

CHAPTER 2: THE SOCIAL CONSTRUCTION OF COMMON CRIMINALS IN THE UNITED STATES

The passage of the California Three Strikes law was not simply the result of the killing of two girls--although the killings were a major factor: California voters were responding to social and psychological trends--both national and local--that played their part in the law's passage. The next three chapters review the psychological cognitive processes and historical and social trends in California during 1993 and 1994 and prior to the passage of the Three Strikes law. The primary focus will be on white voters. Though California whites were on their way to becoming a minority in the 1990s, they still maintained strong political control as demonstrated by the 80 to 85 percent of the votes they had cast in the 1992 and 1994 elections.¹

This chapter reviews many concepts in social psychology that might be considered permanent features of why voters, especially white voters, stigmatize street criminals much greater than other criminal activity and why this leads to greater punishments for street criminals.² Chapter 3 will review the roots of the national psyche or *gestalt* favoring increasingly harsh punishments during the 1980s and early 1990s. And chapter 4 examines trends peculiar to California that produced an anxious

¹ Dale Maharidge, *The Coming White Minority: California, Multiculturalism, and America's Future* (New York: Vintage Books, 1996), 5. An analysis of ballot box trends indicates that by 2040, when nonwhites will be two-thirds of the state's population, whites could still represent a majority of voters. Justin Pritchard, "By 2040, Whites May Still Remain in Voter Control," *San Diego Union-Tribune*, December 5, 2002.

² While many of the social psychological cognitive processes that stigmatize criminals are stronger for whites, it should be kept in mind that some of the same processes also cause all people to overly stigmatize criminals.

and fearful public that was willing to endorse an extremely harsh Three Strikes law.

These three chapters also represent why the law was used more harshly in the immediate years after the passage of the measure.

The Stigmatization and Lack of Political Power of Criminals

Some political scientists view the process of implementing public policy as a battlefield in which different interests battle against one another, and the interests with the most political power and who receive the most sympathy from the public are able to win against those with little political power or little sympathy from the public.³ An imbalance allows some groups to receive more benefits from government policy makers. Only on rare occasions do the lesser interests get treated fairly. Special interest groups, such as small business owners, the middle class, scientists, and senior citizens are considered to possess a lot of political clout, and are socially constructed as “deserving” assistance from society. Big business, the rich, and gun owners are viewed as groups that have a great deal of political power, but less public support. Mothers and children are considered to have little political power, but receive a lot of public sympathy. And, the groups that have the least political power and receive the least sympathy (and are thought of as “undeserving” of help) are gangs and street criminals.⁴ Politicians are believed to thoroughly buy into this matrix and to move to help groups which have the most political power and social prestige, while ignoring or even vilifying those with little political power and social sympathy.

³ Anne L. Schneider and Helen M. Ingram, *Policy Design for Democracy* (Lawrence: University Press of Kansas, 1997).

⁴ Schneider and Ingram, *Policy Design for Democracy*, 109.

Convicted common criminals and their families and friends are perceived as part of communities that are least likely to vote. Felons and ex-felons typically forfeit their right to vote; it is estimated that 13 percent of black men in the United States are ineligible to vote because of criminal convictions.⁵ Most political power is tied to giving campaign contributions, and common criminals are particularly unlikely to donate to political campaigns.

In many cases a proposed law will have recognizable parties who will benefit or suffer from such a law. The parties to be affected can respond accordingly. When legislation is put forward to make a specified act a crime or to enhance the sentences tied to criminal laws, however, there are few people who will step forward in protest, or admit that such a law could directly affect them. The only protesters against such laws are altruistic organizations which act on behalf of others, such as the American Civil Liberties Union. These organizations usually are overwhelmed and cannot devote their energies to all issues--so many proposed criminal laws go through the legislative process unopposed. On occasion there are defense attorneys who protest more punitive laws, but they usually are burdened by large caseloads and therefore have difficulty finding the time and energy to lobby or protest.⁶ In addition, as cynical as it may sound, some defense attorneys see such laws as working to their benefit: as people are

⁵ Michael A. Fletcher, "States Working Hard to Get Felons Back Into Polling Booths: Many Citizens Resist Notion of Criminals Voting," *San Francisco Chronicle*, February 24, 1999.

⁶ In a state as large as California, it is also very difficult for many individuals to lobby or protest at the state capitol because of the time and cost of travel.

subjected to more criminal laws and harsher sentences, the more defense attorneys have to be hired and the easier it is for them to make more money.⁷

Fundamental Attribution Error

Why is there such a stigma attached to criminals? Sociologists often recognize that few people live the life of a saint. Most people consciously break laws--and yet there seems to be a greater negative attitude when judging “others” who break laws. The word “criminal” is rarely used when talking about one’s own actions: it is often used when talking about “others.”

Social psychologists refer to the ideas we have about others’ behavior as part of attribution theory.⁸ An internal attribution generally refers to the inference we give to another’s particular actions as attributable to internal causes such as the person’s attitudes, character, motive or personality--and the assumption is that the action is attributable as unique to that person (for example, “that person is bad”). An external attribution generally refers to our inference that particular actions are attributable to external causes such as the environment or the situation the person is in--and the assumption is that most people would act in a similar manner if in the same situation (for example, “I would have done the same thing if I had been in their shoes”).

Combined with theories on self-esteem (the extent to which people believe themselves

⁷ Since the passage of the California Three Strikes law, the price to hire a private defense attorney to handle a possible third strike for a petty theft or simple possession of a controlled substance case is \$10,000 or higher. Part of the rise in fees might be due to the attorney taking more precautions and spending more time on the case than a typical case, but the other reason might be the fact that attorneys know they can ask such prices because the person facing a third strike penalty is generally desperate and looks at the consequences of a 25 years-to-life sentence as too severe to shop around and take a chance on cheaper attorneys. This information was gathered by the author during interviews with family members of third strikers.

⁸ Fritz Heider is widely regarded as the originator of attribution theory. Heider, *The Psychology of Interpersonal Relations* (New York: Wiley, 1958).

good, competent, and decent), most social psychologists have found that we generally attribute our own successes to internal rather than external attributes, but our failures to external attributes (these are also known as self-serving attributions). On the other hand, we generally attribute the successes and failures of others mostly on internal attributes--and this has become so pervasive that it has been termed “the fundamental attribution error.”⁹

Fundamental attribution error has been shown to be more pervasive in Western cultures where the focus is on individual freedom and autonomy than in Eastern cultures that are more collectivist and focus more on group membership, interdependence, and conformity of group norms.¹⁰

When thinking about crime and attribution theories, therefore, it would not be surprising that many of us tend to self-servingly attribute our own criminal behavior to

⁹ Lee Ross, "The Intuitive Psychologist and His Shortcomings: Distortions in the Attribution Process," in *Cognitive Theories in Social Psychology*, ed. Leonard Berkowitz, 337-384 (New York: Academic Press, 1978). There have been many studies demonstrating the tendency of people to attribute the actions of others as a reflection of internal attributes rather than external attributes. See for example, Edward E. Jones and Victor A. Harris, "The Attribution of Attitudes," *Journal of Experimental Social Psychology* 3, no. 1 (1967): 1-24; Ross, "The Intuitive Psychologist and His Shortcomings"; Lee Ross and Richard E. Nisbett, *The Person and the Situation: Perspectives of Social Psychology* (New York: McGraw-Hill, 1991). Reasons explaining fundamental attribution error are that people tend to have their focus of attention on the person rather than the situation (and such situational information may be unavailable), internal attributes are simpler and more concrete as opposed to external attributes which are more complex and abstract, and our cultural emphasis on individual versus collectivist thinking. See Elliot Aronson, Timothy D. Wilson and Robin M. Akert, *Social Psychology*, 2nd ed. (New York: Longman, 1997), 127-130; Colin Fraser and Brendan Burchell, *Introducing Social Psychology* (Cambridge, UK: Polity, 2001), 221.

¹⁰ See Francis L. K. Hsu, "The Self in Cross-Cultural Perspective," in *Culture and Self*, eds. Anthony J. Marsella, George A. De Vos and Francis L. K. Hsu, 24-55 (London: Tavistock Publications, 1981); H.C. Triandis, "Cross-Cultural Studies of Individualism and Collectivism," in *Nebraska Symposium on Motivation, 1989*, ed. J.J. Berman, 41-133 (Lincoln, NE: University of Nebraska Press, 1990); L. Zebrowitz-McArthur, "Person Perception in Cross-Cultural Perspective," in *The Cross-Cultural Challenge to Social Psychology*, ed. Michael Harris Bond, 245-265 (Newbury Park, CA: Sage, 1988) cited in Aronson, Wilson and Akert, *Social Psychology*, 130; Joan G. Miller, "Culture and the Development of Everyday Social Explanation," *Journal of Personality & Social Psychology* 46 (1984): 961-978 cited in Myers, *Social Psychology*.

external attributes, but to blame the criminal behavior of others on internal attributes.¹¹ When thinking about punishment, therefore, criminal acts would be primarily viewed as a result of the criminal's disposition, personality, or other internal attributes. Solving crime would focus on the criminal, and external causes would tend to be ignored or disregarded. Punishing and incarcerating the individual would appear to be the primary method of dealing with crime. The reaction would be one of retribution or revenge, justified by the idea in trying to prevent future crimes by deterring the wrong-doer and others by the harshness of punishment. Thoughts of ameliorating the crime problem based on the external attributes or root causes would tend to be ignored or take a secondary importance.

Schemas

How people select, interpret, and use information to make judgments and decisions about the social world is referred to as "social cognition."¹² Through social cognition, people develop theories about the world that social psychologists refer to as "schemas." These schemas contain basic knowledge and impressions that are about matters such as people, places, social roles, and specific events. In many ways, the schemas that people develop are helpful, and they can be used as shortcuts when making decisions. Having developed the schema that a friend has extreme mood swings, for instance, one might not react too strongly at something that the friend has

¹¹ Studies have found that the way we process attributions influences our attitudes toward the poor and unemployed; when we focus only on internal attributes, we tend to blame the poor for their predicament and thus have little sympathy for them. N.T. Feather, "Causal Attributions and Beliefs About Work and Unemployment Among Adolescents in State and Independent Secondary Schools," *Australian Journal of Psychology* 35, no. 2 (1983): 211-232; Gail S. Zucker and Bernard Weiner, "Conservatism and Perceptions of Poverty: An Attributional Analysis," *Journal of Applied Social Psychology* 23 (1993): 925-943.

¹² Aronson, Wilson and Akert, *Social Psychology*, 22.

said, but rather wait until the friend is seen again and see if the same pattern emerges when the friend is in another mood. Schemas, however, can also have negative consequences. Schemas are often incomplete or incorrect--and bad judgments and decisions can be made because of this.

Social psychologists have examined how people develop schemas and use new information. They have discovered that often new information will be ignored or not remembered if it is contrary to the schema already developed.¹³ On the other hand, information that is consistent with a schema will be more easily remembered and used to reinforce a schema already developed. Studies also have even shown that sometimes ambiguous information will be interpreted in a way to fit within already developed schemas and new information can be misperceived or distorted in order to fit within the working schemas.¹⁴

The schema that the general public holds about crime and criminals is that most crime is committed by people who have “bad” or “evil” dispositions. They exclude the belief that external attributes have played a part in the choices people made when committing crime. Not only does fundamental attribution error play a part, but this schema is learned early in life. Most children stories contain lessons that try to turn children away from choosing to commit crime. The schema is constantly developed throughout life from the moral lessons of novels, television, and movies and reinforced

¹³ Susan T. Fiske, "Social Cognition and Social Perception," *Annual Review of Psychology* 44 (1993): 155-194; E. Tory Higgins and John A. Bargh, "Social Cognition and Social Perception," *Annual Review of Psychology* 38 (1987): 369-425; Charles Stangor and David McMillan, "Memory for Expectancy-Congruent and Expectancy-Incongruent Information: A Review of the Social and Social Developmental Literatures," *Psychological Bulletin* 111 (1992): 42-61 all cited in Aronson, Wilson and Akert, *Social Psychology*, 68.

¹⁴ Harold H. Kelley, "The Warm-Cold Variable in First Impressions of Persons," *Journal of Personality* 18 (1950): 431-439.

in discussions with people who generally refer to crime as committed by “others.” Although there are a few novels, television shows, and movies that show external attributes as part of the cause of crime, the general schema that crime is caused by internal attributes is so pervasive and ingrained that people tend to ignore examples stressing external attributes.¹⁵

Social psychologists have also studied schemas in conjunction with a concept known as the “self-fulfilling prophesy.” They have demonstrated that teachers who have developed a schema that particular students are better than others will generally act (even unconsciously) in a manner that gives more confidence to such students and they also will devote more time to such students.¹⁶ Because the result then reinforces the teacher’s schema, the schema is held even stronger. This concept of reinforcement through a self-fulfilling prophesy has been referred to as the “reign of error,” and it has been discussed at length under labeling and social construction theories developed by Howard Becker and Edwin Lemert.¹⁷ Its application within jails and prisons seems a

¹⁵ Film and television directors and novelists often try to achieve character development of making the “bad guys” especially “evil.” The emotions of revenge are then fulfilled when the “evil character” gets killed or put in prison.

¹⁶ Robert Rosenthal and Lenore Jacobson, *Pygmalion in the Classroom; Teacher Expectation and Pupils' Intellectual Development* (New York: Holt Rinehart and Winston, 1968). The self-fulfilling prophesy effect, however, has also been shown to not be overly strong. Robert Rosenthal reviewed 448 public experiments and found that in only 39 percent of the studies did expectation affect performance. Robert Rosenthal, "Expectancy Effects: A Brief Update 25 Years after the Pygmalion Experiment," *Journal of Research in Education* 1 (1991): 3-12. High expectations were shown to be especially potent for low achievers. Stephanie Madon, Lee Jussim and Jacquelynne Eccles, "In Search of the Powerful Self-Fulfilling Prophesy," *Journal of Personality & Social Psychology* 72 (1997): 791-809.

¹⁷ Robert K. Merton, "The Self-Fulfilling Prophesy," *Antioch Review* 8 (1948): 193-210 cited in Aronson, Wilson and Akert, *Social Psychology*, 78. Howard Saul Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: Free Press of Glencoe, 1963); Edwin McCarthy Lemert, *Human Deviance, Social Problems, and Social Control* (Englewood Cliffs, N.J.: Prentice-Hall, 1967) cited in Stuart Henry and Werner J. Einstadter, *The Criminology Theory Reader* (New York: New York University Press, 1998), 291.

logical extension. When employees in corrections or the criminal justice system believe that prisoners cannot be rehabilitated or educated interact with the prisoners, rehabilitation or education is only done grudgingly. When the rehabilitation or education fails, the belief that such approaches do not work is reinforced.

Heuristics

“Heuristics” are similar to schemas except “heuristics” are considered cognitive shortcuts that people use for making smaller, quicker decisions. One heuristic posited by social psychologists is the “availability heuristic” which says that we make judgments based on the ease with which we can bring examples to mind.¹⁸ Some examples include studies that have shown that more of the public believes people die from shark attacks than from falling airplane parts or that more people die in fires than die from drowning--even though the opposite is true in both examples. The reason people have such counterfactual ideas is believed to be because they are able to more readily recall news stories or movies about such events--even though in reality they are not statistically representative.¹⁹

¹⁸ Melvin Manis, et al., "Availability Heuristic in Judgments of Set Size and Frequency of Occurrence," *Journal of Personality & Social Psychology* 65 (1993): 448-457; Norbert Schwarz, et al., "Ease of Retrieval as Information: Another Look at the Availability Heuristic," *Journal of Personality & Social Psychology* 61 (1991): 195-202; Amos Tversky and Daniel Kahneman, "Availability: A Heuristic for Judging Frequency and Probability," *Cognitive Psychology* Vol. 5 (1973): 207-232 cited in Aronson, Wilson and Akert, *Social Psychology*, 81.

¹⁹ Scott Plous, *The Psychology of Judgment and Decision Making* (New York: McGraw-Hill, 1993); Paul Slovic, Baruch Fischhoff and S. Lichtenstein, "Cognitive Processes and Societal Risk Taking," in *Cognition and Social Behavior*, eds. John S. Carroll, John W. Payne and Carnegie-Mellon University, 165-184 (Hillsdale, NJ: L. Erlbaum Associates, 1976). Also, people are more fearful of airplane rides and some refuse to ride on airplanes when risk analysis studies have demonstrated that people are 26 times more likely to die in a car crash rather than a plane crash. National Safety Council, by *Accident Facts*, Itasca, 1991) cited in Myers, *Social Psychology*, 112.

Crime--and in particular violent crime--sells. Crime is among the favorite topics used for “entertainment.” Novels, television shows, movies, plays, and even CD-ROM games often use criminal activity as their major plot or subplot. As will be discussed in greater detail in the next chapter, the news industry has become more involved in “entertaining” and therefore increasingly has made crime stories a major part of its coverage. When people calculate the different risks of being harmed, the “availability” of crime events overwhelms more mundane risks such as accidents--thus, it is no surprise that the public is overly fearful of crime.²⁰ Research demonstrates that people who watch a great deal of television--with its heavy servings of violence--significantly overestimate the amount of real crime that occurs.²¹

Another heuristic, called “base-rate fallacy,” causes us to focus on specific incidents or examples and ignore relevant background information about the population or total number of such circumstances.²² When the media focuses on children being kidnapped or murdered by strangers, for instance, people can easily forget that when children are harmed, kidnapped, and murdered, the act most often is committed by acquaintances.²³ Misperceptions about criminal statistics are quite common since the

²⁰ Accidental injury was estimated to occur in the U.S. at a rate of 242 per 1,000 adults per year from 1982 to 1984, while during the same time period, violent victimization was at a rate of 31 per 1,000 adults per year. Frank Schmalleger, *Criminal Justice: A Brief Introduction* (Englewood Cliffs, NJ: Regents/Prentice Hall, 1994), 40.

²¹ George Gerbner, et al., "The "Mainstreaming" of America: Violence Profile No. 11," *Journal of Communication* 30, no. 3 (1980): 10-29.

²² Richard E. Nisbett, et al., "Popular Induction: Information is not Necessarily Informative," in *Cognitive and Social Behavior*, eds. John S. Carroll and John W. Payne, 110 (Hillsdale, NJ: Erlbaum, 1976).

²³ Of all children under age five murdered from 1976 to 2000, only three percent were by strangers. Bureau of Justice Statistics, *Percent of Homicides of Children Under Age 5 by Relationship with the Offender*, (Washington DC, 2003), <http://www.ojp.usdoj.gov/bjs/homicide/tables/kidsreltab.htm> (accessed February 18, 2003).

media tends to focus on crimes that are unusual or where the public is perceived to likely be very sympathetic toward the victims. The public would probably be surprised to learn that young black men have the highest risk of being murdered, probably because they are murdered so often in big cities that the media does not consider their deaths to be “newsworthy.”²⁴

Racism, Prejudices, and Stereotypes

Historically, racism has been a major shame of the United States criminal justice system. From blacks being lynched in the South with the cooperation of government officials to statistical studies demonstrating racism at all levels of decision making within the criminal justice system, people of color are known to have suffered disproportionately more wrongful convictions and harsher punishments than whites.²⁵ Marvin Wolfgang’s study of rape sentences showed that of 119 convicted rapists executed in twelve southern states between 1945 and 1965, 110 were black. After controlling for other factors besides race, Wolfgang concluded that “in less than one time in a thousand could these [racial] associations have occurred by the operation of

²⁴ Blacks were six times more likely to be murdered than whites in 2000. Bureau of Justice Statistics, *Homicide Trends in the U.S.* (Washington DC, 2003), <http://www.ojp.usdoj.gov/bjs/homicide/race.htm> (accessed February 18, 2003). See also Bureau of Justice Statistics, *Homicide Victimization Rates per 100,000 Population by Age* (Washington DC, 2003), <http://www.ojp.usdoj.gov/bjs/homicide/tables/vegetab.htm> (accessed February 18, 2003).

²⁵ One of the most controversial laws involves the federal sentencing disparity for crack versus powder cocaine convictions. One needs to be in possession of 100 times the amount of powder cocaine as opposed to crack cocaine to receive the same amount of punishment. The result is said to be racist because blacks use crack cocaine significantly more than whites. In 1993, blacks accounted for 88.3 percent of federal crack cocaine distribution sentences while whites only accounted for 4.1 percent. In the same year, whites accounted for 32.0 percent of powder cocaine distribution sentences and 27.4 percent were black. United States Sentencing Commission, *Special Report to the Congress: Cocaine and Federal Sentencing Policy* (Washington DC, 1995), <http://www.ussc.gov/crack/exec.htm> (accessed July 7, 2003).

chance.”²⁶ Research by David Baldus presented a twist on criminal justice racial discrimination. Looking at 2,400 criminal homicide cases, Baldus sought to determine whether race was a factor in the determination of death penalty sentences. He found that while a disproportionate number of black defendants did not receive the death penalty, there was a strong correlation between the race of the homicide victim and the chance that the defendant received the death penalty. Murderers, regardless of race, who killed whites were substantially more likely to be sentenced to a death penalty than murderers who killed blacks.²⁷

During the 1980s and 1990s, the most feared person was the young black male, with the young Latino male probably a close second. Even other blacks acknowledged being apprehensive when walking down the street and said that they would cross the street to avoid walking past a young black male.²⁸ A 1988 study demonstrated the discrimination by an all-white professional staff against blacks in a psychiatric hospital. Researchers examined the two most common methods used by staff to handle a patient’s violent behavior: (a) isolating the individual in a room and (b) restraining the

²⁶ U.S. Congress, House Subcommittee No. 3 of the Committee on the Judiciary, 1972 cited in Edward Lazarus, *Closed Chambers: The Rise, Fall and Future of the Modern Supreme Court* (New York: Penguin Books, 1999), 92.

²⁷ David C. Baldus, George Woodworth and Charles A. Pulaski, *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* (Boston: Northeastern University Press, 1990) cited in Lazarus, *Closed Chambers*, 167-168. In another study, 81 percent of the 500 prisoners executed between 1977 and 1998 were convicted of murdering a white person, although blacks and whites are victims of homicide in about equal numbers. A black person killing a white person was 11 times more likely to get the death penalty than a white person killing a black person. The Death Penalty Information Center found that blacks in Philadelphia were four times as likely to get the death penalty than others for committing similar crimes. "Amnesty Report Charges Racial Bias in Death Penalty Cases," *San Francisco Chronicle*, May 17, 1999.

²⁸ See Randall Kennedy, *Race, Crime, and the Law* (New York: Pantheon Books, 1997), 15-16. On November 27, 1993, Reverend Jesse Jackson said “There is nothing more painful for me at this stage in my life than to walk down the street and hear footsteps and start to think about robbery and then look around and see it’s somebody white and feel relieved. How humiliating.” Paul Glastris, "A New Civil Rights Frontier," *U.S. News & World Report*, 116, no. 2, January 17, 1994, 38.

individual in a straightjacket and giving tranquilizing drugs. The study showed that the harsher method--the straightjacket and tranquilizers--was used against black patients nearly four times as much as against white patients. This was the case despite evidence that there was virtually no difference in the number of violent incidents by black and white patients. In fact, the black patients had been diagnosed as being less violent than the white patients when they were admitted to the facility.²⁹

There are two major views about what causes racial prejudice: (1) prejudice is a learned behavior from family, peers, and society, and (2) prejudice is the result of psychological processes that are formed when people create social categorizations. The first reason is straightforward; it simply involves people learning racial prejudice from others and may be encouraged because people feel pressured to act as others do in order to fit within their social circles. The second reason, however, requires some further explanation.

It is generally believed that people make sense out of the world by creating categories. The categories are used to help make decisions: people analyze present stimuli with past data and constantly create and update categories of information so they can determine how to react to different situations. The ability to make categories is said to be a great help in making efficient decisions. In addition, it is said that people categorize things to help simplify how they look at the world. Gordon Allport

²⁹ Charles F. Bond, Clarisse G. DiCandia and John R. MacKinnon, "Responses to Violence in a Psychiatric Setting: The Role of Patient's Race," *Personality & Social Psychology Bulletin* 14, no. 3 (1988): 448-458. It can also be argued that a disparity in sentencing might not actually be "harmful" to communities that are predominantly people of color. If increased sentences actually decrease crime, then some argue that those communities might be "helped" rather than "harmed." See Kennedy, *Race, Crime, and the Law*, 10-11. Harvard Professor Randall Kennedy argues that "blacks have suffered more from being left unprotected or underprotected by law enforcement authorities than from being mistreated as suspects or defendants, although it is allegations of the latter that now typically receive the most attention." Kennedy, *Race, Crime, and the Law*, x.

described such categorizing as the “the law of least effort,” a process that comes into being because the world is too complicated for people to possess a highly differentiated attitude about everything. “Instead, we maximize our cognitive time and energy by developing elegant, accurate attitudes about some topics, while relying on simple, sketchy beliefs for others” stated Allport.³⁰ The downfall of such categorizing is that it can also lead to prejudice or stereotyping that results in unreasonable negative attitudes about others.

One of the major ways people create categories is by establishing groups that they are in--the “in-groups”--versus groups they are not in--the “out-groups.” People tend to have especially positive feelings and give favorable treatment to those defined as being part of their in-group, and negative feelings and unfavorable treatment to those in the out-group. The major underlying motive for this is said to be self-esteem: people seek to enhance their self-esteem by identifying with specific social groups, and such self-esteem will be enhanced only if they see their “in-groups” as superior to the “out-groups.”³¹ Another psychological process common with “in-group” versus “out-group” categorizing is the concept of “out-group homogeneity.” It involves the perception that people within the out-group are more homogenous than they really are--thus, enhancing the belief that “others” seem to act alike.³²

³⁰ Gordon W. Allport, *The Nature of Prejudice* (Reading, Mass.: Addison-Wesley, 1954).

³¹ Henri Tajfel, *Social Identity and Intergroup Relations* (Cambridge: Cambridge University Press; Editions de la Maison des Sciences de L'homme, 1982).

³² Patricia W. Linville, Gregory W. Fischer and Peter Salovey, "Perceived Distributions of the Characteristics of In-group and Out-group Members: Empirical Evidence and a Computer Simulation," *Journal of Personality & Social Psychology* 57, no. 2 (1989): 165-188; G.A. Quattrone, "On the Perception of a Group's Variability," in *Psychology of Intergroup Relations*, eds. Stephen Worchel and William G. Austin, 2nd ed. (Chicago: Nelson-Hall, 1986).

Like schemas, prejudices and stereotypes are reinforced by the way people process new information. We tend to ignore or filter out information inconsistent with a prejudice or stereotype, but become more cognitively conscious and better remember information that is consistent with a prejudice or stereotype, thus reinforcing the prejudice or stereotype.³³ Thus, stereotypes are difficult to change because with the filters in place it always seems as if there is proof that the prejudices and stereotypes are correct.

Social psychologists have observed how people process stereotypes and have developed a model that differentiates between automatic processing and controlled processing. The model states that people generally have an automatic cognitive response when they see someone who fits a specific stereotype and they associate that stereotype with that person. Some people can use controlled processing to ignore the stereotype.³⁴ There are times, for instance, when a person might be busy, overwhelmed, stressed, or in a setting where they might not be able to control the stereotype. In

³³ Galen V. Bodenhausen, "Stereotypic Biases in Social Decision Making and Memory: Testing Process Models of Stereotype Use," *Journal of Personality & Social Psychology* 55, no. 5 (1988): 726-737; Galen V. Bodenhausen and Meryl Lichtenstein, "Social Stereotypes and Information-Processing Strategies: The Impact of Task Complexity," *Journal of Personality & Social Psychology* 52, no. 5 (1987): 871-880; John F. Dovidio, Nancy Evans and Richard B. Tyler, "Racial Stereotypes: The Contents of Their Cognitive Representations," *Journal of Experimental Social Psychology* 22, no. 1 (1986): 22-37; Chris S. O'Sullivan and Francis T. Durso, "Effect of Schema-Incongruent Information on Memory for Stereotypical Attributes," *Journal of Personality & Social Psychology* 47, no. 1 (1984): 55-70.

³⁴ Patricia G. Devine, "Automatic and Controlled Processes in Prejudice: The Role of Stereotypes and Personal Beliefs," in *Attitude Structure and Function*, eds. Anthony R. Pratkanis, Steven J. Breckler and et al., 181-212 (Hillsdale, NJ: Lawrence Erlbaum, 1989); Patricia G. Devine, "Stereotypes and Prejudice: Their Automatic and Controlled Components," *Journal of Personality & Social Psychology* 56, no. 1 (1989): 5-18.

addition, different people have different levels of ability to use control processing to override automatic processing.³⁵

Combining stereotypes with the fundamental attribution error (that people generally attribute behavior of others based on internal attributes) and the factors that make up a stereotype of an ethnic or racial category are seen as being internally attributed to the group--a concept that has been called the "ultimate attribution error."³⁶

The category of "criminals," as discussed, is often overly or incorrectly stigmatized. In addition, most people think of criminals as being "others" and therefore all the problems associated with cognitive processing of "out-groups" are compounded in people's perceptions of "criminals." Crime--especially street crime--is associated with people of color or the poor, and a stereotype is often created that when people, especially white people, first think of crime, they think of people of color; and, unfortunately, when some white people think of people of color, they have an immediate suspicion. The October 1994 case of Susan Smith is a prime example of this phenomenon. After Smith rolled her car into a lake with her two sons inside, she fabricated the story that a black man had carjacked the car. The media immediately reported her story and at first everyone believed her. Why did she say a black man rather than a white man? Because she thought her story was more likely to be believed if she said a black man.³⁷

³⁵ Aronson, Wilson and Akert, *Social Psychology*, 493.

³⁶ Thomas F. Pettigrew, "The Ultimate Attribution Error: Extending Allport's Cognitive Analysis of Prejudice," *Personality & Social Psychology Bulletin* 5, no. 4 (1979): 461-476.

³⁷ Robert Davis, "Prayers Lifted Up for Abducted Boys / Tots Whisked Off in S.C. Carjacking Tuesday," *USA Today*, October 27, 1994, 10A; Rick Bragg, "Police Say Woman Admits to Killings as Bodies of 2 Children Are Found Inside Her Car," *The New York Times*, November 4, 1994, A1.

Social psychologists recognize that many people in the United States have a stereotype about people of color that involves their aggressiveness and the potential for violence. In mock trial research involving college students, students playing jurors were more likely to find the defendant guilty of a crime if his name was Carlos Ramirez rather than Robert Johnson.³⁸ In another study involving students making mock parole decisions, they were less willing to grant parole when the person was named Carlos Ramirez rather than Ashley Chamberlaine even when some of the information in the parole report showed more favorable characteristics for the Latino named person.³⁹

At the end of 2001, 43 percent of the people on death row in the U.S. were black though blacks made up only about 12 percent of the general population.⁴⁰ Based on current rates of first incarceration, about 28 percent of black males will enter state or federal prison during their lifetime, compared to 16 percent of Hispanic males and 4.4 percent of white males.⁴¹ In 2001, black males accounted for about 31 percent of the California prison population while they only constituted about 3.5 percent of the general population.⁴²

³⁸ Bodenhausen, "Stereotypic Biases in Social Decision Making and Memory."

³⁹ Galen V. Bodenhausen and Robert S. Wyer, "Effects of Stereotypes in Decision Making and Information-Processing Strategies," *Journal of Personality & Social Psychology* 48, no. 2 (1985): 267-282.

⁴⁰ Bureau of Justice Statistics, *Number of Prisoners Under Sentence of Death, 1968-2001*, by Tracy L. Snell, NCJ-197020 (Washington DC, 2002), <http://www.ojp.usdoj.gov/bjs/glance/tables/drracetab.htm> (accessed February 18, 2003).

⁴¹ Bureau of Justice Statistics, *Criminal Offender Statistics: Summary Findings* (Washington DC, 2003), <http://www.ojp.usdoj.gov/bjs/crimoff.htm> (accessed February 18, 2003).

⁴² California Department of Corrections, *California Prisoners and Parolees: 2001* (Sacramento, 2001), <http://www.cdc.state.ca.us/OffenderInfoServices/Reports/Annual/CalPris/CALPRISd2001.pdf> (accessed February 18, 2001); U.S. Census Bureau, *Population by Race and Hispanic or Latino Origin, for the United States, Regions, Divisions, and States, and for Puerto Rico: 2000* (Washington DC, 2001), <http://www.census.gov/population/cen2000/phc-t6/tab01.xls> (accessed February 18, 2003).

Racial profiling is a controversial subject and many within the criminal justice system disagree on whether or not it should be allowed. Officially more and more public officials say that racial profiling should not exist, but unofficially there still appears to be a strong undercurrent that permits it to occur, especially after the September 11, 2001 terrorist attacks that encouraged targeting of Muslims and people of Middle-eastern ethnicity. Demonstrating inconsistency (and perhaps self-interest) are those who maintain that we should have a color-blind system that disallows affirmative action, but then argue that racial profiling is necessary for public safety.⁴³

Another controversy involves the racial composition of juries. Many believe the jury system is biased and that people of color are too often judged by people who are not their racial “peers.” Racial profiling by law enforcement, biased white juries, and prejudiced judges and prosecutors are all believed to cause some of the disparity that has large numbers of people of color incarcerated in U.S. prisons and jails.

In 1990, California’s Superior Court judges were 89 percent white and Municipal Court judges were 84 percent white--at a time when the white adult population was 61 percent. During Governor Pete Wilson’s administration, 84 percent of judicial appointments were white. In 1991, a survey by the state bar showed that 91 percent of the attorneys were white. In 1999, in San Joaquin County, 89 percent of the public defenders and 83 percent of the prosecutors were white. According to an analysis of state Department of Justice data in 1997, in San Joaquin County whites were sent to prison at a lower rate than people of color and whites received probation at a higher rate. José Rodriguez, an attorney and director of the Council for the Spanish

⁴³ See Kennedy, *Race, Crime, and the Law*, 6-7.

Speaking, said: “When you go into a courtroom and the judge is white, the district attorney’s white, the bailiff is white, and the public defender’s white, you don’t have a lot of confidence that they’re there to help you.”⁴⁴

As Harvard Professor Randall Kennedy points out, the disparity of people of color arrested, convicted, and incarcerated by the criminal justice system is probably not attributable wholly to discrimination. Crime victim reports corroborate the patterns. Kennedy continues: “Given the deprivations blacks have faced, it should come as no surprise that, relative to their proportion of the population, blacks are more likely than whites to commit street crimes. The legacy of legal racism, modern discrimination, and the failures of government to provide opportunities to the disadvantaged have combined to create criminogenic conditions in which too many black Americans are forced by circumstances to live.”⁴⁵

The racial statistics concerning crime can become a self-fulfilling prophesy that also increases stereotyping. People involved in the decision-making processes of the criminal justice system, such as police officers, prosecutors, judges, and jurors act consciously or unconsciously in ways that perpetuate the disparity. Because the statistics appear to demonstrate whites are less likely to commit street crime, they might give the benefit of the doubt to a white person, but not to a person of color.

Crimes of the Poor Versus Crimes of the Rich

If “street crimes” or “common crimes” are considered over-stigmatized, then “white-collar crimes” or “elite crimes” are under-stigmatized. Punishments for white-

⁴⁴ Elizabeth Bell, "Many Fear Bias in White Court System," *Stockton Record*, July 11, 1999.

⁴⁵ Kennedy, *Race, Crime, and the Law*, 23-24.

collar criminals are typically lighter in comparison to punishments for common criminals--even though white-collar crime can cause far greater monetary losses to victims. Michael Milken, for example, was convicted in multi-million dollar scams and initially received a 10-year sentence for insider trading, but later had the sentence cut to only three years. Then he was released after only serving 24 months in a minimum security prison.⁴⁶

The visceral anger that can sometimes be felt when people discuss punishment of common criminals appears much less when they talk about punishment for white-collar criminals. One of the major reasons is probably based on the concept of the “availability heuristic” discussed earlier. Common crime and street crime are seen on a daily basis on the evening news and in the morning newspapers while white-collar crimes make headlines only when enormous scandals take place. The news business has a much easier time covering common law-breaking because the crime scene usually is a visible place and can be viewed readily by sending a news van and reporters to the

⁴⁶ Stephen M. Rosoff, Henry N. Pontell and Robert Tillman, *Profit Without Honor: White-Collar Crime and the Looting of America* (Upper Saddle River, N.J.: Prentice Hall, 1998), 406. After the \$1.64 billion Orange County bankruptcy trials concluded with convictions for the defendants of illegally misappropriating public funds when they speculated on Wall Street securities known as derivatives, the final tally had Assistant Treasurer Matthew R. Raabe receiving a three-year prison term, Treasurer Bob Citron receiving one year in county jail (days only; he could sleep at home at night--and only had to serve eight months because of good behavior), Budget Chief Ron Rubino received 100 hours of community service, and Merrill Lynch Co. bought its way out of the criminal investigation by paying a \$30 million settlement. After serving 41 days in jail, Raabe was released pending an appeal which Raabe then won when it was held that the Orange County District Attorney's office had a conflict of interest in prosecuting the case. Orange County District Attorney Anthony Rackauckas and State Attorney General Bill Lockyer eventually said they would no longer pursue the case against Raabe because of the anticipated substantial resources it would take to prosecute such a case. It is estimated that it will take a generation and a half to repay the \$1.64 billion Citron lost at roughly \$76 million a year (about one-fourth of Orange County's discretionary spending). Davan Maharaj, Shelby Grad and Michael G. Wagner, "Raabe Sentenced to Prison for Manipulating O.C. Pool Funds," *Los Angeles Times*, October 4, 1997, A1 and A30; Gordon Dillow, "Maybe Raabe Shouldn't Ride the Bus Alone," *Orange County Register*, October 5, 1997, M1; Michael G. Wagner, "Citron Sentence Ending, With Good Behavior," *Los Angeles Times*, October 24, 1997, A1 and A19; "Appeals Court Voids Sole Orange County Bankruptcy Conviction," *Associated Press*, November 2, 2000; "Case Against Ex-Treasurer Dropped," *San Diego Union-Tribune*, July 14, 2001, A3.

scene. Reporters learn how to interview the police, witnesses and even suspects.

White-collar crime is more vague and complex and reporters have difficulty trying to learn how white-collar crimes are committed and then the difficulty leads to problems explaining the issues to the public. Television news shows such as "60 Minutes" uncover and present stories of many white-collar crimes, but such shows add only a few hours a week to a daily deluge of common crime covered on the evening news and the front pages of newspapers as well as the amount of common crime presented in entertainment shows, movies and novels.

The annual dollar amount of white-collar crime has been estimated to be more than 50 times the amount of property loss from common crimes.⁴⁷ The losses from the Savings and Loan scandal of the 1980s alone have been estimated to have cost taxpayers anywhere from \$150 billion to \$500 billion.⁴⁸ The cost of computer hackers was estimated at \$100 billion.⁴⁹ The cost of workplace fraud is said by the Association of Certified Fraud Examiners to be \$400 billion a year.⁵⁰ In comparison, it is estimated that in 1992 the monetary costs to all victims of personal crimes (e.g., robbery, assault, larceny) and household crimes (e.g., burglary, motor vehicle theft) totaled only \$17.6 billion.⁵¹

⁴⁷ Rosoff, Pontell and Tillman, *Profit Without Honor: White-Collar Crime and the Looting of America*.

⁴⁸ Kitty Calavita, Henry N. Pontell and Robert Tillman, *Big Money Crime: Fraud and Politics in the Savings and Loan Crisis* (Berkeley: University of California Press, 1997), 1, <http://uclibs.org/PID/21968>.

⁴⁹ Jack Nelson, "Grappling With Crime Wave on the Web," *Los Angeles Times*, November 30, 1997, A10.

⁵⁰ James S. Granelli, "The Crime Within," *Los Angeles Times*, October 19, 1997, D1 and D14.

⁵¹ Rosoff, Pontell and Tillman, *Profit Without Honor: White-Collar Crime and the Looting of America*, 16. In addition, it has been estimated that it is "likely that the total cost of all American bank robberies

Most people think white-collar crime is not as bad as street crime because they do not think of white-collar crime as violent. This is incorrect. When a careful analysis of environmental crime, hazardous work conditions, unsafe products and medical violations are taken into account, the costs in physical damage to humans could exceed that of all street and common crime.⁵² White-collar crimes can remain hidden and the violence may not always be perceived except over time, after people may have died of cancer from such causes as asbestos poisoning.

As indicated previously, politicians gravitate toward helping special interest groups that are considered “deserving” and have “political power.” While big business may not be regarded as “deserving” as groups like small business and children, big business has money, and high-priced lobbyists.⁵³ In addition, big business generally has the most political power of any special interest group because it can afford to make very large campaign contributions. White-collar criminals, thus, can put pressure on politicians to help shape the laws to their benefit. Some of those benefits include lax or no regulation of shady business practices and minimal punishment for white-collar crimes.

Politicians, out of self-interest, might be leery of increasing punishments for white-collar criminals. Many politicians are in business or have many friends who are

in the last 100 years is less than the cost of bailing out a single corrupt S&L.” Rosoff, Pontell and Tillman, *Profit Without Honor: White-Collar Crime and the Looting of America*, 17.

⁵² For example, the Centers for Disease Control in Atlanta has estimated that contaminated food make more than 30 million Americans sick every year-and cause more than 9,000 deaths. Elliot Jaspin and Scott Montgomery, "Multiple Citations Don't Close Meat, Poultry Plants," *Orange County Register*, January 18, 1998, 2-1. See also Gilbert Geis, "A Base on Balls for White-Collar Criminals," in *Three Strikes and You're Out: Vengeance as Public Policy*, eds. David Shichor and Dale K. Sechrest, 244-264 (Thousand Oaks, CA: Sage, 1996).

⁵³ Schneider and Ingram, *Policy Design for Democracy*, 109.

in business, and therefore sympathize with business owners who may “bend a few rules” to succeed. Also, political corruption is a close cousin to white-collar crime; and, therefore, in any drive to increase penalties for white-collar criminals, legislators risk being seen as hypocrites if the punishments for political corruption are not likewise increased. On a more sinister note, many politicians move back and forth between business and politics, and in order to get a lucrative job with a corporation after holding a public office, they might lessen regulation and reduce penalties for industries where they would like to work. The “co-opting” of government by industries has frequently occurred in the history of the U.S.; it is almost a permanent feature of politics. There occasionally will be a time when a scandal such as the Savings and Loan crisis or the financial statement frauds of utility companies becomes so outrageous that many thousands of people are affected. But the media spotlight seems to quickly die away until another egregious business scandal appears a few years later.⁵⁴

Another reason that white-collar crime might not arouse as much public outrage--at least from the white voting public--is that white-collar crime is often associated with white people and, therefore, the “us versus them” mentality is less compared with common crime that is more associated with people of color. The white-collar criminal can be seen by white people as the next-door neighbor, another member of their family, or themselves. The fundamental attribution error theory (that behavior is caused by internal attributes) is likewise less operative and therefore the people who

⁵⁴ See, for example, James Weinstein, *The Corporate Ideal in the Liberal State, 1900-1918* (Boston: Beacon Press, 1968). As a current example, the California Energy crisis of 2001 has been blamed because federal energy regulators were co-opted by corporate interests. These observations were made by California State Senator Joseph Dunn, Chairman of the Select Committee to Investigate Price Manipulation of the Wholesale Energy Market in "Eye of the Hurricane: California's 'Energy Crisis'," *Verdict* 8, no. 4 (2002): 3-29.

commit white-collar crime are not perceived as dangerous in the same manner as street or common criminals. Because white voters relate better to white-collar criminals, they will generally attribute more external attributes to the causes of this form of criminal activity (perceiving the white-collar criminals as products of their environment rather than their disposition), and therefore the need or desire to punish will be reduced.

Social Learning and Normative Conformity

Much of the previous discussion focuses on the cognitive psychological processing that we perform when we create mental schemas, categories, stereotypes, and similar ways of looking at things. The other major way we create our schemas, categories, and stereotypes is through social learning processes and by our general conformity to the norms prevalent in our society and our social circles.⁵⁵ Norms are defined as beliefs held by society or our social groups as to what is correct, acceptable, and permissible. In general, we like feeling that we are accepted by the groups we associate with; being seen as deviant or nonconformist can be an unpleasant and painful experience. Friends and family are a major influence on our social learning, with school and media also important factors. When society has a strong prevailing attitude or view concerning specific schemas, categories, or stereotypes, such an attitude is said to be institutionalized. Institutionalized racism and sexism are widespread in the United

⁵⁵ Group pressure in small group situations was demonstrated by Solomon E. Asch when he set up experiments where people were asked to judge the length of a line surrounded by other lines. Conspirators within the room falsely answered that they perceived a smaller line as a match to another line. When alone, people answered correctly 99 percent of the time, but when in the presence of the group of conspirators who gave false answers, 37 percent of the responses fell into conformity with the incorrect response of the conspirators. Asch, "Opinions and Social Pressure," *Scientific American* 193, no. 5 (1955): 31-35. See also Muzafir Sherif, "A Study of Some Social Factors in Perception," *Archives of Psychology* 187 (1935): 60; Muzafir Sherif, "An Experimental Approach to the Study of Attitudes," *Sociometry* 1 (1937): 90-98; Richard S. Crutchfield, "Conformity and Character," *American Psychologist* 10 (1955): 191-198. For a general discussion on conformity to group norms, see Aronson, Wilson and Akert, *Social Psychology*, 509-513; Myers, *Social Psychology*, 209-248.

States, but they have become more subtle over the past decades. Rather than prejudicial or stereotypical statements being made in public, such views are maintained but kept private. One could make a strong argument that the public's attitudes about criminals have also become institutionalized--which is why it is so difficult for politicians to promote any legislation that might appear to "help" criminals in any manner.