Fall 1939

Criteria in Criminal Definitions--A Study in the Foundations of Law Enforcement

Spencer D. Parratt

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Spencer D. Parratt, Criteria in Criminal Definitions--A Study in the Foundations of Law Enforcement, 30 Am. Inst. Crim. L. & Criminology 332 (1939-1940)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

CRITERIA IN CRIMINAL DEFINITIONS— A STUDY IN THE FOUNDATIONS OF LAW ENFORCEMENT

SPENCER D. PARRATT*

Criminal law enforcement in the United States operates through two distinct modes. The first and traditional mode is through the ordinary police and prosecuting systems, utilizing the concept of criminal standard expressed in the maxim *ignorantia legis neminem excusat*. The second, and increasingly used mode is through extraordinary investigation agencies, either acting through ordinary prosecuting officials or parallel with them, and utilizing a concept of generalized standards commonly called "discretionary." Which-ever mode is selected by the legislature in providing enforcement machinery and standards depends upon somewhat indeterminate criteria, but usually including the capacity of the legislature to make relatively exact specifications of enforceable rules so that they will be understood by those affected. Hence, as operating enforcement processes, both modes become dependent upon two basic premises. The first of these is that definitions of criminality must be compatible with, and accepted by, those affected as within the bounds of prevailing standards of cultural mores. The second is that penalties, or whatever treatment is provided for convicts, be generally agreed upon as having a commensurate relationship with the nature of the criminal act or the nature of the criminal or both of these elements combined in some not too clear pattern of values.¹ Is it possible to experimentally explore into the operating foundations of these presumptions? A democratic control over administrative processes and rules would indicate that a relationship exists between criminal definitions and citizen attitudes. Perhaps a more subtle and effective method of determining this relationship can be found to supplement, or supersede, the electoral and legislative processes now in vogue.²

---

* School of Citizenship and Public Affairs, Syracuse University, Syracuse, N. Y.

¹ A study of this aspect of the problem is in preparation.

² Cf. The ideology represented in Kelsen's Pure Theory of Law, advanced without technological devices to discover ideological or attitudinal foundations except through the facts of operating existence, is significantly related to the viewpoint advanced as fundamental to this paper. See: *Reine Rechtslehre* (1934)

Significant attempts have been made in the direction of better determining the ideological or attitudinal foundation of criminal definitions. Professor Thurstone reported a study using the method of paired comparisons, but with a small number of statements reduced to the form of single words.³ A second study was reported in the *Journal of Criminal Law and Criminology* by Ray Mars Simpson. This utilized a method of averaging rank orders given to criminal definitions by contrasting interest groups and the development of a composite index of seriousness.⁴

The study here reported is another experimental approach toward the understanding of the relationship of criminal definitions and citizen supporting attitudes, utilizing Thurstone's third method of psycho-physical scale building. The methodology is too well established to require further comment, except as to the particularities involved in the present application.⁵ Both the index of ambiguity and that of relative seriousness have been considered worthy of examination. A list of 110 statements was accumulated as representative of considerable variety of criminal definitions. Some were taken from common law phrasings, checked against legal dictionaries. Others were taken from statutes and of a type presumed to be ministerially enforced. A third category included those designed to extend discretionary authority to administrators. A fourth included definitions of more or less contested social policies which were in process of crystallization, but not necessarily included in statutory definitions. A few statements were included as indicative of standards of criminality no longer representing active social problems.

The raters of these statements into eleven equal appearing interval units in terms of the variable of more or less seriousness included fifty urban dwellers, about half of whom lived in New York City and the balance in Syracuse, and fifty rural dwellers in upstate New York.⁶ Each group was treated separately, although

and the application of the concept to territorial areas under the title "Centralization" in *Authority and the Individual* (1937), pp. 210-239.

³ Reported in the 21 *Journal of Abnormal and Social Psychology* 384-400 (Jan., 1927).

⁴ 25 *Journal of Criminal Law and Criminology*, pp. 76-83. Using the most nearly comparable statements from Simpson's study for purposes of comparison with statements in the present study gives a Personian correlation of $\div .90 \div .03$ with the ratings made by the prisoners and a correlation of $\div .83 \div .05$ —with those of the teachers.

⁵ See "Measuring the Severity of the Third Degree," XXIV *Journal of Criminal Law and Criminology*, pp. 485-503 and footnotes.

⁶ The fifty urban raters included 22 from New York, of whom 4 were lawyers, 9 professional and business men, 4 professional and business women, and 5 classed as housewives. All of these were drawn from income groups between about \$2,500

the smallness of the samples permit of no more than suggestive conclusions. A separate treatment was given the data as a single unified body and the results from this are reported in more detail in the following tables. Tabular presentation appears briefest and least likely to interpose evaluation of results so as to prevent other evaluations to take place without suggestive influences. Examination of the classification of statements in the first eight tables will indicate that no effort has been made to separate definitions in accordance with any other than the element of likeness and difference evidenced under general headings descriptive of the interest affected. Moreover, no brief is held for the inclusion or exclusion

TABLE I
INTEGRITY OF STATE AS INSTITUTION

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
44	The betrayal or breach of allegiance to one's country (treason)	7.5	3.3
45	The making of false coins, currency or government obligations to look genuine with the intention of deceiving or imposing on others (counterfeiting) .	7.2	2.6
87	The advocacy of overturn of established government by force and violence.....	6.8	5.0
26	The revolting against legitimate governmental authority (sedition)	4.1	4.3
40	The disturbing of the public peace by three or more persons meeting together with an intent to execute some unlawful purpose of a private nature with force and violence (unlawful assembly)	3.1	2.7
32	The violation of the public peace, order or decorum (breach of the peace).....	1.9	1.5
108	The refusing to take up arms in defense of one's country when ordered to do so by high government officials	1.9	5.1
109	The refusing to appear at specified time and place for purpose of entering the army or navy of one's country when ordered to do so by high government officials	1.8	5.2
86	The advocacy of overturn of established government by peaceable means	.8	1.8

and \$10,000 per family unit as nearly as evidence indicated without direct questioning. The 26 raters from Syracuse included 12 governmental office holders, none of whom was involved in criminal administration. The remaining raters were about equally divided between housewives and office workers. The rural raters included 17 professional and business men from towns of less than 6,000 population, 10 governmental office holders not involved in criminal administration, and the remaining group farmers and housewives in about equal numbers. Of the total group 37 were women. No college student ratings were included, although a preliminary study used to stabilize the scale made with college student raters showed conclusions correlating to a marked extent with the results of the completed study.

of particular statements in particular tables. The tabular presentation has little relationship to the order in which the statements were numbered for rating purposes. The rating number has been retained and appears for purposes of identification before each statement. Arrangement has been made in order of seriousness within each table.

The very high ambiguity of the statements involving compulsory military or naval service (Nos. 108 and 109) probably is explainable through failure to specify the existence of war, peace, or threat of invasion. The scale position, indicating lack of seriousness, however, shows a large percentage of raters considering the behavior involved as having practically no degree of seriousness. The lack of sharpness in such long standing crimes as treason (No. 44) and sedition (No. 26) may reflect an undercurrent of sentiment from the earlier period of our history when revolution was more a subject of popular debate. Confusion in the meaning of treason may have led to its being defined in the United States Constitution. The small sample of raters recorded in this study, at least, evidence lack of agreement on this matter at the present time. The confusion as to the right to oppose existing organized government is strongly reflected in the high disagreement relative to the behavior in statement number 87. This statement, "The Advocacy of Overturn of Established Government by Force and Violence" presents a sharp contrast with statement number 86; "The Advocacy of Overturn of Established Government by Peaceable Means." In the opinions of the raters there is agreement that the latter behavior is neither serious nor ambiguous.

An outstanding characteristic evidenced is the high degree of seriousness accorded to crimes involving official peculation and corruption. The accepting of protection money for using official influence to protect criminality (No. 107) is as serious as treason (No. 44). If penalties were enforced in accordance with the scale projected by the raters in this study the punishments allotted for betrayal of public trust with a motive of pecuniary gain would be more nearly in accord with the spirit of the Russian than the traditional American system. The use of brutality in extracting confessions (No. 58) is rated but slightly more serious than the offering of a bribe to a public officer to influence his behavior (No. 30), while threats of physical torture (No. 59) is markedly less serious. The use of psychological tricks or misleading statements to cause suspects to confess (No. 60) is rated practically as without serious-

TABLE II

PURITY OF ADMINISTRATION		Index of Seriousness	Index of Ambiguity
Statement Number	Statement Phrasing		
<i>A—Private Assumption of Administrative Function: Repudiation of Lawfulness</i>			
71	The participating in any assemblage of persons illegally asserting the right to correctional power over the body of any person.....	8.0	3.7
38	The fighting together, with deadly weapons by two persons by agreement (dueling).....	2.7	4.5
<i>B—Peculation and Corruption in Official Functionaries</i>			
107	The accepting of "protection money" by a high political official for using influence to protect the engaging in criminal activities.....	7.5	3.3
106	The paying of "protection money" to a high political official for the privilege of engaging in criminal activities	7.1	3.1
31	The misappropriation of funds by a public officer, or person entrusted with public funds, for his own use or use of others (peculation).....	6.5	3.0
94	The misappropriation of public funds by any trusted public official	6.1	2.8
30	The offering of any undue reward or remuneration to any public officer, or person entrusted with public duty, to influence his behavior in the discharge of his duty (bribery).....	5.3	3.7
<i>C—Abuse of Discretion in Dealing With Suspected Law Breakers</i>			
58	The forcing of a suspected criminal to confess by use of physical torture (third degree practices) ..	5.6	3.7
59	The forcing of a suspected criminal to confess by threats of physical torture.....	3.9	4.5
60	The forcing of a suspected criminal to confess by using psychological tricks or misleading statements	.9	4.2
<i>D—Perversion of Enforcement Processes</i>			
34	The giving, or offering, of anything of value to a juror intended to influence him in the discharge of his duty (jury bribing).....	5.9	3.7
29	The willful making of false assertions as to one's opinion, belief, or knowledge, while under oath in a judicial proceedings (perjury).....	5.6	3.9
95	The obtaining of charitable relief by false swearing concerning condition of poverty.....	4.8	3.4
20	The commencement of a judicial proceeding against another, with malicious intent or other improper motives, without probable cause to sustain (malicious prosecution)	4.1	2.8
<i>E—Obstruction and Non-Cooperation in Enforcement Processes</i>			
75	The resisting or obstructing of an officer of the law in the performance of his duties.....	4.8	3.3
110	The refusing to take an oath when so ordered when appearing as a witness in a civil or criminal proceeding	1.5	3.0
84	The refusing of a person, or persons, seeking to recover a person kidnapped, to cooperate with the police and paying the sum required for such return	1.0	3.7
85	The agreeing of a person against whom theft has been committed, to refuse to prosecute if the property is returned.....	.6	2.0

ness, although the ambiguity is high enough to indicate that quite a number of raters placed this practice in the higher ranges of seriousness. The relatively high ambiguities accord jury bribing (No. 34) and perjury (No. 29) may be significant in evaluating the difficulty encountered in dealing with these practices in the court trial processes. Noticeable is the low degree of seriousness accorded to non-cooperation with enforcement officers (Nos. 110, 84, 85). This may represent suspicion and lack of faith in officialization of enforcement as it now exists. Criminal administrators might well consider findings of this type of having managerial utility in shaping future policies in dealing with the public.

As a class of statements the group relating to public order and safety are consistently unambiguous in the opinion of raters when scaled in terms of relative seriousness. The exceptions are significant. Cruelty to animals (No. 62) is a relatively recent projection of policy to extend the moral objection to brutality. The ambiguity is correspondingly higher than most of the long established criminal definitions. Driving an automobile while intoxicated (No. 66) is rated as of relatively high seriousness, but the lack of cultural agreement as to the exact degree is evidenced in the disunity of opinions. Reckless driving (No. 68) evidences similar qualities, with the index of ambiguity being higher and that of seriousness somewhat lower. The difficulty of parking enforcement is indicated when illegal parking before a fire hydrant (No. 60) is considered to be without appreciable seriousness.

Zoning and billboard regulation involve aesthetics as well as other purposes. There seems to be considerable agreement that violation of a zoning law so as to decrease sunshine and fresh air (No. 91) is worthy of penalty, but when violation decreases beauty of the community (No. 90) the seriousness is lower and the ambiguity higher. Billboards are not considered to constitute a serious threat to safety of automobile highways (No. 89), and there is scant approval of elimination of billboards to enhance the beauty of countrysides (No. 88).

The long established crimes against personal security find usual reflection in high concurrencies as to seriousness and ambiguity. Lynching (No. 71) stands out as an exception with a high rating as to seriousness, but with noticeable ambiguity. This lack of universality of agreement as to seriousness in New York State would furnish an interesting comparison with standards prevailing in the South. Manslaughter (No. 4) presents a record of high disagree-

TABLE III
PUBLIC ORDER, SAFETY AND AESTHETICS

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
<i>A—Joint Illegality: Aggravation of Numbers</i>			
105	Belonging to a gang of law breakers and acting in consort with them as a means of making a living.	6.0	2.3
83	The making of common plans by three or more persons to commit an illegal act (conspiracy).....	3.6	2.7
41	The fighting in public of two or more persons in a manner that will naturally produce terror in others (affray)	2.1	2.1
<i>B—Illegal Weapons</i>			
49	The illegal carrying or possessing of a pistol or similar weapon when committing a major crime, such as burglary or robbery.....	7.0	2.7
50	The illegal carrying or possessing of a pistol or similar weapon so as to keep it in concealment from others (concealed weapons).....	5.0	2.5
48	The illegal carrying or possessing of a pistol or similar weapon (illegal possession of firearms) ..	2.8	2.8
<i>C—Brutality</i>			
62	The beating or otherwise misusing animals (cruelty to animals)	2.5	4.0
<i>D—Illegal Condition</i>			
61	The living in idleness, although able to work and refusing to do so, and having no honest means of support (vagrancy)	1.8	2.3
<i>E—Use of Automobiles</i>			
66	The driving of an automobile while in a state of intoxication (driving while intoxicated).....	6.8	3.4
68	The driving of an automobile recklessly (reckless driving)	5.6	3.7
70	The driving of an automobile without a proper driver's license	2.0	2.5
69	The parking of an automobile in front of a fire hydrant (illegal parking)	1.0	1.5
<i>F—Zoning and Billboard Regulation</i>			
91	The constructing of a building, contrary to city zoning laws, so as to decrease the sunshine and fresh air of the community.....	2.9	2.9
90	The constructing of a building, contrary to city zoning laws, so as to decrease the beauty of the community	2.6	3.5
89	The maintaining of a billboard so as to decrease the traffic safety by distracting the attention of drivers of automobiles.....	2.5	2.2
88	The maintaining of a billboard so as to interfere with the natural beauty of the country-side.....	.9	2.3
92	The destruction of shade trees without first obtaining a license from a governmental agency seeking to preserve beauty and shade in the community....	.8	2.0

TABLE IV
SECURITY OF PERSON

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
<i>A—Freedom, Life and Limb</i>			
2	The willful killing of any human being with malice aforethought (murder)	9.5	1.0
9	The forcible stealing or carrying off of a person (kidnapping)	9.2	1.3
10	The forcible taking away of a man's child, wife or ward (abduction)	8.3	2.2
5	The cutting off or otherwise destroying the use of parts of any human being's body and rendering him incapable of defense (mayhem)	8.0	1.9
71	The participating in any assemblage of persons illegally asserting the right to exercise correctional power over persons by violence upon the body of the person (lynching)	8.0	3.7
78	The carnal knowledge of a woman by a man forcibly and against her will (rape)	7.2	2.4
4	The killing of any human being without malice or premeditation (manslaughter)	5.9	4.0
6	The forcible attempt to do bodily harm to another (assault)	5.8	3.1
58	The forcing of a suspected criminal to confess by use of physical torture	5.6	3.7
7	The physical beating, or other use of physical force wrongfully against another (battery)	4.8	2.3
8	The restraint of another, usually by confinement to curb freedom, without authority of law (false imprisonment)	4.6	4.2
74	The violating of a quarantine for infectious disease	4.4	4.2
28	The delivery or expulsion of the fetus, prematurely, or before it is capable of sustaining life (abortion)	3.0	4.0
32	The violation of the public peace, order or decorum (breach of peace)	1.9	1.5
3	The deliberate killing, or attempt to kill, oneself (suicide)	1.7	4.9
<i>B—Reputation</i>			
80	The extorting of money from a person by threats of accusation or exposure of past behavior (black-mail)	5.6	2.7
36	The publication of writing or pictures tending to blacken the reputation of another and expose him to public hatred, contempt or ridicule (libel)	4.4	2.6
20	The commencement of a judicial proceeding against another, with malicious intent or other improper motives, without probable cause to sustain (malicious prosecution)	4.1	2.8
37	The speaking of defamatory words which tend to prejudice the reputation of another or his trade, business or means of getting a living (slander)	3.3	2.7

ment as to seriousness. A surmise might be hazarded that the same element is involved that is responsible for legislative refine-

ments of degrees of manslaughter in terms of motivation and intent. False imprisonment (No. 8) probably reflects confusion resulting from police practice. Violation of quarantine (No. 74) represents a new and apparently uncrystallized standard, while abortion (No. 28) may evidence confusion as to seriousness as a result of the cracking of older values in light of confused standards of moral and religious attitudes. Suicide (No. 3) might have similar elements to account for the low degree of seriousness attached, with considerable disagreement as to this matter. The crimes against reputation and good name are accorded consistently low ambiguities indicating settled cultural values.

TABLE V

VICE: SEX, LIQUOR, GAMBLING

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
<i>Sex—</i>			
72	The employing of children for immoral purposes...	8.8	1.6
53	The operating for profit of a common brothel (brothel keeper)	5.8	3.1
52	The acting to provide gratification of lust to another, as seeking out patrons for a prostitute (acting as a pimp)	5.7	3.7
51	The permitting, by a woman, of common and indiscriminate sexual intercourse for gain (prostitution)	3.1	4.5
28	The delivery or expulsion of the fetus prematurely or before it is yet capable of sustaining life (abortion)	3.0	4.0
76	The selling, or offering for sale, of obscene literature	2.8	3.1
<i>Liquor—</i>			
54	The selling or otherwise furnishing of liquor to a minor	4.5	3.2
55	The selling or otherwise furnishing of liquor to a habitual drunkard	2.2	3.4
56	The selling or otherwise providing of liquor to patrons of a tavern or public place after hours fixed for closing such place	1.5	2.9
39	The state of being drunk or overpowered by intoxicants (drunkenness)	.9	4.2
<i>Gambling—</i>			
63	The keeping of a place where persons assemble for the purpose of gaming for money (keeping gambling place)	2.8	2.8
64	The playing of a game of skill or chance for stakes in money or other valuables (gambling)	1.0	2.9
65	The operating of a scheme for the distribution of prizes by chance among persons who have paid, or agreed to pay, a valuable consideration for a chance to obtain a prize (lottery)	.7	1.8

Behaviors related to vice evidence a not unexpected state of citizen confusion. Noticeable exceptions exist. Employing children for immoral purposes (No. 72) finds high concurrencies as to being very serious. But prostitution (No. 51), brothel keeper (No. 53), and acting as pimp (No. 52) evidence marked confusion. The selling of liquor to a minor (No. 54) or to a drunkard (No. 55) or the state of being drunk (No. 39) evidence the same type of confusion that permits legislative policy to shift from extreme to extreme without satisfying majorities for very long at a time. Noticeably less ambiguous, and evidencing less seriousness to the raters, are statements involving gambling practices. If a sample of citizenry sufficient to draw significant conclusions could be obtained

TABLE VI
PUBLIC MORALS AND RELIGION

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
<i>A—Marital Relations and Chastity</i>			
23	The voluntary sexual intercourse of a married person with a person of the opposite sex other than his or her spouse (adultery).....	4.7	4.0
18	The forsaking without just cause, a husband by the wife, or a wife by the husband (malicious abandonment)	4.6	2.9
27	The persuading of a female to sexual intercourse by artifice, flattery, or promises and causing her to surrender her chastity (seduction).....	4.5	3.2
22	The state of a man who has two wives, or of a woman who has two husbands, living at the same time	4.1	3.2
25	The voluntary sexual intercourse on the part of an unmarried person with a person of the opposite sex, whether married or unmarried (fornication)	1.2	3.5
35	The cohabiting or intermarriage of a person of the Caucasian or white race with/and a person of the Negro race (miscegenation).....	1.2	4.3
79	The non-payment of alimony by an ex-husband to his ex-wife	1.1	2.6
24	The voluntary illicit sexual intercourse between persons of opposite sexes (fornication).....	1.0	3.3
<i>B—Offenses Against God and Religion</i>			
73	The unlawful disinterment of the body of a dead person from a grave.....	3.6	4.1
57	The malicious reviling of God or religion (blasphemy)	1.1	3.3
67	The violation of a rigid Sunday law or religious regulation seeking to curtail or provide behaviors on Sunday (blue laws).....	1.1	1.9
77	The giving of birth control information to women unable to support larger families than they already have	.7	1.4

in a political jurisdiction and the same type of conclusion enforced as discovered in this experimental study, one might wonder as to the effectiveness of seeking to enforce penalties against the types of gambling described in the statements. (Nos. 63, 64, 65.)

One might conclude that public moral and religious values reflected in the behaviors described in the statements in this classification are in noticeable disagreement. Miscegnation (No. 35) has an ambiguity of 4.3 scale units, while adultery (No. 23) is not far behind in evidencing lack of concurrencies. Seduction (No. 27), Bigamy (No. 22), Fornication (Nos. 25 and 24) are definitely unsettled as to seriousness when compared with most long standing crimes against person or property. Probably the culture reflects

TABLE VII
SECURITY OF PROPERTY

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
11	The malicious burning of a dwelling or other structure belonging to another (arson).....	7.2	2.2
15	The fraudulent appropriation of money or goods entrusted to one's care by another (embezzlement)	6.1	2.6
12	The breaking and entering the house of another with the intent to commit a felony (burglary)...	5.9	2.1
47	The buying, receiving or possessing stolen goods with the knowledge that they are stolen (acting as a fence)	5.9	2.4
17	The forcible taking of goods or money of any value from the person of another (robbery).....	5.8	2.3
13	The taking of property valued at more than fifty dollars belonging to another and against his will (grand larceny)	5.6	2.1
46	The stealing or unlawful obtaining of the automobile of another (auto theft).....	5.2	2.0
21	The false making or changing, with intent to defraud, any writing which, if genuine might be of legal efficacy or validity (forgery).....	5.0	2.5
43	The entering upon another's possessions by force or violence (forcible entry).....	5.0	2.7
16	The deliberate deception with the design of securing something by taking unfair advantage of another (fraud)	4.8	2.8
98	The picketing of a place of an employer by strikers with violent destruction of property.....	4.6	3.7
19	The malicious physical injury to the rights of another, impairing their utility or materially diminishing their value (malicious mischief).....	4.2	3.6
14	The taking of property valued at less than fifty dollars belonging to another and against his will (petit larceny)	3.3	2.8
42	The entering upon the soil or property of another, in the absence of a lawful authority without the owner's license (trespass).....	2.3	2.3

a period of readjustment to new conditions of living, although there is little comparable data to make comparisons as to other times and places. At least the long established crime of blasphemy (No. 57) evidences a slight degree of seriousness hardly in keeping with its historical importance in the colonial period of New England and the ambiguity index is suggestive that confusion exists. But blue laws (No. 67) are no longer considered serious nor is there disagreement on this point. The finding relative to giving of birth control information to women unable to support larger families than they already have (No. 77), amounting to very high concurrence as to lack of seriousness was not produced by eliminating raters of Catholic faith, although the raters available probably were mostly non-Catholic in religion. No data was accumulated on this point.

If the people rating this instrument reflect the cultural values of their communities, there is little danger of New York State becoming "communistic" in the near future. Crimes against property are rated as noticeable serious in relative ranking with other classes, and the index of ambiguity is evidence that agreements as to ranking are consistently high. Only two statements, one relating to picketing with violent destruction of property (No. 98), and the other giving a technical legal definition of malicious mischief (No. 19) showed lack of agreement above 3.0 scale positions. When the variation in types of behavior described, and the range of seriousness accorded different behaviors (from 2.3 to 7.2) are considered the consistently low ambiguities evidences high cultural understandings. If ministerial enforcement of criminal law is supported in any classification in the present study, it is in the protection of property.

If presence of ambiguities in according relative seriousness might be explained in sex and moral relationships as due to breaking of old patterns of values, the presence of ambiguities in restrictions of economic freedom would seem to reflect the grappling with problems toward which crystalization of attitudes has not matured. Noticeable is the conclusion reached by the raters that none of the statements represent practices of outstanding seriousness when compared with crimes having longer standing. Equally noticeable is the fact that there is unquestioned evidence that penalties should attach to practices represented, even though seriousness is not marked. Legislation might be guided by such data as this if time and effort could be made available to gather a significant sample of citizen opinions.

What behaviors described in the statements are considered

TABLE VIII
CURTAILMENT OF ECONOMIC FREEDOM

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
99	The paying of workers of wages below that specified by law	4.0	4.0
102	Selling, or offering for sale, patent medicines having no scientifically determined curative properties	3.9	4.9
93	The participating in any monopolistic agreement to raise the price of merchandise, or decrease its quality, at the expense of the public.....	3.8	2.8
33	The combining of persons for purpose of interfering, otherwise than by lawful competition, with the business affairs of others, and depriving them, by means of threats and intimidation, of the right to conduct their businesses according to their own judgment (boycott)	3.4	3.5
100	The suing of unfair methods of competition.....	3.2	3.6
103	Advertising patent medicine having no scientifically determined curative properties	3.2	3.8
96	The influencing of legislation in the interest of a special group in the population.....	3.0	4.8
101	The granting of secret rebates in business.....	3.0	3.9
82	The concealing of merchandise upon which a duty is lawfully charged when bringing it into the country	2.9	3.1
104	Causing employees to work longer than eight hours per day	1.5	4.6
97	The picketing of the place of an employer without violence by strikers	0.6	2.7
98	The picketing of a place of an employer by strikers with violent destruction of property.....	4.6	3.7
8	The fraudulent taking into a country, or out of it, merchandise prohibited from being so taken by law (smuggling)	4.4	3.0

most serious? Table IX presents an answer to this question, the statements being arranged in order of relative seriousness as determined by 100 raters. The ambiguities are given after the index of seriousness for each statement. It will be observed that all of the most serious crimes are against personal security and status. The more common types of crime, as determined by the Bureau of Investigation Quarterly Reports, are not included in this table. Moreover, except for lynching (No. 71), advocacy of violent revolution (No. 87), treason (No. 44), driving an automobile while intoxicated (No. 66) and behaviors involving official corruption (Nos. 107, 106, 31) all of these statements are without high ambiguities, none having an index of more than 2.7 scale positions.

Corollary to the question relating to crimes of greatest seriousness is that as to those of least seriousness. Table X presents all of these rated below a scale position of 1.5, arranged in order of

TABLE IX
CRIMES OF GREATEST SERIOUSNESS

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
2	The willful killing of any human being with malice aforethought (murder)	9.5	1.0
9	The forcible stealing or carrying away of a person (kidnapping)	9.2	1.3
72	The employing of children for immoral purposes....	8.8	1.6
10	The forcible taking away of a man's child, wife or ward (abduction)	8.3	2.2
5	The cutting off or otherwise destroying the use of parts of any human being's body and rendering him incapable of self-defense (mayhem).....	8.0	1.9
71	The participating in any assemblage of persons illegally asserting the right to exercise correctional power over persons by violence upon the body of any person (lynching).....	8.0	3.1
11	The malicious burning of a dwelling or other structure belonging to another (arson).....	7.6	2.2
44	The betrayal or breach of allegiance to one's country (treason)	7.5	3.3
107	The accepting "protection money" by a high political officer for using influence to protect the engaging in illegal activities.....	7.5	3.3
78	The carnal knowledge of a woman by a man forcibly and against her will (rape).....	7.2	2.4
45	The making of false coins, currency or government obligations to look genuine with intention of deceiving or imposing on others (counterfeiting)...	7.2	2.6
106	The paying of "protection money" to a high political officer for the privilege of engaging in criminal activities	7.1	3.1
49	The illegal carrying or possessing a pistol or similar weapon when committing a major crime, such as burglary or robbery	7.0	2.7
87	The advocacy of overturn of established government by force and violence.....	6.8	5.0
66	The driving of an automobile while in a state of intoxication (intoxicated driving).....	6.8	3.4
31	The misappropriation of funds by a public officer, or person entrusted with public funds, for his own use or use of others (peculation).....	6.5	3.0

No other statement obtained an index of seriousness above 6.1.

ascending seriousness. Significant may be the fact that quite a number of the behaviors described and rated as of extremely low seriousness, involve crimes entrusted to ministerial enforcement. Quite possibly administrative experience would warrant experimentation with enforcement of prohibitions of behaviors indicated through discretionary powers, at least to determine whether or not the element of intent, motive, status, or some other factor is not involved as a condition precedent to justification of imposing penalty. This suggestion may be particularly applicable in instances

where the index of ambiguity is high enough (possibly above 3.0 or thereabouts; a matter requiring experimental determination in

TABLE X
CRIMES OF LEAST SERIOUSNESS
ARRANGED IN ORDER OF INCREASING SERIOUSNESS BY 100 RATERS

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
1	(This is the landmark statement and of value only as determining a point of reference.) The selling of bread in absolute accordance with legal provisions	.4	1.1
85	The agreeing of a person against whom theft has been committed to refuse to prosecute if the property is returned	.6	2.0
97	The picketing of the place of an employer without violence by strikers	.6	2.7
77	The giving of birth control information to women unable to support larger families than they already have	.7	1.4
65	The operating of a scheme for the distribution of prizes by chance among persons who have paid, or agreed to pay, a valuable consideration for a chance to obtain a prize (lottery).....	.7	1.8
86	The advocacy of overturn of established government by peaceable means	.8	1.8
92	The destruction of shade trees without first obtaining a license from a governmental agency seeking to preserve beauty and shade in the community..	.8	2.0
88	The maintaining of a billboard so as to interfere with the natural beauty of the country-side.....	.9	2.2
60	The forcing of a suspected criminal to confess by using psychological tricks or misleading statements	.9	4.2
39	The state of being drunk or overpowered by intoxicants (drunkenness)	.9	2.2
69	The parking of an automobile in front of a fire hydrant (illegal parking).....	1.0	1.5
84	The refusing of a person, or persons, seeking to recover a person kidnapped, to cooperate with the police, and paying the sum required for such return	1.0	3.7
64	The playing of a game of skill or chance for stakes in money or other valuables (gambling).....	1.0	2.9
24	The voluntary illicit sexual intercourse between persons of opposite sexes (fornication).....	1.0	3.3
79	The non-payment of alimony by an ex-husband to his ex-wife	1.1	2.6
57	The malicious reviling of God or religion (blasphemy)	1.1	3.3
35	The cohabiting or intermarriage of a person of the Caucasian or white race with a person of the Negro race (miscegenation)	1.2	4.3
25	The voluntary sexual intercourse on the part of an unmarried person with a person of the opposite sex, whether married or unmarried (fornication).	1.2	3.5

No other statement rated below 1.5.

particular instances) to warrant the conclusion that there exists basic confusion of citizen values.

If selection of discretionary methods of execution of criminal definitions is made as a consequence of lack of agreed values as to seriousness of defined behaviors, a summarization of statements evidencing greatest and least ambiguity might be significant. Table XI presents the statements evidencing greatest ambiguity; Table XII those evidencing least ambiguity and suggestively most subject to ministerial enforcement in terms of the criteria developed in this approach. It will be noted that ambiguity may be due to lack of clarity in the statement as it would apply to actual situations. Ambiguity may be due to inherent multiplicity of meaning to different raters and correctable by more accurate separation of elements. Or ambiguity may be due to confusion of values among raters. More penetrating experimentation is necessary before separation of these differentials can be made. With this qualification, the table seems to supply a basis for further analysis of the nature of citizen attitude toward criminal definition. Lack of crystallization of developing attitudes toward new problems of social control seem to be suggested in a number of statements, breakdown of previous patterns in others, and clashes of economic, biologic and moral values in others which may reflect the impingement of changing environmental forces of indefinite variety. But the table gives little support to the presumption that laws entrusted to ministerial enforcement are most agreed upon in terms of seriousness. If discretionary enforcement is to be utilized a question of the conditions to the selection of laws to be so enforced may prove significant, even if the methodology evidenced in the present approach proves inadequate. Another comment seems fitting. Students of public administration tend to elevate "efficiency" to be the criterion *sine quo non* of administration. How can there be determinable efficiency when the ends are confused, or where there is basic clash between citizen support and legislative definition? Which standard is the activity of the administrator to be measured against in considering efficiency in his accomplishments? Table XII is presented immediately following Table XI. It presents the statements found least ambiguous by the 100 raters. It should be noted that statements falling at extreme positions as to seriousness or its lack, must, as a limitation of the methodology be relatively unambiguous.

TABLE XI
CRIMES HAVING GREATEST AMBIGUITY
ARRANGED IN ORDER OF DECREASING AMBIGUITY BY 100 RATERS

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
109	Refusal to appear at specified time and place for purpose of entering the army or navy when ordered to do so by high government officials.....	5.2	1.8
108	Refusal to take up arms in defense of one's country when ordered to do so by high government officials	5.1	1.9
87	Advocacy of overturn of established government by force and violence	5.0	6.8
102	Selling, or offering for sale, patent medicines having no scientifically determined curative properties	4.9	3.9
3	The deliberate killing, or attempt to kill oneself (suicide)	4.9	1.7
96	The influencing legislation in the interest of a special group in the population.....	4.8	3.0
104	Causing employees to work longer than eight hours per day	4.6	1.5
38	The fighting together with deadly weapons by two persons by agreement (dueling).....	4.5	2.7
51	The permitting, by a woman, of common and indiscriminate sexual intercourse for gain (prostitution)	4.5	3.1
59	The forcing of a suspected criminal to confess by threats of physical torture.....	4.5	3.9
26	The revolting against legitimate governmental authority (sedition)	4.3	4.1
35	The cohabiting or intermarriage of a person of the Caucasian or white race with a person of the Negro race (miscegenation)	4.3	1.2
8	The restraint of another, usually by confinement to curb freedom, without authority of law (false imprisonment)	4.2	4.6
60	The forcing of a suspected criminal to confess by using psychological tricks and misleading statements	4.2	.9
73	The unlawful disinterment of the body of a dead person from a grave.....	4.1	3.6
99	The paying of workers wages below that specified by law	4.0	4.0
4	The killing of any human being without malice or premeditation (manslaughter)	4.0	5.9
23	The voluntary sexual intercourse of a married person with a person of the opposite sex other than his or her spouse (adultery).....	4.0	4.7
28	The delivery or expulsion of the fetus prematurely, or before it is yet capable of sustaining life (abortion)	4.0	3.0

One of the reasons for ambiguity in a sample of raters taken from diverse groups is that there may be differentials among the group interests. Adequate determination of the seriousness and

TABLE XII
CRIMES HAVING LEAST AMBIGUITY
ARRANGED IN ORDER OF INCREASING AMBIGUITY BY 100 RATERS

Statement Number	Statement Phrasing	Index of Seriousness	Index of Ambiguity
2	The willful killing of any human being with malice aforethought (murder)	1.0	9.5
97	The picketing of the place of an employer without violence by strikers.....	1.1	.6
9	The forcible stealing or carrying away of a person (kidnapping)	1.3	9.2
77	The giving of birth control information to women unable to support larger families than they already have	1.4	.7
69	The parking of an automobile in front of a fire hydrant (illegal parking)	1.5	1.0
72	The employing of children for immoral purposes..	1.6	8.8
65	The operating of a scheme for the distribution of prizes by chance among persons who have paid a valuable consideration for a chance to obtain a prize (lottery)	1.8	.7
86	The advocacy of overturn of established government by peaceable means	1.8	.8
32	The violation of the public peace, order or decorum (breach of the peace).....	1.9	1.5
5	The cutting off or otherwise destroying the use of parts of any human being's body and rendering him incapable of defense (mayhem).....	1.9	8.0
67	The violating of a rigid Sunday law or religious regulations seeking to curtail or provide behaviors on Sunday (blue laws).....	1.9	1.5
39	The state of being drunk or overpowered, by intoxicants (drunkenness)	2.0	.9
46	The stealing or unlawful obtaining of an automobile of another (auto theft).....	2.0	5.2
85	The agreeing of a person against whom theft has been committed to refuse to prosecute if the property is returned	2.0	.6
92	The destruction of shade trees without first obtaining a license from a governmental agency seeking to preserve beauty and shade in the community..	2.0	.9

ambiguity of specified definitions requires adequacy of sampling all groups affected to obtain the degree of stability warranting conclusions as to cultural patterns within the jurisdiction in question. Lack of time and opportunity has limited the study presented to the rating of fifty urban and fifty rural people. A fundamental query relates to the extent to which agreement exists among the two groups included in a single "sovereign" unit. Quite possibly the extension of the type of analysis projected in this approach will permit more adequacy in defining areas of common problems; since problems in a democracy are what the people agree are problems. The urban-rural differential, for example, might prove more of a

justifiable foundation for separating areas of administration or legislation than present state areas.

Table XIII presents the statements indicating greatest disagreement between urban and rural raters in order of decreasing differential. All other crimes, except the twenty-three, in the list of one hundred ten, were so close as to make differentials unimportant in light of the small sample of attitudes. Even the data presented must be carefully qualified because of the smallness of numbers. But the differentials are suggestive at least.

TABLE XIII
CRIMES OF GREATEST DISAGREEMENT BETWEEN 50 URBAN AND 50 RURAL
RATERS AS TO SERIOUSNESS

Statement Number	Statement Phrasing	Differential in Scale Position			
		Urban	Rural	Differential	Combination
104	Causing employees to work longer than eight hours per day	2.1	1.1	1.0	(1.5)
102	Selling, or offering for sale, patent medicines having no scientifically determined curative properties	3.6	4.6	1.0	(3.9)
96	The influencing of legislation in the interest of a special group in the population..	2.4	3.4	1.0	(3.0)
38	The fighting together with deadly weapons by two persons by agreement (dueling)	3.1	2.2	.9	(2.7)
25	The voluntary sexual intercourse on the part of an unmarried person with a person of the opposite sex (fornication)	1.9	1.1	.8	(1.2)
101	The granting of secret rebates	3.6	2.8	.8	(3.0)
3	The deliberate killing, or attempt to kill, oneself (suicide)	1.4	2.1	.7	(1.7)
95	The obtaining of charitable relief by false swearing concerning condition of poverty	4.2	4.9	.7	(4.8)
63	The keeping of a place where persons assemble for the purpose of gambling for money (keeping gambling place)	2.5	3.2	.7	(2.8)
48	The illegal carrying or possessing a pistol or similar weapon (illegal possession of firearms)	4.1	3.4	.7	(3.8)

Statement Number	Statement Phrasing	Differential in Scale Position			
		Urban	Rural	Differential	Combination
19	The forsaking, without just cause, a husband by the wife, or a wife by the husband (malicious abandonment)	4.2	4.8	.6	(4.6)
35	The cohabiting or intermarriage of a person of the Caucasian or white race with a person of the Negro race (miscegenation) ..	.9	1.5	.6	(1.2)
23	The voluntary sexual intercourse of a married person with a person of the opposite sex other than his or her spouse (adultery) ..	4.3	4.8	.5	(4.7)
51	The permitting, by a woman, of common and indiscriminate sexual intercourse for gain (prostitution)	2.7	3.2	.5	(3.1)
44	The betrayal or breach of allegiance to one's country (treason)	7.4	7.9	.5	(7.5)
57	The malicious reviling of God or religion (blasphemy)	.9	1.4	.5	(1.1)
107	The accepting of "protection money" by a high political officer for using influence to protect the engaging in illegal activities	7.1	7.6	.5	(7.5)
76	The selling, or offering for sale, of obscene literature	2.5	3.0	.5	(2.8)
53	The operating, for profit, of a common brothel (brothel keeper)	5.4	5.9	.5	(5.8)
31	The misappropriation of funds by a public officer, or person entrusted with public funds, for his own or the use of others (peculation)	6.2	6.7	.5	(6.5)
98	The picketing of a place of an employer by strikers, with violent destruction of property	4.2	4.7	.5	(4.6)
87	The advocacy of overturn of established government by force and violence	6.7	7.3	.5	(6.8)
30	The offering of any undue reward or remuneration to any public officer, or person entrusted with public duty, to influence his behavior in the discharge of his duty (bribery)	5.2	5.7	.5	(5.3)

No others having a differential in scale position of more than .4.

SUMMARY

In summary it may be noted that the status of citizen opinion indicated in this study provides an important vantage point from which police and prosecution administration can be considered. It will be quite impossible to determine an operating criterion for evaluation of police administration until it becomes possible to project a point, or points, of reference against which measurement can take place. If the "law" is not supported by citizen approvals its enforcement cannot be a measure of police success without endangering the critical balance of local political responsibilities. Only when the law is in conformity with citizen agreements upon approvals can ministerial policing be expected so that professional emphasis upon methods can be developed. Otherwise "politics" is inherent in the system and criticism of the police or prosecutor for his giving deference to what he considers his official and personal self-interests is not only unjustified, but naively unfair.⁷

---

⁷ See 199 *Annals of the American Academy of Political and Social Science*, 154-174, "How Effective Is a Police Department."