Given a thorough criminal investigation that accurately establishes the chronicle of factual events and a conveniently metalistic diagnosis reassuring all parties that the criminal is intrinsically bad, a convict can righteously be regarded as a permanently dangerous person. Since rehabilitation for reentering society would then be outside the pale of the system, the person must either be 1) destroyed, or 2) preserved in a cage and retrained only for caged living. The situation is pervaded by a compelling sense that a drastic remedy must follow the drastic criminal act. Special strength is contributed by the presence of a shocked and infuriated community and by incontrovertible evidence that the defendant, under some circumstances, can be dangerous. The exact nature of what is done to the defendant does not seem as important as that something be done which need only be harsh, conspicuous, and safely traditional. Unfortunately, while cognitive psychology has the special pliability to provide convenient diagnoses and justifications custom-fitted to the prevailing political and social contingencies, it lacks the scientific power to support behavioral technologies constructively and remedially effective with problems of this magnitude.

The greater threat to society might reside, not with the convict, but with people who resort to cognitive formulations in deceiving themselves about what they are doing with, and to, that person. When people seriously entertain fallacies as pregnant with invalid implications as the assumption of free will, an extended indulgence in misdirected and misinterpreted behavioral technology necessarily follows from the efforts to pursue those implications. That debased technology can feature complex repertoires, operations, and procedures all increasingly divorced from reality and increasingly difficult for behaviorally sophisticated people to take seriously. The scientific psycho-babble of free-will psychology which the cognitive psychological "experts" employ in their courtroom testimony and written reports nevertheless substitutes for profundity, and worse, for common sense, but only because of the limited technical comprehension of both judges and jury members with respect to human behavior. In one example, a clinical school psychologist testified about a delinquent student who had little to say after being caught committing a series of small crimes. When asked in court to say why the student was rather quiet, the expert psychologist explained that the boy's "psychic energy was so low that he was disinclined to verbalize his ideation," and when asked to make clear why the boy had misbehaved, the psychologist assured the court that in that particular boy, "the potential for malevolence outweighs the potential for benevolence; everyone has only so much psychic energy." Not only did those present keep a straight face, but those statements were accepted as expert wisdom about human behavior. In part, the judge decided the young man's fate on the basis of that nonsense.

Psychologists often establish consulting firms dependent on the local attorneys plus the local judiciary, for employment. The consultants are under contingencies to please and protect the interests of those who have employed them, lest they not be engaged on future occasions. Psychologists’ decisions about the behavior of defendants can be erroneous without significant repercussions, but that cannot be said of the psychologists’ decisions concerning the social and political status of their judicial clients. The interest of the prisoners whom the consultants are asked to examine are protected only by some tenuous professional ethics which often prove flexible when those psychologists are squeezed by economic and political realities.

The ineffectiveness of cognitive science facilitates the drift away from control by technical contingencies. Weak science does not tend to produce a history of successes that leads to what we describe as consistent devotion to the technical aspects of the business. Cognitivists are therefore generally more susceptible to competing influence by non-technical contingencies than are behaviorologists, or, to end metaphorically: Behavior not anchored in mission objectives can easily be moored to other controls.

Judge’s Court

Taking advantage during periods of functionally diminished legal recourse. During court proceedings many occasions arise for the presiding judge to rule on objections, admissibility of evidence or testimony, and questions of procedure. Errors on these rulings constitute grounds for appeal, but an appeal is not always forthcoming and, if filed, not always successful. Judges learn to gauge the likelihood of a successful appeal. In some cases a defendant of modest means will not be able to afford the expense of an appeal or will lack the physical and emotional stamina to sustain a protracted extension of the case. In other cases, a judge who is familiar with the biases and tendencies of the higher courts can be relatively certain about whether the higher court will entertain an appeal or affirm that judge’s rulings if it does review the case. Within the latitude afforded by the improbability of a successful appeal, a judge can rule with impunity.

An example was provided in a case in which a man who had been involved in a fatal traffic accident was standing trial under the state’s tough new law against driving while under the influence of alcohol (D.U.I.). The judge knew that the state supreme court had recently upheld the law and that strong supportive public sentiment had prompted both the elected legislature to pass the law and the elected supreme court to consider its legal merits. The time was clearly not propitious for appeals that might portend an eroding of that legislation. Additionally, public favor would accrue to elected judges in whose courts early felony convictions were obtained under that law.

However, as the trial proceeded, the state’s case against the defendant failed to build effectively. The defendant’s car had collided with another car in the dark on a narrow twisting country road resulting in the death of the other driver. The deceased driver was shown to have been extremely intoxicated and to have died as a direct result of colliding with the interior of his own car after failing to use the
available seat belt that probably would have prevented serious injury. The state was unable to produce any evidence that the defendant was intoxicated at the time of the accident or that the defendant had engaged in reckless driving prior to the accident. The prosecutor was able to establish only that earlier in the day the defendant had drunk a couple of beers and that at the time of the collision the defendant’s car had crossed slightly to the left of center. When the time came for the judge to send the case to the jury, what had seemed at the outset like an opportunity for a D.U.I. conviction had largely evaporated.

The judge salvaged the situation by manipulating the verdict options provided for the jury’s consideration. He gave the jury the following four possible verdicts, each consisting of the listed set of elements, in addition to the possible but unlikely “not guilty.” Three of the four “guilty” options were based on the new D.U.I. law:

1. (D.U.I. law)  
   driving while drunk  
   driving recklessly  
   causing a death  
   committing a moving traffic violation

2. (D.U.I. law)  
   driving while drunk  
   driving recklessly  
   committing a moving traffic violation

3. (D.U.I. law)  
   driving while drunk  
   committing a moving traffic violation

4.  
   driving recklessly  
   committing a moving traffic violation

The judge refused to permit the jury to consider a fifth verdict simply of committing a moving traffic violation (driving left of center), ironically the only element actually established by the state’s case.

The dead man’s family had attended the trial and wanted revenge. The prosecution had focused on the loss of life. The jury was under strong social contingencies to find the defendant at least partially guilty of causing a death even though the accident would normally have produced only minor injury to a properly secured driver. Such a contingency imposed on jurors, if uncritically accepted, can generate some feelings of shame in those jurors who find themselves assigning a greater measure of culpability than the established facts would justify. It is easier to find somebody guilty of causing a death if more supporting evidence can be found (“...maybe he was drunk...”). Since no evidence whatsoever was available to support reckless driving (the defendant had said that his car had drifted slightly left of center when he was momentarily blinded by the lights of the approaching car), the jury quickly rejected verdict options 1 and 4 and considered options 2 and 3 (exoneration was beyond the pale).

A conviction was obtained on verdict option 2. The judge’s construction of the jury’s verdict options had increased the probability of the D.U.I. conviction. Upon appeal based both on lack of evidence of intoxication and lack of a verdict option matching the proven elements, the state supreme court refused to reverse the decision. A standing conviction under the new law could be posted.

The trap. Judges define cases by grouping interrelated charges, but in exercising their discretionary authority to formulate cases in that way, they control variables that can alter the probabilities of convictions. For example, a defendant found himself charged with multiple lesser offenses that could be joined in a single set of charges that would collectively define the major crime. In that particular case, the charges were interrelated in such a way that in pleading “not guilty” to one of the lesser charges, the defendant would automatically incriminate himself on one of the more serious charges by unavoidable implication. The established facts were 1) that an object of property had been stolen, 2) that the stolen item had been recovered in the defendant’s possession, and 3) that either the defendant or another identified person had committed the theft. Under the law a person who possesses stolen property because he himself stole it cannot also be be guilty of having “received” it, because that implies acquiring it from another party while knowing that it was stolen by a party other than oneself. Under the circumstances of that particular case, if the defendant convincingly pleaded “not guilty” to the lesser charge of receiving stolen property, the conclusion that he stole it himself would be inescapable.

Since a citizen is constitutionally protected from the requirement of self-incrimination, it could be argued that this defendant should not have had to incriminate himself on one charge by the simple exercise of another of his rights — namely, entering a “not guilty” plea to a charge. The defense attorney moved that the charges be separated and the case divided into two parts to be tried separately in order to break the linkage and permit the defendant to plead “not guilty” without incriminating himself. However, keeping the charges linked in a single case, or failing to drop one of the charges, increased the probability of a conviction, and the judge denied the motions to drop a charge or create separate cases. The defendant was left to confess to a part of the crime that evidence suggested he did not commit or else incriminate himself on another charge in violation of his Fifth Amendment rights.

Exploiting social contingencies on juries. Judges have substantial latitude in controlling the presentation of cases to juries, mainly with respect to the permissible variables and latitude of the presentations. Judges set the bounds within which cases are to be conducted before juries. They rule on the admissibility of evidence, and on the relevance of facts or even whole facets of a case, and they interpret the laws of procedure and evidence. Judges also reformulate and mediate the charges against the defendant, which were originally specified by police officers and prosecutors, when those charges are subsequently transmitted to a jury for consideration. The judge cannot add to the charges brought be-
fore the court, but as emphasized in the previous subsection, the judge can arbitrarily subdivide charges into their constituents — generally called lesser included offenses — and allow, or not allow, those elements to be brought to the jury for separate consideration.

Juries are under contingencies to convict defendants. A general presumption of some degree of guilt exists, because most jury members assume that all the fuss could hardly be without any basis whatsoever. Even though a defendant might have been shown to have incurred little if any liability for tragic events, jury members remain subject to a general expectation that blame should be assessed, particularly if extremely severe losses have been suffered by a victim. Rather than set the defendant free, a jury that can construct even a small or tenuously increment of liability for the defendant, will tend, under contingencies of appeasement, to find the defendant guilty of at least some small element of misconduct.

But mitigating contingencies are also at work. Jury members do not want to be used as instruments of vindictiveness by other parties, so they tend to reject extremes in finding guilt and setting penalties. Additionally, jury members are typically inexperienced at the job, ignorant of the law and of courtroom procedural requirements, and often unsophisticated in their powers of analysis. As such they feel vulnerable to criticism and are under contingencies to protect themselves. When a judge charges the jury and offers to that jury a range of possible verdicts, the jurors naturally sense that, although the most valid and technically correct verdict could lie anywhere between not guilty and guilty of the most serious offense, the safest verdicts for the members of the jury are to be found near the center of the preferred range of possible offenses. A verdict of guilty of an offense near the middle of the severity scale creates the opportunity for jury members to claim to have recognized the merit in both sides of the case, to have been merciful in rejecting extreme punishments, to have been responsible in protecting the social order and upholding the law, and to have been astute enough to get the complexities sorted and analyzed and the issues resolved. There should be little surprise when jury verdicts in complex cases fall near the middle of the range of possible verdicts offered by the judges, a likelihood to which many judges are sensitive.

A judge can increase the probability of evoking a particular personally preferred verdict from a jury in a complex case by arranging for that verdict to fall near the middle of the range of possible verdicts that will be provided to the jury. Judges get special help in constructing such contrived ranges of possible verdicts from police and prosecutors who habitually overcharge defendants in criminal cases. Those officials have learned to start defendants through the system accused of multiple offenses extended into a range of gravity that the evidence will only tenuously support, if at all. Judges sometimes welcome those extensions as resources for their own creative formulations of potential verdict ranges, since in cases where they do not need the questionable excess charges they can simply dismiss them for lack of evidence.

If a judge favors an extreme verdict (guilty of the most grave offense or entirely innocent), the extreme verdict can be made to fall near the middle of the range of possible verdicts by narrowing the range until its ends are near its middle. Charges can remain clustered, for example, when a judge refuses to list separately the lesser included offenses as discrete verdict options so that the jury is deprived of the opportunity to find the person guilty of a limited offense and must consider only the options of "innocent" or "guilty" (of an extremely serious offense). If the judge perceives that the trial has gone in favor of one side or the other and can limit the jury's options to such extremes, the judge can be relatively certain that the jury, so constrained, will opt for that extreme most closely approximated by the prevailing tide of sentiment established during the trial. While attorneys might attempt to mitigate these judicial manipulations by arguing point by point against them, judges have so much discretionary authority in these matters and so much latitude in interpreting the legal precedents that are supposed to be respected, that attempts at such countercontrol have only limited success.

Discussion

Analysis of Rationalization And Self-deception

The contingencies responsible for these informal covert mini-trials produce the offending actions without necessarily evoking descriptive behavior from the behaving parties. In our culture we have a long history of social punishment for violating the spirit of the law, going against ethical norms, taking unfair advantage of defenseless persons, and similar transgressions, so almost everybody feels uncomfortable when they see themselves behaving in any of those ways. Since behaving improperly and seeing that one is doing so are separate behaviors, the former reinforced and the latter punished, it should come as no surprise to the person that the doing often occurs while the awareness of it remains behavior that is not happening — the reinforced aspects of the behavior continue, but punished aspects stop. The fact that the various officers and officials act without benefit of accurate self-analysis of what they are doing amounts to nothing more than previously punished behaviors no longer occurring. Verbal behavior is operant in nature and subject to changes in frequency according to changes in its consequences, and that includes the verbal operants of introspective analysis that might occur under stimulus control of the speaker's own unconditioned activities within the criminal justice system.

However, while officials might fail to see themselves exploiting their authority to inflict punishment (because such awareness, having been punished, is not prepotent), they do tend to describe their improper actions in ways that are reinforcing to hear. Though often inaccurate and characterized as self-righteous rationalizations, those descriptions of what they are doing, and why, reinforce the speakers.

One form of countercontrol consists of making ob-
vicious to the offending parties the real contingencies controlling their improper behavior plus the detrimental implications of self-deception for all parties and for the system. Making such revealing presentations is precisely what defense attorneys do in efforts to protect clients from system abuses. When aversive seeing and knowing are so punishing that they cease to occur, and when invalid but reinforcing rationalizations emerge prepotently, the offending behavior can continue against the defendant. But when a defense attorney supplements the stimuli consisting of the official misconduct with additional verbal and nonverbal stimuli that together compel the verbal behavior of valid interpretation by the offending official, the concomitant elicited aversiveness for that official can be increased to such an extreme that doing the right thing emerges as a prepotent escape behavior. The offending official's appropriate behavior gets negatively reinforced, while the defense attorney's action to elevate the official's level of aversive consciousness enough to make that happen gets positively reinforced. (See Skinner, 1953, for a discussion of prepotency.)

Much of the easily rationalized abuse would be eliminated if punishment were de-emphasized as a reason for the existence of the system. Technically, of course, events in the criminal justice process occur much too belatedly to function as punishment for the alleged criminal behavior, without some degree of mediating verbal behavior. Nevertheless, substantial aversiveness is arranged by the courts and covert minicourts of the criminal justice system, which punish behaviors pertinent to the immediate situation more than the alleged criminal behavior for which the defendant was arrested. Justifications centering on the need for "punishment" provide an excuse to carry out retributions in the sense of "getting even" (an eye for an eye ... a tooth for a tooth), an enthusiasm often seemingly unconcerned with decreasing the frequency of the offensive behavior. A predominantly operant resocialization that would have people emitting appropriate behaviors for commendable reasons is in the long run more effective and free of the undesirable side effects associated with punishment. Such a more sophisticated approach would deprive people within the system of the convenient rationalization that those who pass through the system are there to be treated aversively in the first place. If a person is there to be subjected to substantial formally sanctioned abuse, it is an easy exercise to justify adding an increment of informal aversiveness for good measure, and if doing so turns out to be self-serving, that can be dismissed as an extraneous if fortuitous benefit. (See Skinner, 1974, Ch. 4; 1971, Ch. 4; 1953, Ch. 11-12.)

The Effects on The Victims

Persons who have been subjected to the kinds of abuses described in this paper, as well as those exposed to credible reports of such events, will tend to distrust the criminal justice system, especially with respect to entering that system as a defendant. A variety of escape behaviors will be negatively reinforced, nearly all of which degrade the integrity of the culture. Potential defendants might flee, and if successful, their testifying about events of interest is precluded; important facts might never become known. Those who evade arrest gain skill in avoiding capture but not in acceptable alternatives to their improper behaviors. Those in custody might attempt dangerous escapes, perhaps inflicting harm on officials, bystanders, or themselves. Witnesses who find themselves in a culpable or compromised state might leave the scene prior to being identified and linked to the suspicious circumstances, leaving behind unnecessary controversies that they could have resolved.

Defendants subjected to aversive treatment throughout the system can also escape in other ways, some corrupt and some self-denigrating. Those with the means might extend favors, offer bribes, or pay some form of "protection money" to officials. In other cases, persecuted individuals might turn to groveling or pathic sniveling and perhaps affect a sycophantic demeanor. Some prisoners, subjected over long periods to system abuses from which they cannot escape through overt action, exhibit the pattern called learned helplessness (Maier, Seligman, & Solomon, 1969; briefly discussed by Catania, 1979, p. 164, among others). Overt escape from the abuses proves impossible, but instead of mere suppression under punishment or threat of punishment (which would yield recovery of the escape behaviors in subsequent situations not featuring the punishment contingencies) the escape behaviors extinguish. When the person is later in situations from which overt escape would be possible, appropriate, and unpunished, the escape behaviors do not occur; they represent a repertoire no longer available to the person. It might be impossible to discriminate these symptoms of extinction from those exhibited by a person who escapes from aversiveness (inflicted on those attempting overt escapes) by deliberately engaging in the incompatible operants of holding still, staying in place, and keeping quiet. In any case, whether because of loss of escape behaviors due to extinction or due to strengthening through negative reinforcement of deliberate inactivity as a kind of escape, the result is a person who others describe as generally helpless when under aversive contingencies from which escape is not only deemed possible and appropriate but is expected of the person.

Innocent defendants, faced with a series of special aversive arrangements, might quickly plead guilty in order to gain rapid egress from the system. System officials learn that the difficult task of proving guilt can be circumvented if defendants simply plead guilty — a circumstance encouraged by informal abuse of defendants while they are in custody. Efforts by officials to contrive such abuse and then hide it detract from the resources available for proper pursuit of their duties.

Corrective Recommendations

To alter the corrupting contingencies throughout the system, some specific recommendations can be implemented:
(1) Make obvious to all parties how these abuses can occur; incorporate instruction on the science of such matters into the training programs for officers and officials in the system. The science of human behavior is an extensive verbal repertoire. Much of it is incompatible with the rationalizations and other self-deceptions with which errant officials protect themselves from their own malfeasance. Through proper verbal conditioning, the errant behaviors per se can be made to occasion analytical verbal behavior accurately descriptive of events in a manner that leaves little opportunity for alternative deception. A somewhat thorough program of formal training in applied behavioral science is implied if that level of self-analysis is to gain prepotency.

(2) Institute procedures that will reveal or expose otherwise hidden cases of abuse. The social contingencies supporting respect for defendants’ rights are ineffective when the offending events and the agents to whom the offenders are accountable cannot be brought into contact. That results in a functional dissociation of the first and second terms in those three-term contingencies of accountability which determine the actions of the countercontrolling agents, and therefore the countercontrolling behaviors (the second terms) do not occur (the offending officials hide what they do and get away with it). Procedures to expose violations depend on the particular features and settings of the improper actions. While countermeasures must not hinder the necessary professional activities of the officials, the corrective interventions must link the events of concern with the persons who countercontrol the abuses. Experiments have included videotaping various events such as arrests, the transport of prisoners, interrogation sessions, and certain activities in the daily living routines of incarcerated persons. [For example, when I recently served as a consultant in a murder case, I was asked to review a routinely recorded videotape of the police interrogation of a suspect.] Laws and regulations can be rewritten to require more formal justifications for various actions by officials or more timely actions.

(3) Institute schemes of accountability for officials that provide consequences for their actions, both proper and improper. For example, officers might be eligible for bonuses or merit pay if prisoners in their custody have incurred no physical damages. If improper hostile conduct by system officers results in dismissal or loss of a case against a defendant, an investigation of the circumstances could be required. Professional organizations, or perhaps even more independent bodies, might review the conduct of attorneys or judges and act on the findings. Continuation in office, or the right to seek reappointments could be contingent on the outcome of such formal reviews of conduct.

(4) Increase ethical training for officials, so that their misconduct becomes self-punishing, and their proper conduct becomes self-reinforcing. To instill a sense of duty is technically to subject a person to a schedule of punishment for deviations from what is defined to be the duty, and to a schedule of reinforcement for adherence to that duty. The sources of the punishment and reinforcement should be many and varied, but should include the peer group and overseers with whom the person will subsequently be performing. Punishment automatically conditions aversive emotional respondents and leaves them under stimulus control of elements in the circumstances in which the punishment occurred. If any deviation from a course of actions called “doing one’s duty” or “fulfilling one’s responsibilities” has been punished, any later incipient deviations from that course will elicit the previously conditioned aversive stimuli (variously called guilt, shame, or sin depending on what kind of group did the initial punishing). The person is thus self-punished by the onset of those aversive feelings and can escape from them only by a return to the behaviors of doing one’s duty or acting responsibly. This negatively reinforcing process has the advantage of functioning even when the probability of any positive reinforcement is near zero, or when potential positive reinforcers are too deferred to be of significant immediate effect. Though persons who do their duty have traditionally been respected and admired for possessing a strong “will” to do what is correct, their sense of propriety is not due to a mysterious and virtuous will. It is a behavioral product producable according to well understood formulations.

(5) Eliminate public elections for officers of the court and advance candidates to those offices by examination, professional record, and endorsement by panels of competent reviewers representing the various legitimate interests to be protected. Voters might then be asked to elect a winner from a list of candidates already determined, through these kinds of procedures, to be qualified for office. Members of the voting public are not in a position to cast intelligent ballots in open popular elections for officials in the criminal justice system. Citizens might be asked to vote on policy, operational features, or other general limiting or defining characteristics, but to choose a judge, prosecutor, public defender, or sheriff by open public election merely insures selection according to political and social variables to which laymen are sensitive and without regard to those technical variables that define the special qualifications necessary for holding office. The result is that technically competent persons cannot attain office on the basis of their records of effective performance, while less competent persons often appear more appealing to the electorate on other bases. Once in office, a popularly elected person who is not prepared to come strongly under contingencies for effective and proper technical behavior will drift under the ubiquitous social, political, and economic contingencies. Persons unprepared to access reinforcers attached to technical excellence are almost always prepared to come readily under control of the alternatives.

(6) Police officers, jailers, and others responsible for maintaining incarcerated or arrested persons should be permitted to apply a wider range of controlling variables, including primary reinforcers, and they should be trained in the manipulation of those variables in both positive reinforcement and aversive control. Much abuse, especially the physical varieties, actually stems from the weakness in the kinds of behavioral controls to which the keepers are now
limited. Misguided humanistic interventions have succeeded in guaranteeing as basic rights the primary reinforcers that could be employed in positive ways to shape quality behavior in prisoners (see Skinner, 1983, pp. 354-355). Instead, those reinforcers are doled out noncontingently, and thus wasted for shaping behavior. Deprived of the only kinds of truly effective reinforcers available, the keepers are compelled to resort to threats of punishment and aversive measures to maintain control, and occasionally to strengthen the conditioned aversive value of those threats by following them with the aversive stimuli. If the keepers had more effective controlling variables at their disposal and were trained to use them, they could maintain control primarily through positive reinforcement using powerful primary reinforcers. The aversive emotional respondents conditioned by punishment would be reduced significantly; prisoners would not feel oppressively controlled and would give much less attention to countercontrol; and suppression of unacceptable repertoires as a central theme could fade in importance while the emphasis shifted more toward shaping new repertoires. Undermining the validity of punishment would erode the acceptance of rationalizations for abuse based on inflicting punishment. A major loophole in the contingencies of accountability for system officers and officials would thus be closed.

Appropriate Scientific Foundations for The Criminal Justice System

Reliance on cognitive psychology as a scientific foundation within the criminal justice system continues to be a disaster. That fallacy-laden conceptual structure proves incapable of supporting the design and operation of effective cultural agencies. The criminal justice system of today evolved on the basis of assumptions, still maintained, such as 1) the validity of personal responsibility, 2) punishment as more proper and effective than other processes of control, 3) the effectiveness of punishment even though long delayed, and 4) the intra-organism locus of control over behavior—all wrong, as any competently trained behaviorologist well knows.

Behaviorology provides the foundations upon which to reconstruct social institutions and cultural agencies. Its philosophy, science, and technologies of human behavior address issues as central as the concept of personal responsibility or as particular as the misbehavior of an official on a given occasion. Few competent behaviorologists exist, because few training programs with the capacity to produce them have emerged. The few available behaviorologists have spread themselves thinly across the many applied areas devoted to human behavior, so that very few studies of the criminal justice system with that scientific perspective have appeared in the literature. [Among the limited available examples are Fraley (1983) and Rakos and Switzer-Rakos (1986).]

The emergence and coalescence of behaviorology is continuing as persons from parent disciplines, escaping the mostly political, economic, and social contingencies that nourish their hesitance, leave those disciplines behind and assume an identity as behaviorologists. Whether the culture can survive with its ill-designed agencies until they can be corrected through the application of an effective behavioral science is a question awaiting settlement. One well known cultural analyst reminds us that it might be too late (Skinner, 1983, p. 397). But the next step is clear: Complete the organization and establishment of a discipline having the philosophical, scientific, and technological power to address the integrity of a culture.

Epilogue: Issues at The Cultural Level of Analysis

Abuses of the kind reported in this article, whether deliberate infringements on rights or simply inappropriate technical handling of the situation, occur in the absence of effective countercontrols which defendants and prisoners might arrange. A disproportionate share of such abuse is bestowed on the poor, the socially unskilled, the inarticulate, and similar types who lack the kinds of resources necessary to arrange either personal or group countercontrols (see Skinner, 1953, Chapters 20 & 21). Some of the abuses are subtle and sophisticated, and occasionally persons of wealth and social prominence also fall victim—especially when the offending arrangements are put in place by parties of equal or greater sophistication, a circumstance thematically prominent in Tom Wolfe’s novel, The Bonfire of The Vanities (1987).

Why the criminal justice system is heavily preoccupied with members of the low socio-economic classes is at one level of analysis simply answered: Those people are ineffective; their legal, socially sanctioned behavior produces relatively few reinforcers. Furthermore, among their inadequate skills are those of self-management. Thus, not only do they take what are seemingly easy though often illegal short­cuts to their reinforcers, they also lack the self-management skills to avoid detection and are often apprehended.

Why cultures produce significant proportions of ineffective people is an issue beyond the scope of this paper. But to offer one general observation: Our culture, like others, functions with narrowly skilled yet generally ineffective persons in numbers sufficient to do the less pleasant work (narrowly skilled for their specific jobs, but generally too ineffective to change the system). Corrective social ethics often follow rather than inspire technologically based, work-saving innovations which reduce both the needs for such exploitation and the severity of that which is still thought necessary. As long as maintenance of the most skilled and effective people at the cultural level to which they have become accustomed requires more unpleasant and dreary labor than they can easily perform, those people will maintain, justify, and in some cases further arrange a culture that produces a class of workers that can be constrained to perform that labor. For those specifically trained but socially and culturally unskilled persons, access to essential primary reinforcers is arranged to be an inescapable function of their keeping to their cultural place and doing the less attractive
work — but, at the same time, they will be unable to intervene at the cultural level to alter the system in which they toil disadvantageously. One aspect of maintaining such a culture is a criminal justice system that contributes substantially to the constraints that maintain those workers’ exploitable statuses by 1) curtailing alternative shortcuts to reinforcers, and by 2) preventing actions that might destabilize the cultural system (both kinds of behavior being generally classed as illegal).

For low paid, hard working classes, cultural history reveals a long record of progressive relief based on technological innovation. Mechanized farm equipment displaced slaves, and computers are displacing a variety of workers. That is not to imply that unemployment is a special kind of freedom, but in the long run those types of people who have been relieved by technology from providing ill-rewarded labor have subsequently emerged, often with altered roles and in different social contexts, in control of more of the variables that affect their lives. As culture matures in this way, the criminal justice system, along with other cultural agencies, can progressively focus on those cultural quality control functions that more perfectly manifest its ideal.

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