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## THE DIFFERENTIAL ASSOCIATION THEORY AND COMPULSIVE CRIMES

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The differential association theory, which is considered by most sociologists as the best formulation to date of a general theory of criminality, holds, in essence, that criminality is learned in interaction with others in a process of communication. Specifically, the hypothesis is that criminality is learned from observations of definitions favorable to law violation, the learning including both the techniques of committing crime and the "specific direction of motives, drives, rationalizations and attitudes." The ratio between such definitions and others unfavorable to law violation determines whether or not a person becomes criminal.<sup>1</sup>

This generalization is stated in universal form, presumably as a description of the etiology of all criminal behavior. Hence, the discovery of cases of criminal behavior whose genesis and development has not followed such a process would call for either a modification of the generalization or a redefinition of the concept "crime."<sup>2</sup> The important point in the theory is that all criminal behavior is learned in a process of social interaction, and to prove or disprove the theory we must carefully examine behavior to which the label "crime" is applied but which does not appear to have been learned in such interaction.<sup>3</sup>

For example, crimes which in the criminal law are based upon strict liability rather than one proof of intent almost immediately appear as possible exceptions. Careful examination of the characteristics of such offenses might logically call for a redefinition of the concept "crime," rather than a revision of the generalization, although either procedure would be scientifically permissible.<sup>4</sup> As another example, "situational

<sup>1</sup> E. H. SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY* (New York: J. B. Lippincott Co., 1947), pp. 6-9.

<sup>2</sup> Many criminologists now argue that crime is not a homogeneous phenomenon and that it is therefore unwise to attempt universal scientific generalizations about it. While there is merit in this argument, it is not pertinent to the present discussion. See DONALD R. CRESSEY, *Criminological Research and the Definition of Crimes*, *AMER. JOUR. OF SOCIOLOGY*, LVI (May, 1951), 546-551.

<sup>3</sup> Some apparent exceptions to the theory were pointed out by Sutherland himself. See his *The Relation Between Personal Traits and Associational Patterns*, in WALTER C. RECKLESS, *The Etiology of Delinquent and Criminal Behavior* (SOC. SCI. RES. COUNCIL BUL. 50 [New York, 1943]), pp. 131-137.

<sup>4</sup> One argument for the first course of action already has been made. Hall holds that strict liability offenses have so little in common with other crimes that they should not be included in the ambit of the criminal law. JEROME HALL, *PRINCIPLES OF CRIMINAL LAW* (Indianapolis Bobbs-Merrill,

crimes" or "crimes of passion," such as an assault or murder perpetrated after a period of antagonistic or irritating behavior on the part of the victim, present an apparent exception to the generalization and should be examined carefully for the purpose of determining whether they are real exceptions.

Also apparently exceptional to the theory are the so-called "compulsive crimes," such as kleptomania and pyromania. It is the objective of this paper to re-examine the "compulsive crime" concept with an aim to determining in a preliminary way whether such behavior must remain as exceptional.

#### THE LEGAL-PSYCHIATRIC CONTROVERSY

Before such re-examination can be made, however, it is necessary to review briefly the three fundamental points in the legal-psychiatric controversy about whether behavior said to be "compulsive" also is "crime." The issues are fairly clear. First, in the criminal law, under the M'Naghten rules, the stigma "insanity," not "crime," is applied to legally harmful behavior perpetrated under circumstances such that the defendant was unable to distinguish between right and wrong. This is to say, in more general terms, that he was unable to contemplate the normative consequences of his acts. If it is observed that a so-called "compulsive criminal" *did* contemplate the normative consequences of his behavior, the behavior is classed as crime, rather than as insanity.

Second, psychiatrists insist that some of the behavior which results in legal harm ("compulsive crime") has essentially the same characteristics as does compulsive behavior generally. As a general category of neuroses ("psychasthenia," anankastic reactions," etc.), compulsive acts are described as irresistible behavior which the person in question often recognizes as irrational but is subjectively compelled to carry out.<sup>5</sup> Such acts are considered as irrational because they are thought to be prompted by a subjective morbid impulsion which the person's "will" or "judgment" or "ego" cannot control.<sup>6</sup> In other words, behavior described as compulsive is thought to be completely determined by the inner impulse or compulsion, and while the genesis of the compulsion might lie in a social context, once it has been formed it apparently operates as an entity, agent, or element in itself. Thus, the overt act is considered as prompted entirely "from within," and present contact with values concerning morality, decency, or correctness of the overt behavior in

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1947), pp. 280, 296. Such a redefinition of the crime concept, incidentally, would have serious effects upon current generalizations about "white-collar-crimes," many of which are of a strict liability type.

<sup>5</sup> Cf. ROY M. DORCUS AND G. WILSON SHAFFER, *TEXTBOOK OF ABNORMAL PSYCHOLOGY* (Baltimore: Williams and Wilkins, 1941), p. 364.

<sup>6</sup> MALAMUD, for example, indicates that psychasthenias or anankastic reactions "have in common the fact that the patients feel themselves compelled by some inner force and against their own will or reason to think, act or feel in an abnormal manner," and that compulsive acts are "forms of behavior which the person carries out consciously without knowing the reason for such activity or for reasons which he knows have no logical foundation." WILLIAM MALAMUD, *The Psychoneuroses*, in J. McV. Hunt (Editor), *PERSONALITY AND THE BEHAVIOR DISORDERS* (New York: Ronald Press, 1944), pp. 851-852. Cf. FRANZ ALEXANDER AND HUGO STAUB, *THE CRIMINAL, THE JUDGE, AND THE PUBLIC* (New York: Macmillan Co., 1931), pp. 149-150.

no way affects the actor, in the last analysis, either in deterring him from acting or in encouraging him to act.<sup>7</sup>

It is argued by psychiatrists, then, that in cases of "compulsive crime" the actor *does* know right from wrong and does contemplate the normative consequences of his acts (*i.e.*, he recognizes the behavior as irrational, foolish, wrong, illegal, etc.), but *nevertheless* exhibits the behavior because it is prompted from within by a force which he is powerless to resist.<sup>8</sup> If the legal harm resulting from such behavior actually is crime, then it obviously is exceptional to the differential association theory. The "criminality" in "compulsive crime" would depend not upon former contacts with differential values concerning law-abidingness, but upon a non-social agent or process.

Third, some jurists have adopted a position similar to that of the psychiatrists. This is apparent from the fact that the courts of about fourteen states hold that the consequences to the actor of the perpetration of a legal harm can be avoided by showing that while the defendant knew right from wrong his behavior was prompted by an "irresistible impulse."<sup>9</sup> While there is disagreement among psychiatrists, it appears that most of them agree with the legal theory of those jurisdictions allowing the irresistible impulse defense, and many of them contend that those judges not allowing it are backward, ignorant, or stubborn.<sup>10</sup>

<sup>7</sup> Cf. GREGORY ZILBOORG, *Misconceptions of Legal Insanity*, AMER. JOUR. OF ORTHOPSYCHIATRY, IX (July, 1939), 540-553.

<sup>8</sup> LORAND, for example, cites three case histories as evidence that "compulsive stealing" is a subconscious act of aggression against the parents or parent surrogates. He points out that there were faults in the critical appreciation of the factors of reality, and that "all showed an overwhelmingly strong instinctual drive which clouded the function of critical faculty. They were unable, consciously, to resist, and they could not prevent the breaking through of strong drives from within which lead to stealing." SANDOR LORAND, *Compulsive Stealing*, JOUR. OF CRIM. PSYCHOPATHY, I (January, 1940), 247-253. Cf. MALAMUD, *op. cit.*

<sup>9</sup> E. R. KEEDY, *Irresistible Impulse as a Defense in Criminal Law*, U. OF PA. L. REV., C (May, 1952), 956-993. The "irresistible impulse" and "compulsive crime" concepts seem to have at their base the same assumptions inherent in the old faculty psychology concepts "moral perversion," "moral imbecility," "inhibitory insanity," "affective mania," "monomania," etc., each of which implied a psychological disorder which has no connection with the "intellect" or "knowing" or "reasoning" faculties. See LAWSON G. LOWREY, *Delinquent and Criminal Personalities*, in J. McV. HUNT (Editor), *PERSONALITY AND THE BEHAVIOR DISORDERS* (New York: Ronald Press, 1944), pp. 799-801. Most modern psychiatrists claim that theirs is not a faculty psychology since what was formerly considered as emotional and intellectual faculties is now considered as one—the total personality. But while this "integration" theory is affirmed by psychiatrists as they oppose the M'Naghten rules it is denied when they support notions of "compulsive crime" or "irresistible impulse." See the discussion by JEROME HALL, *op. cit.*, pp. 523-524.

<sup>10</sup> WERTHAM is a noteworthy exception. This psychiatrist writes that "the criminal law which makes use of the conception of irresistible impulse is not an advance belonging to the present 'scientific social' era. It is a throwback to, or rather a survival of, the previous 'philosophical psychological' era. The concept of irresistible impulse derives from a philosophical, speculative, synthetic psychology. It forms no part of and finds no support in the modern dynamic psychoanalytic study of mental process." NEW YORK UNIVERSITY SCHOOL OF LAW, *SOCIAL MEANING OF LEGAL CONCEPTS—CRIMINAL GUILT* (New York: New York University School of Law, 1950), p. 164. Elsewhere the same author has stated that there is nothing in the whole field of psychopathology which corresponds to the irresistible impulse and that compulsions play no role in criminal acts. FREDERIC WERTHAM, *THE SHOW OF VIOLENCE* (New York: Doubleday, 1949), pp. 13-14. Bromberg and Cleckley recently

## MENTALISTIC ASSUMPTIONS OF LAW AND PSYCHIATRY

This divergence in opinion and viewpoint is enhanced by the fact that an assumption of "mind" is implicit in the psychological orientations of both psychiatry and criminal law, so that each discipline has a "mentalistic" approach to human behavior. In criminal law, the "right and wrong test" assumes the existence of a mind which, when normal and mature, operates in such a way that the human has conscious freedom to choose rationally whether or not a crime shall be committed. The mind impels the person only in the direction "he wishes to be impelled. But a mind which is immature or "diseased" cannot make intelligent choices, and a defendant possessing such a mind is considered incapable of entertaining criminal intent. Such an assumption tends to equate rationality and sanity, and it is necessary to fixing "responsibility" for acts.<sup>11</sup> Although psychiatrists often denounce this jurisprudential assumption on the ground that it ignores the facts of science,<sup>12</sup> their denunciation is possible only because of emphasis on a different mentalistic construct. In writing of "compulsive crime," at least, most psychiatrists assume a mind with only one significant difference from the one assumed by most jurists. Here, the mind is said to be subject to casual emotional experiences, especially early sexual experiences, which give it characteristics such that at the present moment of action it completely determines the person's choice—and, consequently, his overt behavior—in a manner which usually is completely unconscious and unknowable without the help of a psychiatrist. The deeply hidden emotional forces of the mind are thought to compel the actor even if "he" knows the action is illegal, and "he" has no choice in whether the action shall be undertaken. The chief difference between such psychological forces or "mainsprings of action," and instinctive "mainsprings of action" is that the former are "unconscious."<sup>13</sup>

Mentalistic assumptions of both kinds must be clarified and supplemented in order to determine whether "compulsive criminality" is exceptional to the differential association theory. As long as criminality is said to have its etiology in a rather mysterious "mind," "soul," "will," or "unconscious," there will be no possible way for generalizations about criminality to be subjected to empirical tests or observations which would settle the issue. Also, so long as "compulsiveness," as traditionally

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stated a similar position: "The concept of sudden 'irresistible impulse' in an otherwise perfectly normal organism is unsupported by modern psychiatric knowledge." WALTER BROMBERG AND HERVEY M. CLECKLEY, *The Medico-Legal Dilemma—A Suggested Solution*. JOUR. CRIM. L., CRIMINOL. AND POL. SCI., XLII (March–April, 1952), 729–745.

<sup>11</sup> For discussion of the differences between "responsibility," "causation," and "accountability," see ARNOLD W. GREEN, *The Concept of Responsibility*, JOUR. CRIM. L. AND CRIMINOL., XXXIII (January–February, 1943), 392–394; and BROMBERG AND CLECKLEY, *op. cit.*

<sup>12</sup> See, e.g., EDWARD GLOVER, *The Diagnosis and Treatment of Delinquency*, in L. RADZINOWICZ AND J. W. C. TURNER (Editors), *MENTAL ABNORMALITY AND CRIME*, Volume II of ENGLISH STUDIES IN CRIMINAL SCIENCE (London: Macmillan, 1949), pp. 279–280.

<sup>13</sup> See BENJAMIN KARPAN, *An Attempt at a Re-evaluation of Some Concepts of Law and Psychiatry*, JOUR. CRIM. L. AND CRIMINOL., XXXVIII (September–October, 1947), 206–217. FOOTE has pointed out that in spite of the seductive appeal which is exerted by the hope of reducing human behavior to some simple and permanent order through finding certain "basic" imperatives underlying it, criticism has negated every specific naming of the "mainsprings of action." *Nelson N. Foote, Identification as the Basis for a Theory of Motivation*, AMER. SOCIOLOGICAL REV., XVI (February, 1951), 14–22.

described, must be determined by specialists rather than judges or juries, jurists will resist discussion of it in their courts and the legal-psychiatric controversy will continue.

#### A SOCIOLOGICAL THEORY OF MOTIVATION

Behavior traditionally considered as "compulsive crime" can be handled and clarified without the assumption of "mind" or a basic biological or psychic imperative by application of the sociological hypothesis that there are differences in the degree to which acts are controlled by the linguistic constructs (words or combinations of words) which the actor has learned from his social groups. Since the use of linguistic constructs depends upon contacts with social groups, this amounts to differences in the degree to which the actor participates in group experiences. In sociological "role theory," differences of this kind are considered differences in the motivation of the actor, although this concept is used in a sense quite different from the use in psychiatry. Motivation here refers to the process by which a person, as a participant in a group, symbolically (by means of language) defines a problematic situation as calling for the performance of a particular act, with symbolically anticipated consumation and consequences.<sup>14</sup> Motives are not inner, biological mainsprings of action but linguistic constructs which organize acts in particular situations,<sup>15</sup> the use of which can be examined empirically. The key linguistic constructs which a person applies to his own conduct in a certain set of circumstances are motives; the complete process by which such verbalizations are used is motivation.

The great difference between this conception of motivation and the notion that motives are biological or are deeply hidden in the "unconscious" may be observed in the use of the concept "rationalization" in the two systems. In psychiatry it usually is said that one "merely rationalizes" (*ex post facto* justification) behavior which "has really been prompted by deeply hidden motives and unconscious tendencies."<sup>16</sup> In the other system, which uses a non-mentalistic conception of motivation, it is held that one does not necessarily "merely rationalize" behavior already enacted but acts because he has rationalized. The rationalization is his motive. When such rationalizations or verbalizations are extensively developed and systematized the person using them has a sense of conforming because they give him a sense of support and sanction.<sup>17</sup> An individual in our society, for example, may feel fairly comfortable when he commits an illegal act in connection with his business for, after all, "business is business." But not all verbalizations are equally developed or systematized, and in some instances the use of the verbalizations does not, therefore, receive such extensive support and sanction. The individual in these instances does not have a comfortable sense of conforming. The person in the above example prob-

<sup>14</sup> *Ibid.*

<sup>15</sup> Cf. C. WRIGHT MILLS, *Situated Actions and Vocabularies of Motive*, AMER. SOCIOLOGICAL REV., V (December, 1940), 904-913.

<sup>16</sup> ARTHUR P. NOYES, *TEXT-BOOK OF MODERN PSYCHIATRY* (Philadelphia: W. B. Saunders and Company, 1940), p. 49. See also, for example, WILLIAM A. WHITE, *INSANITY AND THE CRIMINAL LAW* (New York: Macmillan, 1923), p. 9; and BENJAMIN KARPMAN, *op. cit.*

<sup>17</sup> For an excellent discussion of this point, see A. R. LINDESMITH AND A. S. STRAUSS, *SOCIAL PSYCHOLOGY* (New York: Dryden Press, 1949), pp. 307-310.

ably would not feel as comfortable if his illegal act were perpetrated according to the verbalization "all businessmen are dishonest." As conceptualized in sociology, then, motives are treated as "typical vocabularies (linguistic constructs) having ascertainable functions in delimited societal situations"<sup>18</sup> and, as such, they may be examined empirically.

Using this conception of motivation, it is immediately apparent that not all behavior is equally motivated; there are differences in the degree to which behavior is linguistically controlled. Certainly some behavior is performed with almost no social referent, i.e., with the use of no shared verbalization. For instance, behavior which is physiologically autonomous is clearly non-motivated since the release of energy appropriate to performing the behavior does not depend upon the application of a linguistic construct. Similarly, if one's behavior has been so conditioned by his past experiences that he behaves automatically, in the way that Pavlov's dogs behaved automatically at the sound of the bell, he is not motivated.<sup>19</sup> However, it is equally certain that other behavior cannot be enacted unless the actor has had rather elaborate and intimate contact with linguistic constructs which are, by definition, group products. Such behavior is motivated, and it may be distinguished from automatic behavior by the fact that it has reference to means and ends. If a person defines a situation as one in which there are alternatives, if there is evidence of planning, evidence of delaying small immediate gains for larger future gains or evidence of anticipation of social consequences of acts, he is motivated.

#### APPLICATION OF THE MOTIVATION THEORY TO "COMPULSIVE CRIME"

When this theory of motivation is applied to the problem at hand, it may be seen that if behavior traditionally considered as "compulsive crime" were clearly non-motivated or autonomous then the legal-psychiatric controversy would have been resolved long ago since, if such were the case, the behavior easily could be subsumed under the legal concept "insanity." If "compulsions" "in" a person "came out" in the same way that his whiskers "come out," then even in the most "anti-psychiatric" court there would be no question of his legal responsibility, and his behavior would not, in fact, be designated as crime. In this case, there would be no problem about whether the behavior were exception to the differential association theory but, instead, the behavior would lie outside the definition of the phenomenon (crime) with which the differential association theory is concerned. Non-motivated behavior of this kind which resulted in legal harm would not be unlike the behavior of a sleeping or drugged person whose hand was guided by another to the trigger of a gun aimed at a victim's head. Such behavior is not planned by the actor, and precautions against detection are not taken because the ability to use the language symbols normally pertinent to the situation is absent or deficient.<sup>20</sup> If behavior is non-motivated the actor cannot possibly entertain "criminal intent."

<sup>18</sup> C. WRIGHT MILLS, *op. cit.*

<sup>19</sup> Genuinely fetishistic behavior probably is of this kind.

<sup>20</sup> Although it is not recommended, because it probably would lead to even more confusion than now exists, the criminal law theory which exempts some persons from liability because they lack "responsibility" might easily be restated in these terms. Those persons—generally psychotics and very young children—who are now excused on the ground that they cannot distinguish between

In most cases now labeled "kleptomania," "pyromania," etc., however, the actors appear to be motivated in the same way that other criminals are motivated. Consequently they are, in the terminology of the criminal law, "responsible." They select secluded places in which to perpetrate their acts, plan their activities in advance, realize that they will be arrested if detected, and do many other things indicative that there is a conscious normative referent in their behavior. Certainly most acts traditionally described as "compulsive crime" are clearly quite different from autonomous behavior having no normative components,<sup>21</sup> in spite of the fact that the two are usually assumed to be identical or at least very similar. While it is not easy to classify precisely certain acts as motivated or non-motivated, since men do not always explicitly articulate motives,<sup>22</sup> the sociological framework at least affords an opportunity to classify correctly the great proportion of the acts ordinarily labeled "compulsive crime." Using that framework, illegal conduct which is motivated would be classed as "crime" and illegal acts which were non-motivated would be classed as "compulsion" and would fall within the legal category "insanity."

#### NON-SCIENTIFIC CRITERIA OF COMPULSIVE CRIMINALS

Accurate classification of this kind would be valuable, since in the current system it appears that compulsive crime concepts are no less "wastebasket categories" than is the "psychopathic personality" concept. Casual observation indicates, at least, that the application of the "compulsive crime" label often accompanies the inability of either the subject or the examiner to account for the behavior in question *in terms of motives which are current, popular, and sanctioned in a particular culture or among the members of a particular group within a culture.* For example, one criterion, usually

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right and wrong either have not acquired or have lost the ability to control language symbols. In fact, on a level which now seems very unsophisticated, this principle was recognized in the criminal law as early as the thirteenth century when Bracton formulated what erroneously has been called the "wild beast test."

<sup>21</sup> Possibly it was the observation of this same difference which led ALEXANDER and STAUB to argue that while the impulse in kleptomania, pyromania and compulsive lying is an unconscious one, an impulse foreign to the ego, yet the act is not completely unconscious, as is the case, they hold, in compulsive neuroses generally. FRANZ ALEXANDER AND HUGO STAUB, *op. cit.*, pp. 95-97. See also ROBERT H. GAULT, *CRIMINOLOGY* (New York: D. C. Heath and Company, 1932), pp. 163-166 where kleptomania and pyromania are used as illustrations of the psychopathic personality. That is, they are considered as "a form of outlet for a nature that is unbalanced by reason of the dominance of the egocentric disposition. . . . They take what does not belong to them not so much as a result of blind impulsion; not *quite* 'blind impulsion' because the kleptomaniac is at pains to conceal not only his act but the products of his stealing. . . . We are forced to conclude that in the general run of instances of this nature we are dealing with unreasoned impulsion to get goods to amplify one's store, to gratify one's desire for possession and therefore magnify one's self. In other words, here is the egocentric disposition. This language suggests a purposive character of the behavior—and it is so that it results in obtaining goods." However, LICHTENSTEIN, STEKEL, and many others, claim that the evidence of deliberation and intent in the acts of pyromaniacs and kleptomaniacs does not in and of itself signify sanity. PERRY M. LICHTENSTEIN, *A DOCTOR STUDIES CRIME* (New York: D. Van Nostrand, 1934), p. 182; WILHELM STEKEL, *PECULIARITIES OF BEHAVIOR* (New York: Liveright, 1924), Vol. I, p. 258.

<sup>22</sup> C. WRIGHT MILLS, *op. cit.*



overlooked, for designating behavior "kleptomania" rather than "theft" is apparent lack of economic need for the item on the part of the person exhibiting the behavior. This may be observed in at least two different ways. First, the probability that the term "kleptomania" will be applied to a destitute shoplifter is much lower than the probability that it will be applied to a wealthy person performing the same kind of acts. "Kleptomania," then, often is simply a short-hand way of saying, as the layman does, "That woman is rich and can buy almost anything she desires. She does not need (economic) to steal. She must be crazy."<sup>23</sup> An interesting but erroneous assumption in such logic is that the behavior of normal persons committing property crimes is explainable in terms of economic need.<sup>24</sup> This assumption, coupled with the empirical observation that wealthy persons sometimes do commit major property crimes led to the erroneous conclusion by two sociologists that such crimes must be prompted by "greed" rather than "need."<sup>25</sup> Among psychiatrists, contradiction of the same assumption, through observation of the fact that wealthy persons do sometimes commit minor property crimes, results in the notion that larcenous behavior of wealthy persons must be "compulsive." The economic status of the observer probably is of great importance in determining whether he thinks a person is not in economic need and is consequently compulsive. Whether or not the misconduct is considered "disproportionate to any discernible end in view"<sup>26</sup> conceivably will depend a great deal upon the attitudes of the examiner rather than upon those of the offender. That is, a poor person might consider that a middle-class person had no need to steal and that his stealing must be the result of "greed" or a "compulsion," while a middle-class person probably will entertain this notion only as it refers to upper-class persons whose incomes far exceed his. If all psychiatrists were poverty-stricken the proportion of shoplifters called "kleptomaniacs" probably would be much higher than it is. And if it is assumed that the larcenous behavior of wealthy persons is, because they are wealthy, "compulsive" then there is little opportunity for determination of possible contacts with behavior patterns conducive to crime.

Second, the absence, from the observer's standpoint, of economic need is used as a criterion for designating persons as "kleptomaniacs" in cases in which the particular

<sup>23</sup> Compare: "In kleptomaniac we have individuals who steal, but their stealing has a number of important differences from ordinary theft. For one thing, the purely predatory element present in common theft is lacking here. The subject steals not because of the value and the money he gets from the stolen articles—that is, not for their mercenary value—but entirely for what they mean to him emotionally and symbolically. One often observes this in rich women who have no need for the article they steal and, in point of actual fact, dispose of almost immediately after the article has been stolen. While the symbolic nature of such stealing is often evident on the surface, we not infrequently come across cases of stealing the nature of which is not so obvious, so that one is puzzled to figure out whether we are dealing with kleptomania or ordinary theft. Many such cases are found in our prisons." BENJAMIN KARPMAN, *Criminality, Insanity and the Law*, JOUR. CRIM. L. AND CRIMINOL., XXXIX (January–February, 1949), 584, 605.

<sup>24</sup> For evidence to contrary, see E. H. SUTHERLAND, *WHITE COLLAR CRIME* (New York: Dryden Press, 1949).

<sup>25</sup> HARRY ELMER BARNES AND NEGLEY K. TEETERS, *NEW HORIZONS IN CRIMINOLOGY* (New York: Prentice-Hall, 1945), p. 43. The conclusion does not appear in the Second Edition (1951) of this book.

<sup>26</sup> WILLIAM HEALY, *THE INDIVIDUAL DELINQUENT* (New York: Little, Brown, 1918), p. 771.

articles taken appear to be of no immediate use to the subject. For example, Alexander and Staub do not consider as kleptomaniac the behavior of a physician (a "neurotic criminal") who had been taking medical books and supplies, but his "theft of porcelain figures which were new and actually of no value is more in the nature of a kleptomaniac act," and Wallerstein has stated that a case "was hardly kleptomania in the usual sense because the articles were pawned or sold for money."<sup>27</sup> Although they have not been explored in this connection, Veblen's arguments about the great desirability in our culture of acquiring money merely as a means of accumulating economically "useless" goods might have a bearing here.<sup>28</sup> If his thesis were followed it would seem, at least, that there is little logical justification for designating as "criminal" the behavior of one who stole money with which to buy "useless" goods while at the same time designating as "compulsive" the stealing of the goods themselves.

This criterion also is used for designating even poor persons as "kleptomaniacs" in instances of repetitive taking of what appear to be economically useless goods. However, the fact that mere repetitive taking need not indicate a compulsion may be illustrated by the case of a gang of boys who went from store to store in a large city stealing caps. They would enter a store and each boy would steal a cap, leaving his own on the counter. The group would then move to another store where the stolen caps would be left on the counter, and new ones would be stolen. This practice would continue until the gang members became bored with the game. It is not difficult to distinguish such behavior from what is called kleptomania because it was perpetrated by a number of boys acting together, because it appears to have been done as play<sup>29</sup> and, most important, because it was perpetrated by boys closely approaching the cultural stereotype of the delinquent or criminal. Even a psychoanalyst probably would not assume that the caps were sex symbols or fetishes, although it is not inconceivable that he would do so.<sup>30</sup> However, if one of the boys at a later date repeated alone the same kind of thefts, the probability that he would be labelled a

<sup>27</sup> FRANZ ALEXANDER AND HUGO STAUB, *op. cit.*, p. 168; JAMES S. WALLERSTEIN, *Roots of Delinquency*, NERVOUS CHILD, VI (October, 1947), 399-412.

<sup>28</sup> See THORSTEN VEBLLEN, *THE THEORY OF THE LEISURE CLASS* (New York: Vanguard Press, 1938); and LOUIS SCHNEIDER, *THE FREUDIAN PSYCHOLOGY AND VEBLLEN'S SOCIAL THEORY* (New York: King's Crown Press, 1948).

<sup>29</sup> In discussing legal problems of kleptomania HALL says, "But mere repetition tends to prove habit, not abnormality." JEROME HALL, *op. cit.*, p. 517. See also H. M. TIEBOUT AND M. E. KIRKPATRICK, *Psychiatric Factors in Stealing*, AMER. JOUR. OF ORTHOPSYCHIATRY, II (April, 1932), 114-123.

<sup>30</sup> KARPMAN reports the case of a man who burglarized women's apartments taking both money and female intimate garments. By using this case as an illustration of "fetishistic kleptomania" he puts great emphasis upon the taking of the garments and almost ignores the taking of money. BENJAMIN KARPMAN, *Criminality, Insanity, and the Law*, *op. cit.* GAULT has made the following significant statement about such practices: "*The attempt that some have made to lay the foundation for cases of this nature in repressed sex motives and to interpret the objects stolen as so many symbols that they have in relation to the sex aspect of experience is a very unconvincing procedure. . . .* The case is doubtless not so simple. The sex urge is only one of the many that actuate the human organism. For instance, let us assume that a clothespin or a rubber hose found among the stolen goods of a kleptomaniac is a symbol. Symbol of what? The answer, according to the present writer's opinion, is that *its symbolic character depends upon what the investigator is interested in finding.*" ROBERT H. GAULT, *op. cit.*, pp. 163-166. Italics not in the original.

kleptomaniac would be high. And if the boy were a member of a wealthy family the probability of his being labeled a kleptomaniac would be even higher.

In fire-setting cases the absence of obvious economic need also is used, in the traditional system of thought, as a criterion for applying the term "pyromania," but here the absence of other popular motives is used as well. If it can be determined easily that one burned property in order to collect insurance, in order to get revenge, or in an attempt to conceal a criminal act, or if there is ground for believing that he had some other conventional motive, then the probability that he will be designated a "pyromaniac" is low. However, if none of these is immediately apparent,<sup>31</sup> and especially in instances where the thing burned has no great economic value, the probability that the term will be applied is much higher. Traditionally, pyromania has been, then, like kleptomania, a residual category.<sup>32</sup>

In contrast to what appears to be current practice, when sociological theory of motivation is used the apparent inability of a person to explain his actions to the police, to a psychiatrist, or even to himself, is not considered sufficient for classifying those actions "compulsive." Using that theory, it may be observed that most criminals, in fact, when asked to explain their acts either recite the popular motives involved or respond that they do not know. For example, one might say, as did a criminal who had stolen a whole truck-load of groceries, "I didn't want to take them but I had to because I was hungry." This response may be compared with that of a person arrested for taking small objects from a store: "I didn't want to take them but I just had to take them," and with that of a person who had burned an automobile, "I just wanted to stir up some excitement." As indicated above, such rationalizations are not necessarily *ex post facto* justifications for acts—and if they are not, then there is no logical justification for classifying one person as a "thief" and the others as "compulsive." Motives are circumscribed by the actor's learned vocabulary.

#### SOCIOLOGICAL ROLE THEORY APPLIED TO "COMPULSIVE CRIME"

But sociological theory can do more than correctly classify the large proportion of defendants said to be compulsive. The literature on role theory provides a framework not only for understanding the behavior of such defendants, but for understanding their inability to account for their behavior as well. Closely related to the theory of motivation which has been outlined is that aspect of role theory which deals with the relationship between the person's identification of himself as a "social

<sup>31</sup> One investigator states that of all the varieties of incendiaries, the pyromaniac is most difficult to detect "because of the lack of motive." CAMILLE F. HOYEK, *Criminal Incendiarism*, *JOUR. OF CRIM. L. AND CRIMINOL.*, XLI (March-April, 1951), 836-845.

<sup>32</sup> Psychoanalysts make much of the assumed sexual symbolism in cases of non-economically motivated incendiaryism. Thus, in one case of repeated burning of grass on vacant lots it was asserted that the lots symbolized the subject's father, that by driving onto the lot with his father's automobile the subject identified himself with his father and his sex organ and performed the act of incest on his mother, that the subject's efforts to help in extinguishing the fires was symbolic of an unconscious wish to atone for his sin, and that the splashing of water on the fire was a symbolic repetition of a regression to the urethral phase of his libidinal development, in which phase the subject was said to have had erections which were relieved by urinating. ERNST SIMMEL, *Incendiarism*, in K. R. EISSLER (Editor), *SEARCHLIGHTS ON DELINQUENCY* (New York: International Universities Press, 1941), 90-101.

object" and his subsequent behavior.<sup>33</sup> In order to play a social role one must anticipate the reactions of others by taking the role implicitly before it is taken overtly. He must look at himself from another's point of view. By hypothesizing the reactions of others the person looks upon himself as an object and, consequently, identifies himself as a particular kind of object. He then performs the role which is appropriate to the kind of social object with which he has identified. The vocabulary of motives employed in the performance of the role also is a corollary of this self identification. But at various times and in different situations the person may identify himself differently, so that he is able to play many, often even conflicting, social roles. Again, his identification of who he is and what he is determines the roles he plays.<sup>34</sup>

For example, one might in the course of a day identify himself as a father in one situation, as a husband in another situation, and as a property owner in another situation. The motives employed in the performance of each role will reflect his particular identification. A similar phenomenon may exist in respect to so-called "compulsive crime." For example, a person might in some situations identify himself as a kleptomaniac, since that construct is now popular in our culture, and a full commitment to such an identification includes the use of motives which, in turn, release the energy to perform a so-called compulsive act. The more positive the conviction that one is a kleptomaniac the more automatic his behavior will appear. The subject's behavior in particular situations, then, is organized by his identification of himself according to the linguistic construct "kleptomania" or its equivalent. In the framework of role theory, it is this kind of organization which makes the behavior recognizably recurrent in the life history of the person. The fact that the acts are recurrent does not mean that they are prompted from within but only that certain linguistic symbols have become usual for the person in question.

If this theory were applied, we would not expect apprehended shoplifters, some of whom conceive of themselves as kleptomaniacs, to provide a logically consistent or even "correct" explanation for their behavior. For example, one who has behaved according to a set of linguistic constructs acceptable to himself in one role (kleptomaniac) might later discover that both the behavior and the constructs are unacceptable to himself in another role he is playing or desires to play (father, property owner). In that case there will be a high probability of denial to himself in the second role that "he" behaved at all. His conception of himself from one point of view results in denial of the action: "I wasn't myself when (or if) I did that," "I wasn't feeling well that day," "I couldn't be the criminal you seek—I couldn't do a thing like that," etc. On the other hand, his continued conception of himself according to the symbolic constructs which were used in behaving in the first place probably will result in open confession that "he" behaved: "stop me before I do it again," "I have no control of myself," "That which is 'in' me comes out in situations like that," "I did it and I'm glad," etc.

In interviewing persons who, according to role theory, have identified with "compulsive criminals" of some sort we should not expect them to realize that "who they are" depends upon language symbols and, hence, upon arbitrary ascriptions by

<sup>33</sup> For a general discussion of this subject, see GEORGE H. MEAD, *MIND, SELF, AND SOCIETY* (Chicago: University of Chicago Press, 1934).

<sup>34</sup> See the discussion by NELSON FOOTE, *op. cit.*

others. One who identifies himself as a "kleptomaniac," for example, will be prone to accept such a conception of himself as ultimate reality. Even those observers or examiners who use the traditional notion that compulsive behavior is an expression of an "inner spring of action" have considered the subject's conception of himself as absolute rather than as a group product. As one sociologist has pointed out, "Because our learning has more often than not been perfected to the point where cognitive judgments in standardized situations are made instantaneously, and the energy for performing the appropriate behavior is released immediately, it has been an easy mistake for many observers to suppose that the organic correlates came first and even account for the definition of the situation, rather than the reverse."<sup>35</sup>

In our present state of knowledge we cannot be entirely sure how one gets committed to particular identities and motives in the first place but, as indicated, the process certainly is one of social learning. The differential association theory is a theory of social learning specifically applied to criminal behavior, and it contends that, in the terminology used above, the identifications and motives of criminals are acquired through direct, personal, contacts with persons sharing those identifications and motives. This theory may have many defects, in that it does not precisely or adequately describe or integrate all the aspects of the processes by which criminality is learned, but it describes the processes by which one becomes a "compulsive" criminal as well as it describes the processes by which one becomes a "non-compulsive" criminal. "Compulsive criminality," as traditionally described, is not of such a nature that it is necessarily exception to the differential association theory.

#### SUMMARY AND CONCLUSIONS

1. The assertion that "the latent forces of such phenomena as compulsive stealing and fire-setting are understood"<sup>36</sup> is not warranted.

2. If the traditional assumption that all "compulsive crime" is motivated entirely "from within" is correct, then the use of the words "compulsive" and "crime" together is erroneous. If the behavior actually were prompted "from within" it would be subsumed under the legal concepts "insanity," not "crime."

3. Re-examination of "compulsive crime" concepts in the framework of sociological theories of motivation, identification, and role-playing indicates that most of the legally harmful behavior traditionally labeled "compulsive" actually is "motivated" and has a developmental history which is very similar to that of other "motivated" behavior. That legally harmful behavior which is automatic ("non-motivated") cannot be considered as crime.

4. Since the developmental processes in so-called "compulsive criminality" are the same as the processes in other criminality, "compulsive crimes" are not, because of something in their nature, exceptional to the differential association theory. Upon closer empirical examination it probably will be demonstrated that criminality which traditionally has been assumed to be "personal" is actually a group product, and this criminality will become of more concern to the sociologist than has been the case in the past.

<sup>35</sup> *Ibid.*

<sup>36</sup> ROBERT M. LINDNER, *STONE WALLS AND MEN* (New York: Odyssey Press, 1946), p. 323.