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SOCIOLOGICAL ANALYSIS OF CONFIDENCE SWINDLING

EDWIN M. SCHUR

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INTRODUCTION

Almost twenty years ago L. L. Bernard, noting the prevalence of various types of fraud in American society, stated: "We have reached the fraud stage of social control in the evolution of succession of forms in social control."¹ There seems little doubt that today we are still in what Bernard terms the fraud stage of development. Swindling appears to be a strongly entrenched national phenomenon, many instances of which are reported daily in newspapers throughout the country.

Though fraud of course takes on a wide variety of forms, from a sociological view almost all fraud can be seen to contain the kernel of the "confidence game" procedure—the creation, by one means or another, of a relation of confidence, through which a swindle is effected. All types of con games fall into a general pattern which may be described briefly as follows. The swindler (or swindlers, for several racketeers often band together to form a "con mob") selects a person who appears likely to be a good "sucker" (or, in the argot of the con man, "mark"). After establishing some degree of rapport with the mark, and once he sees that the mark will trust him, the con man tells the mark of a dishonest scheme by which they can make some money. The mark gives the swindler his money, which he never again sees. Because he has placed his confidence in the con man, it never occurs to the mark (until it is too late) that he is the object rather than the co-perpetrator of the swindle.

Unfortunately there is no way to accurately gauge the extent of criminal fraud in the United States today. Victims of con games (who, themselves, sought to gain dishonestly) rarely report their losses; many victims of related types of fraud never fully realize they were "taken." And where the loss is small, the victim often prefers not to bother getting involved with the police. Thus especially in the realm of fraud, "crimes known to the police" fall far short of crimes actually committed.

Despite the uncertainty, experts agree on the magnitude of the fraud problem. According to Maurer, it may well be that "The three big-con games, the wire, the rag, and the pay-off, have in some forty years of their existence. . . produced more illicit profit for the operators and for the law than all other forms of professional crime (excepting violations of prohibition law) over the same period of time."² And

¹ BERNARD, L. L., *SOCIAL CONTROL*, New York: Macmillan, 1939, p. 36.

² MAURER, DAVID, *THE BIG CON*, Indianapolis: Bobbs-Merrill, 1940, p. 17.

the most recent edition of the late Professor Sutherland's competent text reports: "It is probable. . . that fraud is the most prevalent crime in America."³

Current efforts to curb fraud are typically ineffectual. As noted above, the reporting of fraudulent crimes is minimal. Then too, the variety of statutes relevant to various kinds of fraud is, in many jurisdictions, close to chaotic: "Enact, as Colorado has done, some two dozen statutes on the general topic of obtaining property illegally and confusion is bound to result."⁴ In some states, there are separate statutes covering larceny, embezzlement, false pretenses, confidence game, and forgery. This may enable a defendant to play one provision off against another—against a larceny charge raising a defense that the evidence shows embezzlement, then reversing his stand in a subsequent embezzlement trial. Composite larceny statutes in New York and California undoubtedly simplify the law-enforcement-prosecution task. New York's law is particularly well-drafted in that it makes irrelevant the thorny questions of possession as against title which plague prosecutors in many states.⁵

Another difficulty for prosecutors arises because of the general rule of criminal law that a false pretense or representation, to be indictable, must be an untrue statement regarding a past or present fact. While a leading California decision recently held that false promises are false pretenses⁶, the outdated common law doctrine is still the majority rule. Exacting evidentiary requirements under specific statutes, together with the possibilities of professional swindlers "fixing" cases, further inhibit successful prosecution of fraud.

Even where statutes have been simplified so that the required proof would not hinder prosecution law-enforcement authorities and courts seem reluctant to give fraud laws a broad application, particularly where a segment of the business community might be imperiled. For instance, under the Federal Mail Fraud Act, there need be no showing that anyone is in fact defrauded and promissory fraud as well as misrepresentation of past and present fact is indictable; yet the government has relied largely on the noncriminal "fraud order" technique, rather than using the criminal sanctions also provided by the Act. An important element seems to be the "reluctance to stigmatize the overzealous advertiser as a criminal."⁷

Where sanctions are imposed in swindling cases, they are rarely stringent; prison statistics show that, generally, sentences imposed in this country for fraud are relatively light. Fraud offenders, then, are rarely uncovered and even more rarely prosecuted; of those who are prosecuted, most are at least able to avoid serious punishment. The con game, perhaps the nucleus of much American fraud, is particularly untouchable because of the victim's equivocal position.

The extent to which particular criminal statutes are unenforceable should not be attributed to chance factors. If the law's efforts to curb fraud seem of no avail, the

³ SUTHERLAND, EDWIN H., *PRINCIPLES OF CRIMINOLOGY*, New York: Lippincott, 5th ed. rev. Cressey, 1955, p. 42.

⁴ HEGARTY, JAMES E., *False Pretenses, Confidence Game and Short Check in Colorado*, 25 ROCKY MTN. L. REV. 325 (1953).

⁵ NEW YORK PENAL LAW, Sec. 1290 (Clevenger-Gilbert, 1951).

⁶ *People v. Ashley*, 267 P2d 271 (1954), *cert. den.* 348 U. S. 900 (1954); Note, *False Promises as False Pretenses*, 43 CAL. L. REV. 719 (1955).

⁷ Note, *The Regulation of Advertising*, 56 COL. L. REV. 1018,1041 (1956).

answer lies not merely in the cleverness of the swindler and the inadequacy of current police techniques for fraud-detection. To understand the real meaning of the fraud problem in America, one must turn to an analysis of the social dynamics of fraud and the con game within the modern American social system.

SWINDLING AS INTERACTION

An important element in an analysis of fraud (particularly in the confidence game situation) centers around the fact that the con game is, in a very real sense, a *game*. Though the term con game probably originated with the situations in which a swindler would induce his victim to compete in a "game of chance" (from which the swindler had carefully eliminated the chance element), it has been carried over to cover quite (superficially) different situations. Perhaps too little attention has been paid the interesting fact that confidence rackets are called "games", while most other criminal offenses receive (even from their practitioners) far less playful appellations.

Sociology has long recognized the great significance, for understanding human action, of play and games. Georg Simmel wrote:

All the forms of interaction or sociation among men—the wish to outdo, exchange, formation of parties, the desire to wrest something from the other, the hazards of accidental meetings and separations, the change between enmity and cooperation, the overpowering by ruse and revenge—in the seriousness of reality, all of these are imbued with purposive contents. In the game, they lead their own lives; they are propelled exclusively by their own attraction. For even where the game involves a monetary stake. . . . to the person who really enjoys it, its attraction rather lies in the dynamics and hazards of the sociologically significant forms of activity themselves. The more profound, double sense of "social game" is that not only the game is played in a society (as its external medium) but that, with its help, people actually "play" "society."⁸

As George H. Mead suggested, the development of the human "self" may be illustrated by the child's participation first in play and later in the organized game. In the earlier stage of pure play the child typically "takes on" the roles of particular persons he sees about him; he plays at being other people. In the organized game stage, there is more complex role-playing, the self emerges through the creation of a "generalized other", and the game has rules which must be followed.⁹ Interestingly enough, the confidence game would seem to embody aspects of both these stages. Certainly the "taking on" of another's role, the playing at being someone else, so characteristic of Mead's pure-play stage, is a prime factor in confidence swindling. At the same time there is little doubt that, at least from the swindler's standpoint, the con game has rules which must be followed and is the sort of game where "taking the attitude of the other" (one of Mead's favorite phrases) may be vitally necessary. Maurer notes, "Big-time confidence games are in reality only carefully rehearsed plays in which every member of the cast except the mark knows his part perfectly."¹⁰

⁸ WOLFF, KURT H. (ed. and tr.), *THE SOCIOLOGY OF GEORG SIMMEL*, Glencoe: The Free Press, 1950, pp. 49-50.

⁹ MEAD, GEORGE H., *MIND, SELF AND SOCIETY*, Chicago: Univ. of Chicago Press, 1934, 1950, pp. 152-164.

¹⁰ MAURER, *op. cit.*, p. 108.

Traditionally, criminology has studied crime and the criminal. Little attention has been paid the victim of criminal offenses; in many instances this is a grave shortcoming. Hans von Hentig pointed out an important but typically ignored fact when he wrote that, "In a sense the victim shapes and moulds the criminal."¹¹ This holds particularly true for most fraud situations. As Maurer explains:

A confidence man prospers only because of the fundamental dishonesty of his victim. . . . As the lust for large and easy profits is fanned into a hot flame, the mark puts all his scruples behind him. . . . In the mad frenzy of cheating someone else, he is unaware of the fact that he is the real victim, carefully selected and fatted for the kill. Thus arises the trite, but none the less sage maxim: "You can't cheat an honest man."¹²

Similarly, Professor Sutherland quotes one professional con man as follows: "'A confidence game will fail absolutely unless the sucker has got larceny in his soul.'"¹³ And as Sutherland went on to note, there is no known case of a prospect declining to continue with a scheme once he learned it was dishonest.

One writer has argued that the victim's state of mind is completely irrelevant to the question of whether the crime of false pretenses is committed in a particular case:

Whether the swindler obtains the confidence of his victim seems entirely unimportant if in fact the swindler intended to defraud and actually does defraud his victim. . . . the fraudulent trick or device is undoubtedly what causes the unwary citizen to lose his property. . . . To reason otherwise would seem almost to promote dishonesty, and cheating, and to reward artful treachery.¹⁴

While this approach might make it easier for prosecutors to proceed under false pretenses laws, it clearly fails to do justice to the actual dynamics of the fraud situation. Is it really the trick or device which "undoubtedly. . . causes" the citizen to lose his property? At best, that is only part of the true picture.

Confidence swindlers are generally recognized to be the elite of the underworld. Proceeds from such fraud can be exceptionally large, the con man tends to be his own boss (even where several swindlers form a mob), and unlike the "heavy rackets" swindling involves no violence. While factors such as these help to account for the swindler's high status in the underworld, there are satisfactions still more basic to the swindling process which accrue not only to the polished professional confidence man but all the way down the line to the small-time sharper.

One writer comments, for example, that "Above all, every deception, every imposture is an assumption of power. The person deceived is reduced in stature, symbolically nullified, while the imposter is temporarily powerful, even greater than if he were the real thing."¹⁵ It may well be that from the psychodynamic standpoint, the assertion of power over the victim is as important to the swindler (though perhaps not on the conscious level) as is obtaining the sought-after money or property.

¹¹ VON HENTIG, HANS, *THE CRIMINAL AND HIS VICTIM*, New Haven: Yale Univ. Press, 1948, p. 384.

¹² MAURER, *op. cit.*, p. 16.

¹³ SUTHERLAND, EDWIN H., *THE PROFESSIONAL THIEF*, Chicago: Phoenix Books, 1937, 1956, p. 69.

¹⁴ ATTWELL, JOSEPH J., *The Confidence Game in Illinois*, 49 NORTHWESTERN UNIV. L. REV. 737, 751 (1955).

¹⁵ KLEIN, ALEXANDER (ed.), *GRAND DECEPTION: THE WORLD'S MOST SPECTACULAR AND SUCCESSFUL HOAXES, IMPOSTURES, RUSES AND FRAUDS*, New York: Lippincott, 1955, p. 13.

Indeed the concepts of power and power relations seem quite appropriate to an analysis of defrauding. To some extent at least, we may even apply to the fraud situation a few of the ideas currently used in the analysis of small group interaction processes. For in a sense rivalry, coalition and strategy are of the very essence of the confidence game. (It is interesting to note in this regard that the term "payoff," which features significantly in the analytic scheme developed by von Neumann and Morgenstern,¹⁶ is also the label given by professional criminals to several of the more ambitious of the traditional confidence games).

We have seen that the victim has an active role to play in bringing about his own downfall. Invariably, the swindler convinces the victim that together they can swindle a third party; this third party, too, must be reckoned with in studying the structure of power relations inherent in the confidence game situation. One way of picturing such a *triad* would be to say that the victim enters into a spurious coalition with the swindler against an imaginary third party. The would-be alliance between the con man and his victim is, of course, based wholly on a lie. But as Simmel aptly stated: "However often a lie may destroy a given relationship, as long as the relationship existed, the lie was an integral element of it. The ethically negative value of the lie must not blind us to its sociologically quite positive significance for the formation of certain concrete relations."¹⁷ Though the victim's alliance with his swindler is indeed, as he will eventually discover, a spurious one, it is his belief in the lie and his confidence in the coalition which induces him to act as he does.

Basic to the widespread willingness to play the role of victim in such dramas would seem to be the desire to get "something for nothing." Again there may be the power element; the attempt to best a third party may underlie the victim's eagerness. But it is also interesting to note that potential victims do not seem to learn from their own or others' past experiences; indeed awareness of the widespread existence of swindling seems to help little in putting a swindle-prone public on its guard. This may suggest the presence of a desire (conscious or unconscious) to be victimized. Modern psychology has stressed the need for punishment which plays an important role in unconscious life, particularly among criminal offenders; this need is often illustrated by the frequency with which offenders betray themselves by leaving some telltale clue at the scene of the crime. A similar mechanism may operate to promote a willingness to be defrauded.

The potential victim is probably quite aware that the plan of action his confidant proposes is "wrong." Under such circumstances, he may harbor a strong ambivalence about winning; he may almost sense that he is to be swindled, but may unconsciously desire to be punished for his own wrongdoing. The question whether such self-defeating mechanisms should be attributed to a basic "death wish" or masochism must be left to the psychoanalysts.

A STRUCTURAL IMMORALITY

Most American studies of fraud and related offenses have been oriented to the individual offender, whose depredations are usually explained in terms of what may

¹⁶ VON NEUMANN, JOHN AND OSKAR MORGENSTERN, *THEORY OF GAMES AND ECONOMIC BEHAVIOR*, Princeton: Princeton Univ. Press, 1947.

¹⁷ WOLFF, *op. cit.*, p. 316.

be called a "situational approach." Thus the conclusion of Lottier, based on first-hand study of embezzlers in a court's psychopathic clinic: "In every case, without exception, a critical tension situation of one kind or another invariably preceded the embezzlement behavior."¹⁸ Similarly Cressey, in his recent book, *OTHER PEOPLE'S MONEY*, developed a modified situational theory of trust violation:

Trusted persons become trust violators when they conceive of themselves as having a financial problem which is non-shareable, are aware that this problem can be secretly resolved by violation of the position of financial trust, and are able to apply to their own conduct in that situation verbalizations which enable them to adjust their conceptions of themselves as users of the entrusted funds or property.¹⁹

Such theories may have validity with reference to the "chance offender" (assuming for the moment that the "chance" offender is not merely a persistent offender who got caught early in the game); to explain the persistent swindler we need a theory which transcends the situational approach. In any case, since various types of fraud abound in modern American society, we must look to our present social system for clues to explain the great drawing-power the roles of swindler and victim currently display.

C. Wright Mills, who has perhaps sensed the crux of the problem, states:

Many of the problems of "white-collar crime" and of relaxed public morality, of high-priced vice and of fading personal integrity, are problems of *structural* immorality. They are not merely the problem of the small character twisted by the bad milieu. And many people are at least vaguely aware that this is so. As news of higher immoralities breaks, they often say, "Well, another one got caught today," thereby implying that the cases disclosed are not odd events involving occasional characters but symptoms of a widespread condition. There is good probative evidence that they are right.²⁰

In attempting to understand how such a "widespread condition" influences crime patterns, we should perhaps take for a lead the notion of the French sociologist Gabriel Tarde that "All the important acts of social life are carried out under the domination of example." Tarde asserted that: "Criminality always being. . . a phenomenon of imitative propagation. . . the aim is to discover. . . which among these various spreadings of example which are called instruction, religion, politics, commerce, industry, are the ones that foster, and which the ones that impede, the expansion of crime."²¹

One system of values which may foster crime, and particularly fraud, in our society, is that relating to the phenomenon of salesmanship. As Sutherland notes, "The confidence games are based essentially on salesmanship. . . ."²² To a great extent our society is built on salesmanship, and the term implies much more than the mere sale of material goods. In an era when an increased premium is being put on "idea men," the ability to "sell a bill of goods" (in the figurative sense as well as the literal) takes on added importance. It is just this ability which the successful con man must demon-

¹⁸ LOTTIER, STUART, *A Tension Theory of Criminal Behavior*, 7 AMER. SOCIOLOGICAL REV. 840 (1942).

¹⁹ CRESSEY, DONALD R., *OTHER PEOPLE'S MONEY: A STUDY IN THE SOCIAL PSYCHOLOGY OF EMBEZZLEMENT*, Glencoe: The Free Press, 1953, p. 30.

²⁰ MILLS, C. WRIGHT, *THE POWER ELITE*, New York: Oxford Univ. Press, 1956, pp. 343-344.

²¹ TARDE GABRIEL, *PENAL PHILOSOPHY*, tr. Howell, Boston: Little Brown, 1912, p. 362.

²² SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY*, p. 233.

strate. Closely related to "selling a bill of goods" is the cultural stress on "putting across" one's "personality." We are all quite familiar with the importance in modern American society of being "well liked," of getting along and of being a "good mixer." These socially-sanctioned attributes are the very hallmark of the experienced swindler. Maurer notes that con men, ". . . have cultivated the social side more than any other criminal group. They are able to fit in unobtrusively on any social level Although their culture is not very deep, it is surprisingly wide and versatile."²³

Though women frequently act as lures or accomplices in certain con games, full-fledged confidence swindling seems to be primarily a male offense in this country. Since nothing is required for the commission of fraudulent acts which would be beyond the physiological capacities or social opportunities of women, the fact that swindlers are predominantly male tends to underscore the influence of general social values in shaping patterns of fraud. The specific attributes of the swindler tend to be typically male attributes under our present social system. This is generally true of the ability to sell things and of having a successful "personality;" certainly, "coming up with an idea," "putting an idea across" and convincing others are held to be almost exclusively within the masculine domain. It may be interesting also to note that the role of confidant (which the swindler usually takes on, often with great success), be it in the form of priest, lawyer, doctor or psychoanalyst, is characteristically taken by a male in our society. Quite likely, we should expect an increase in female fraud in the future. Otto Pollak has noted that, ". . . an increase in female crimes against property is a concomitant of the social emancipation of women."²⁴ As the "idea woman" comes more and more into vogue, the "confidence woman" may cease to be a rarity. What affect this will have on the total extent of fraudulent crime remains to be seen.

Reinforcing the rationalizations which the social system provides the swindler, and further inciting his depredations, is the seemingly unlimited supply of victims. Businessmen seem particularly likely marks; as von Hentig has noted, "There is . . . general consensus that businessmen are excellent victims in all respects."²⁵ This must be at least partly attributed to certain values of the business community which seem to underlie the trend to what Mills terms a "structural immorality." As Donald Taft comments:

. . . success is based somewhat increasingly upon financial gain similar to that of the banker or speculator rather than upon that of the old-fashioned industrialist whose fun was in the day's work. Whatever the economists may say, speculative gains look more like luck than hard work, and more nearly approximate the something-for-nothing philosophy of the pickpocket.²⁶

Similarly, a probable influence on victim behavior is risk-taking, a generally approved activity which appears in numerous forms throughout our social life. The high value placed on risk-taking underlies the characteristic zeal for success which has played an integral part in shaping patterns of American social mobility. As Geoffrey Gorer has

²³ MAURER, *op. cit.*, p. 186.

²⁴ POLLAK, OTTO, *THE CRIMINALITY OF WOMEN*, Philadelphia: Univ. of Pennsylvania Press, 1950, p. 75.

²⁵ VON HENTIG, *op. cit.*, p. 435.

²⁶ TAFT, DONALD R., *CRIMINOLOGY*, New York: Macmillan, rev. ed. 1950, p. 231.

observed, "Gambling is. . . a respected and important component in many business ventures. . . . Like the gambler 'for fun' the American businessman is generally prepared to take proportionately far greater risks than his European equivalent."²⁷

The victim, then, like the swindler, can easily take advantage of conflicting and overlapping patterns of expected behavior to justify his participation in fraudulent schemes. And in the swindler, who is the idea man, the convincer, (and who thus in part typifies the leader), the victim may see something of his own (real or hoped-for) image; it may be this image to which he responds.

IMPLICATIONS FOR THE SOCIOLOGY OF CRIME

According to Professor Sutherland's "differential association" theory, "A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law."²⁸ While the impact of such "definitions" is evident in much of what I have suggested above, it may be more useful to view value orientation on the social-system level, rather than membership in particular social groups within that system, as the prime vehicle for assimilation of the definitions. Furthermore, at least insofar as it is offered as a general theory of all crime, the differential association theory is negligent in limiting the subject matter of criminology to the understanding of the individual offender. As Clarence Jeffery has remarked in his highly valuable article, "Crime must be studied as an aspect of institutional systems. Institutions, not individual offenders, should be the subject matter of criminology." Under such an approach, "The concept of cause is replaced by one of function."²⁹

"Structural-functional" sociology indeed offers much that is fruitful for analysis of the sociology of crime. According to this view, "deviance is always relative to a given institutionalized value-pattern system. . . ." ³⁰ Sutherland at least sensed this basic unity of legality and illegality, as evidenced by his thesis that essentially the same sort of processes which result in lawful behavior also result in unlawful behavior.

Structural-functional analysis makes clear that a given item may have "diverse consequences, functional and dysfunctional, for individuals, for sub-groups, and for the more inclusive social structure and culture."³¹ Thus crime, usually thought of as negative and disorganizing, can serve positive as well as negative functions within the social system. While there has been some recognition of possible economic functions of crime³², other social functions of crime are less frequently recognized.

The distinction between "manifest" and "latent" functions, "aids the sociological interpretation of many social practices which persist even though their manifest purpose is clearly not achieved."³³ This idea may be particularly useful in analysis

²⁷ GORER, GEOFFREY, *THE AMERICAN PEOPLE*, New York: Norton, 1948, p. 178.

²⁸ SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY*, p. 78.

²⁹ JEFFREY, CLARENCE R., *Crime, Law and Social Structure. Part I: Methodology*, 47 *J. CRIM. LAW, CRIMINOL. & POLICE SCI.* 423 (1956).

³⁰ PARSONS, TALCOTT, *THE SOCIAL SYSTEM*, Glencoe: The Free Press, 1951, p. 283.

³¹ MERTON, ROBERT, *SOCIAL THEORY AND SOCIAL STRUCTURE*, Glencoe: The Free Press, 1949, 1951, p. 32.

³² HAWKINS, E. R. AND WILLARD WALLER, *Critical Notes on the Cost of Crime*, 26 *J. CRIM. LAW AND CRIMINOL.* 684 (1936).

³³ MERTON, *op. cit.*, p. 64.

of seemingly unenforceable criminal laws; I have elsewhere tried to apply such an analysis to our current laws against abortion.³⁴ Since our fraud laws are rarely applied, and when applied do not seem effective, why do we maintain them in their present form? The answer may lie in the important functions served by the practices nominally sought to be outlawed; we might well ask ourselves—could we really afford to effectively curtail fraud?

Structural-functional analysis has underscored the fact that in order to eliminate an existing social structure one must first provide the necessary "functional alternatives." This should make evident the futility of attempting to curb fraud by merely increasing penalties. Rusche and Kirchheimer have quite rightly stressed this "uselessness of shifting penal policies as a weapon against socially determined variations in the crime rate."³⁵ Just what sort of adjustment in the social system must be made is uncertain, but the idea that radical changes are needed is not new. Sutherland, for example, recognized that "adequate control of professional crime cannot be attained by proceeding against thieves one at a time either by punitive or by reformative policies. Control calls, in addition, for modifications in the general social order out of which professional theft grows."³⁶ Perhaps the only real hope for a major reduction of fraud lies in such changes as may gradually result from an informed questioning of some of our prevailing social value systems.

Criminology has been seriously hampered in the past by its refusal to abandon the "social welfare approach" in favor of a truly sociological orientation. The former, as Kingsley Davis suggests, labors under the like-causes-like fallacy, here the idea that evil causes evil. To adopt a genuinely sociological mode of analysis, criminology must first of all recognize that "the contramoral is always functionally related to the moral. . . ."³⁷ With such recognition as a starting point, the phrase "sociology of crime" begins to take on real meaning.

³⁴ SCHUR, E. M., *Abortion and the Social System*, 3 SOCIAL PROBLEMS 94 (1955).

³⁵ RUSCHE, GEORG AND OTTO KIRCHHEIMER, *PUNISHMENT AND SOCIAL STRUCTURE*, New York: Columbia Univ. Press, 1939, p. 201.

³⁶ SUTHERLAND, *THE PROFESSIONAL THIEF*, p. 229.

³⁷ DAVIS, KINGSLEY, *Illegitimacy and the Social Structure*, 45 AMER. J. SOCIOL. 215 (1939).