us, there is no compelling reason to regard patterns that have historical origins as unchangeable.[68]

Professor Blumstein shows us how quickly circumstances can change in the United States in his detailed analysis of recent trends in firearms violence.[69] To use the terminology of chapter 7, the Blumstein analysis is a "global comparison" of patterns of

---

66. *See id.*
67. ZIMRING & HAWKINS, *supra* note 5, at 123.
68. *See* Friedman, *supra* note 45; *see also supra* text accompanying notes 54-56.
69. Blumstein, *supra* note 50, at 960-65.

gun violence that presents circumstantial evidence of firearms use as a contributing cause of lethal violence.[70] The disaggregated detail in the Blumstein data make it powerful evidence on causation, without any specific indication of the specific mechanisms that operate to make gun use a predictor of death from assault.

III. ON PREVENTION

The final two chapters in *Crime Is Not the Problem* concerned how governments can more effectively cope with high lethality violence. Chapter 10 explored how making the reduction of life-threatening injury a clear priority might change the substantive criminal law.[71] We reviewed the major preventive mechanisms of criminal law and the uses and limits of each in preventing death and life-threatening injury.[72] That only one of the Symposium papers[73] discusses this effort we attribute to the novelty of the enterprise.

The last chapter of the book concerned the larger question of how a democratic government should organize and execute a program to reduce lethal violence. This chapter widened the focus from the substantive criminal law to the totality of government. The ambition of this chapter was strategic rather than tactical. We regarded chapter 11 as distinct from most programmatic statements on criminal justice policy in two respects. First, rather than merely listing program elements, the chapter proposed a set of principles to guide the selection of lethal violence policies.[74] We believe there is value in providing a standard against which proposals can be judged. The first forty percent of the chapter was dedicated to this enterprise.

Second, the chapter deliberately addressed the long-term policy toward American lethal violence. In the field of criminal justice policy, a long-term perspective is an unprecedented luxury. The half-life of a policy proposal is measured in sound bites in the United States of the 1990s. The recurrent policy

---

70. *See* ZIMRING & HAWKINS, *supra* note 5, at 110-13.

71. *See id.* at 159-84.

72. *See id.* at 162-76.

73. James B. Jacobs, *Legal and Political Impediments to Lethal Violence Policy*, 69 U. COLO. L. REV. 1099 (1998).

74. *See* ZIMRING & HAWKINS, *supra* note 5, at 185-94.

debates frequently sound as if all participants suffer from chronic amnesia. Yet lethal violence is a problem that outlasts fashionable political trends. It might better be addressed incrementally, with an appreciation of the potential for policy change observable when issues are removed from a preoccupation with immediate response and current political constraint.

A. *Who's in Charge of the Criminal Law?*

Professor James B. Jacobs addresses the ways in which both separation of powers and the distribution of authority across multiple levels of government in the federal system will conspire against any formally coordinated program at all levels of government.[75] If policies are to be rational, he asks, who is to rationalize them?

The problems of multiple levels of government turn out to be much more troublesome for law enforcement tactics and noncriminal law programs than for the rationalization of the penal law, where authority is centered at the state level. There is, of course, overlap and potential conflict between state, municipal, and federal levels of government in the area of penal law. In such cases we would rather pay the price of inefficiency than attempt to build a federal lethal violence control juggernaut on the model of the current national drug control strategy.

But we do not think that the real choices are limited to inefficiency or bureaucratic centralization. Once a principle of priority becomes popular, there can be a conscious parallelism among levels of government that will achieve many of the same concerts of action as can hierarchical organization. Decentralized sentencing powers certainly did not restrain the nationwide expansion of imprisonment or the dramatic shift in drug control strategy in the 1980s.[76] With the federal government providing technical support and information, there is no reason to doubt the ability of a multitude of states and cities to march in the same direction without being subject to centralized control.

While the organizational features of American federalism impose some limits on governmental progress toward the control

---

75. *See* Jacobs, *supra* note 73.

76. *See generally* FRANKLIN E. ZIMRING & GORDON HAWKINS, THE SCALE OF IMPRISONMENT (1991).

of lethal violence, the most important obstacles are substantive rather than procedural. In our view, resistence to change comes not so much from pressure groups *per se* as from the interests they represent. The tried and true political remedies to crime in American politics, such as mandatory sentences and new death penalties for fifty federal crimes, are frictionless in two respects: They are consistent with ideological demands and they lack any visible pecuniary cost to the interests of their policy audience. When cost and citizen inconvenience are part of the price tag for criminal justice policy, the obstacles to change are larger. One reason why Americans keep doing the same things in criminal justice policy is that we have carved out policy channels that are the paths of least resistance. If the control of lethal violence has a low priority, that pattern is likely to continue.

B. Principles for Prevention?

The critical responses to chapter 11 can be neatly divided into two categories: gun control and everything else, with the former commanding the major share of attention. Professor Delbert S. Elliot is the lone exception to the gold rush toward guns. Drawing on his experience with the etiology and control of youth crime, he quite correctly detects that we doubt that "people programs" designed as general crime prevention strategies are an efficient way to reduce lethal violence in the United States.[77]

We offer two distinctions to clarify the nature of the difference between Professor Elliot's position and our own on crime prevention. The first distinction is between the efficacy of general crime prevention programs and the programmatic appropriateness of such people programs as a way of reducing high lethality violence. We would hesitate to invest resources in such programs only because we doubt that they are an efficient way of reducing lethal violence when compared with more violence specific strategies. If we are wrong about this, and Professor Elliot thinks that we are wrong, we have no principled objection to the investment of governmental resources in general crime prevention programs as a cost-effective method of reducing homicide, forcible rape, and high lethality robbery. The standard we proposed in chapter 11 is utterly pragmatic. The shift in objec-

77. *See* Elliott, *supra* note 1, at 1091-96.

tives from crime prevention generally to a priority on lethal violence specifically disadvantages general prevention programs. But if such programs can clear that practical hurdle of proving they reduce life-threatening violence, there is no ideological or programmatic litmus test imposed by the principled framework of chapter 11 that would disfavor them.

The second distinction of importance to Professor Elliot's position is our belief in the desirability of governmental support for education and social services generally, but not as specially designed programs for reducing and preventing crime.[78] Governmental investment in the development of youth is a central task in a liberal democracy, too important in our view to be distorted and refocused by a concern with crime prevention or crime control. One of the central tensions in the history of the American juvenile court is the mixture of motives that haunts an institution that seeks simultaneously to nurture and punish American youth who commit crimes. The central insight of labeling theory is that labels like "delinquent" negatively impact the substantive content of tuition and support programs. We have no doubt that teaching children well and providing supervision and support throughout childhood and adolescence will in fact reduce crime, particularly if it is offered to all children and is not distorted by demands for immediate social control. The last sentence in our book states "We need not prejudice either the education or the environment of our children to assure that they will live in a safer society."[79] It is not desirable, however, to dress agendas of education and support in the costume of crime control if they are to best serve the welfare of the young or the ultimate best interests of the society.

C. *Double Vision on Gun Control*

The second category of responses to chapter 11 focuses on gun control. In constructing a list of three priority concerns for violence control, we identified handgun control as the *sine qua non* for substantial reduction in American lethal violence.[80] The point of that analysis is that no program to make deep cuts in

---

78. *See id.*
79. ZIMRING & HAWKINS, *supra* note 5, at 216.
80. *See id.* at 199-201.

lethal violence would be plausible without an attempt to substantially reduce the use of handguns in interpersonal violence. Our conclusion on the long-term prospect for such controls did not seem to us overly sentimental:

> [T]he choice in handgun control is between two unpalatable alternatives. Gun control in the twenty-first century will either be an expensive, unpopular, and untested attempt at bringing the United States handgun policy to the standard of the rest of the developed world, or it will consist of minor adjustments to current regulations that will all but guarantee persisting high rates of death. It is likely that this hard choice will amount to the definitive referendum on lethal violence in the United States.[81]

A great variety of arguments are mounted in this collection of papers against attempts to restrict citizen access to firearms. The litany of impediments includes ineffectiveness, hindrance of citizen freedom,[82] excessive cost,[83] the higher danger of tyrannical government,[84] lack of citizen support for general restrictions,[85] lessened crime deterrence,[86] and many more. But none of the critics expressly contests the *sine qua non* conclusion in the book.

We know of no way for the United States to move toward a homicide rate even fifty percent higher than that of Australia or Canada without serious attempts to restrict the availability and use of handguns. Neither, apparently, do our critics. Special restrictions on handgun ownership and use are found all over the world, and have existed in some American states and cities for almost a century. That does not mean that any restrictive handgun program will produce cost-effective results. But the necessity of gun policy to deep cuts in homicide rates does explain why handgun control will remain at the center of any dialogue about reducing lethal violence in the United States.

In rereading the critiques of Attorney General Norton and Professor Wilson, we were struck by two types of double vision on

---

81. *Id.* at 201.
82. *See* Cottrol, *supra* note 2, at 1063-65, 1068-69.
83. *See* Norton, *supra* note 1, at 1171-72.
84. *See* Cottrol, *supra* note 2, at 1063-65, 1068-69.
85. *See* Wilson, *supra* note 41, at 1215.
86. *See* Polsby & Kates, *supra* note 51, at 1000.

the question of firearms control. The first has to do with the kind of weapons that should be the subject of restrictive gun control efforts. The *sine qua non* in *Crime Is Not the Problem* is handgun control. Although easily concealable handguns represent only about one-third of all firearms, they are used in more than three-quarters of all interpersonal gun violence in the United States.[87]

In contrast to the emphasis in *Crime Is Not the Problem* on the restriction of handguns, our critics oppose parallel ownership restrictions on all firearms. We suppose that equating restrictive handgun policies with ownership prohibition of all firearms is a rhetorical attempt to make a difficult prospect sound impossible. The political difference between difficult gun control prospects and impossible prospects is quite important for many conservatives in the United States who are ideologically committed to the suppression of violent crime and to the freedom of citizens to own firearms. If handgun control is only very difficult, then two important ideological goals are in conflict. Only if handgun controls are totally ineffective or politically impossible is the critic rescued from choosing between highly valued goals.

From this perspective, the impossibility of meaningful gun control would be very good news because it would remove the conflict in priorities. Single-cause interpretations of violence—for example, homicide is either caused by perpetrators or by instrumentalities but not by both—are one way to avoid the potential conflict with gun controls because in a world of single causes, homicide is caused by perpetrators. If the conservative critic lives in a world of multiple causation, the prospect of handgun controls will be either embarrassing or impossible.

In a second sense, Attorney General Norton exhibits a striking double vision on the prospect of gun controls as a part of American violence policy. Near the end of her analysis, the Attorney General assures us that "enforcing gun control would overpower the criminal justice system with huge numbers of people whose crime is not commission of violent acts, but rather the mere possession of a contraband item."[88] Some pages earlier, however, she states that "The New York experience, where 'zero

87. *See* FRANKLIN ZIMRING & GORDON HAWKINS, THE CITIZEN'S GUIDE TO GUN CONTROL 38 fig.5.1 (1987).

88. Norton, *supra* note 1, at 1171.

tolerance policing' successfully caused a dramatic drop in violent crime, is the most thought-provoking outgrowth of recent trends to toughen law enforcement policies."[89] From this, it appears that the Attorney General does not think that this "zero tolerance policy" had the effect of overpowering New York City's criminal justice system.

As it turns out, the New York police crackdown is very much an experiment in applied handgun control. First, New York has had since 1911 the type of targeted, restrictive handgun legislation that Professor Wilson believes is not a political possibility in the United States.[90] As administered in New York City, this policy has meant that fewer than one percent of New York residents have the special permits that are required for handgun ownership. What the city police have been doing since 1993 is enforcing these gun laws (and many other laws) with a vengeance on city streets.[91] The results have been very specific. Non-gun homicides in New York City were not much affected by the new regime; they had been declining since 1986 and continued that downward trend after 1993.[92] But gun homicides and other street crime involving firearms dropped by sixty percent in three years after 1993.[93] Rather than the laws against graffiti and loitering, this differential pattern of outcome seems a testament to the potential value of enforcing rigorous and handgun-specific controls. We wonder whether the Attorney General's enthusiasm for New York policing will survive its association with gun controls.

One final note on firearms control as a violence prevention strategy concerns a more subtle conceptual problem than the single-cause assumptions previously discussed. Perhaps this problem should be called the "single-solution" approach to violence prevention. Professor Wilson advocates the development of new methods of concealed gun detection as an alternative to restrictions on the ownership of concealable weapons.[94] But

---

89. *Id.* at 1168.

90. *See* Wilson, *supra* note 41, at 1215.

91. *See* Jeffrey Fagan, Franklin E. Zimring & June Kim, *Declining Homicide in New York City: A Tale of Two Trends*, 88 J. CRIM. L. & CRIMINOLOGY (1998) (forthcoming) (on file with author).

92. *See id.* at fig.2.2.

93. *See id.*

94. *See* Wilson, *supra* note 41, at 1215-16; *see also* Sam Kamin, *Law & Technology: The Case for a Smart Gun Detector*, 59 LAW & CONTEMP. PROBS. 221

choosing between supply reduction and point-of-use controls is not the only way to reduce handgun violence. Investment in a mixture of complementary strategies is usually more appropriate. For example, the New York City street police efforts to remove hand-guns benefit from the low general rates of handgun ownership and the stigma on handguns that restrictive licensing has produced. Would handgun removal policies by street police work as well in Miami or Atlanta where the inventory of handguns in the civilian population is larger and the stigma far less? Probably not.

The general point this example illustrates is discussed in chapter 11 as the "Compound Benefits of Multiple Intervention." It is one of several principles that Professor Wilson and others have skipped over in their search for the red meat of specific policy plans. Yet his search for the *one* right gun intervention suggests the principles in chapter 11 merit more attention from Professor Wilson. How would a traffic safety program proceed if we assumed that we had to choose between divided highways and air bags as a single solution to the problems of highway death and injury, or between padded steering wheels ("instrumentality theories"[95]) and enforcing laws against speeding ("perpetrator theories"[96])? Confining the search for solutions to one method at a time would be regarded as transparently silly in most problem areas. Why not here?

IV. CONCLUDING REFLECTIONS

Drafting the final section of a response of this kind invites its authors to search for higher ground than the particulars of exchange in this Symposium issue. What have we learned here about the global issues? What would we now emphasize about lethal violence and its control in view of these reactions to *Crime Is Not the Problem*?

Three things. The first is the importance and limiting influence of political ideology on criminal justice policy. The second is the particular promise of the late 1990s as a time for learning about the etiology and control of life-threatening

---

(Winter 1996).

95. Polsby & Kates, *supra* note 51, at 971.

96. *Id.*

violence. The third is the need to maintain an appropriate sense of priority and limits when considering the role of any single set of concerns in the complicated yet promising American future.

A. *Ideology and Policy*

The dominant role of political ideology in criminal justice policy is universally acknowledged in the United States, at least when people are discussing the criminal justice opinions of others. Of course, every commentator grants himself a personal exemption from this problem. The Symposium papers generally conclude that most of *Crime Is Not the Problem* is liberal in its ideological orientation. In large part, this conclusion is based on the reputation of its authors and the significance accorded to handguns as a contributory cause of lethal violence.

Of course, we do not think that the perspectives and priorities in this book walk a consistent party line. In the usual crime control debate, liberals will not seriously consider the preventive potential of punishment, while conservatives will not seriously consider anything else. We took the preventive potential of the criminal law seriously in chapter 10. But we also considered a wide variety of other strategies and thereby attempted to avoid the ideological limits on the range of countermeasures usually examined in the search for solutions to lethal violence.

There is another way in which the demands of ideological purity limit the ability to evaluate ways to prevent violence. The typical hard line instinct on criminal penalties is to enforce them rather than to scrutinize the strengths and weaknesses of particular penalty schemes. Attorney General Norton, for example, expresses her enthusiasm for incarceration for both the deterrent and the moral and educative effects of criminal sanctions.[97] She worries that our book might de-emphasize the use of the law's most serious sanctions for nonviolent crime.[98] She says nothing, however, of the argument made in chapter 10 that crime crackdowns might undermine the safety of crime victims by treating dangerous and non-dangerous felonies similarly and by muting the moral distinction between crimes that often kill and those that do not. And what may keep the

---

97. *See* Norton, *supra* note 1, at 1168.
98. *See id.* at 1166.

Attorney General from taking the book's proposals seriously is that she is ideologically committed to harsh penalties and will tend to welcome only analysis that puts her favored remedies in a positive light. Where there is conflict between ideology and pragmatism, it is far from inevitable that the pragmatically superior crime prevention alternative will be selected. Nor will the true political believer see the selection of the ideologically favored alternative as selling out crime prevention. Ideologic commitment means that superior pragmatic choices are not seen as superior at all. Yet believing only in the efficacy of politically correct programs can tragically limit the field of choice in criminal justice policy.

The restricted vision that ideology imposes on true political believers is by no means missing from the liberal side of the great crime-control divide. Just as conservatives sustain a general enthusiasm for prison, we know many liberals who have never met a gun control plan that they did not like. Since handguns are such an important problem, they think that any attempt to control them must be worth supporting. When pressed for the mechanism that should reduce shootings, many proponents of ineffective or largely symbolic controls will speak of the importance of even zero-impact gun controls as a step in the right direction. Ideology, in other words, is an equal opportunity distorter of pragmatic values in the control of violent crime.

B. To Live in Interesting Times

Professor Garland begins his erudite analysis of "the crime control context" of *Crime Is Not the Problem* by warning that the book "appears at an historical moment which is peculiarly inauspicious for the analysis."[99] He quite correctly identifies an inconsistency between targeted priority of the sort we advocate and the politically fashionable "broken windows" theory of control, which posits that tolerating low level disorder on city streets invites more serious forms of crime.[100] While this "broken windows" theory is usually confined to policing strategies, Professor Garland urges that a similar ethic can inform punish-

---

99. Garland, *supra* note 4, at 1148.
100. *See id.* at 1149.

ment policy as well. He argues that the prior generation has "been something of a testing ground for the Zimring and Hawkins strategy. . . . An untheorized notion that (low-level) crime 'is not the problem' appears to have shaped policing, prosecution, and sentencing policy for much of the 1960s, 1970s, and 1980s."[101]

On the results of this experiment, Professor Garland remarks: "the pattern of focusing upon the hard core and filtering out minor offenders coincided with a period of steep and sustained increases in property and nuisance crime, together with (mostly) rising rates of robbery, rape, and homicide."[102] Professor Garland's analysis here is important in its own right and also significant as an example of how temporal trends are often subject to perceptual distortion by the fashions of the time.

However, we would not accept the notion that the last thirty years "have been something of a testing ground for the Zimring and Hawkins strategy"[103] in the United States. Since 1977, the United States imprisonment rate has increased at an unprecedented rate and the largest increases in prison populations have been due to drug offenses and property offenses.[104] Whatever the question has been in the United States, prison seems to have been the answer for at least two-thirds of the period that is nominated as a field test for our preferred theories of criminal justice policy.

But the trend in many other nations was more consistent with a priorities approach. In our chapter on "Violence and the Growth of Crime," we contrasted the huge expansion of property crime in six of the G7 nations with trends in imprisonment and found no huge expansion of imprisonment outside the United States.[105] In the period from 1960 to 1990, the nations in which imprisonment did not expand in response to property crime were France, Canada, Germany, and Italy.[106] Perhaps these were the countries that ran the Zimring and Hawkins experiment that Professor Garland posits?

---

101. *Id.* at 1148-49.

102. *Id.* at 1149.

103. *Id.* at 1148.

104. *See* FRANKLIN E. ZIMRING & GORDON HAWKINS, THE SCALE OF IMPRISONMENT (1991); FRANKLIN E. ZIMRING & GORDON HAWKINS, PRISON POPULATION AND CRIMINAL JUSTICE POLICY IN CALIFORNIA (1992).

105. *See* ZIMRING & HAWKINS, *supra* note 5, at 28 tbl.2.1, 31 tbl.2.2.

106. *See id.* at 31 tbl.2.2.

If so, where are the "(mostly) rising rates of robbery, rape, and homicide" that Professor Garland mentions?[107] In chapter 2, we used homicide rates to measure lethal violence: the data revealed a trendlessness in the G7 nations as a whole in homicide combined with a huge increase in theft.[108] We showed similar patterns with annual data in Australia and in England.[109]

We would guess that Professor Garland's error here may be trusting native speakers as informants about American criminal justice policy. From its low point in 1972, the United States prison population increased threefold through the 1970s and 1980s.[110] But many American policy debaters speak as if this was a period of unprecedented penal leniency. They even concoct artificial measures such as "prison years per reported theft" to soften the appearance of the system.[111]

Our general point is that it is important to distinguish the temper of our times from the factual realities of current conditions. For example, homicide rates and other forms of life-threatening violence are down sharply in the United States from the highest rates in the early 1990s.[112] What is the reason for this? In a policy area rich in ideological investment, confident causal theories to explain the declines are quickly in commerce. But the factual details of these declines provide opportunities to test assumptions about causation that should be carefully explained before causal interpretations are cast in stone. This is what Jeffrey Fagan and one of us are trying to do in New York.[113]

There are two elements that make present day America a wonderful laboratory for exploring the relationship between crime rates and rates of lethal violence. First, the capacity to measure many crimes is expanding so that comparisons can now be made cross-nationally for the first time. More comparisons are available to test theory and, therefore, to test many more hypotheses relevant to causal assumptions about lethal violence.

---

107. Garland, *supra* note 4, at 1149.

108. *See* ZIMRING & HAWKINS, *supra* note 5, at 28.

109. *See id.* at 24-27.

110. *See* ZIMRING & HAWKINS, *supra* note 76.

111. Michael K. Block, *Supply Side Imprisonment Policy*, *in* NATIONAL INST. OF JUSTICE, UNITED STATES DEP'T OF JUSTICE, TWO VIEWS ON IMPRISONMENT POLICIES 9 (1997).

112. *See* ZIMRING & HAWKINS, *supra* note 5, at 58.

113. *See* Fagan, Zimring & Kim, *supra* note 91.

Second, this is a dynamic period in the United States. Rates of homicide doubled in the United States between 1964 and 1974 and have been fluctuating in a narrow band ever since.[114] But the most recent down trends may be more than cyclical dips.[115] A real down trend may be upon us, and the opportunities to learn from the careful examination of these trends are great, if we will only take them.

C. *Lethal Violence in Perspective*

Two final points should be made about the limited significance of life-threatening crime to the American population and the American prospect. At its peak, the United States homicide rate was 10 per 100,000 persons per annum, representing an aggregate annual risk of 1 in 10,000.[116] Lethal violence is by far the most important criminal justice problem in the United States, but far from the most important social or governmental concern of the current age. In *Crime Is Not the Problem*, we thought it unwise to invest more of our national treasure in crime control, and argued instead for a reallocation of resources within the crime budget to focus on high lethality violence. The total resources we devote to crime and its control in the United States are more than adequate, particularly when compared to the public investment we make in other areas of public concern.

Indeed the best feature of a successful program to reduce life-threatening violence on American soil is the promise such a program holds to redirect public attention and resources to other matters besides crime and violence. With any luck, criminal justice in the United States will avoid becoming a permanent growth industry, expanding its reach to compensate for the decline in lethal violence. The greatest ambition of American criminal justice should be to create conditions in which crime and violence are a smaller public concern.

---

114. *See* ZIMRING & HAWKINS, *supra* note 5, at 57-58; Blumstein, *supra* note 50, at 947-48, 954-57.

115. *See* Blumstein, *supra* note 50, at 947-48, 954-57.

116. *See* ZIMRING & HAWKINS, *supra* note 5, at 58.