




1991

## "A Strange Liking": Our Admiration for Criminals

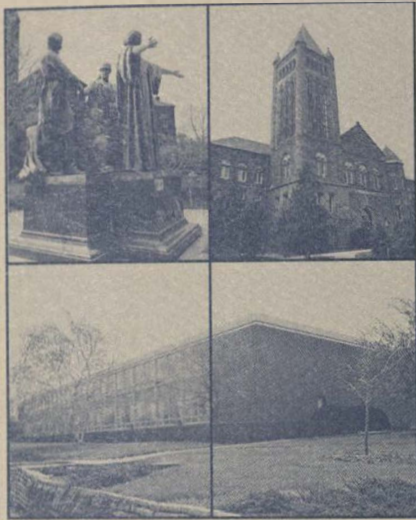
Martha Grace Duncan

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/faculty-articles>

 Part of the [Comparative Literature Commons](#), [Criminal Law Commons](#), [Law and Psychology Commons](#), [Other Psychology Commons](#), and the [Psychological Phenomena and Processes Commons](#)

---

# UNIVERSITY OF ILLINOIS



## LAW REVIEW

---

### ARTICLES

"A Strange Liking": Our Admiration  
for Criminals ..... *Martha Grace Duncan*

*Laidlaw v. Organ*, Gulian C. Verplanck,  
and the Shaping of Early Nineteenth  
Century Contract Law: A Tale of a  
Case and a Commentary ..... *M.H. Hoeflich*

Changing Our Perspective on Arbitration:  
A Traditional and a Feminist View ... *Jane Byeff Korn*

### NOTES

Plea Bargains and Nonprosecution Agreements:  
What Interests Should Be Protected When  
Prosecutors Renege?

Attorney Subpoenas: The Dilemma Over a  
Preliminary Showing Requirement

Paying the Costs of Hazardous Waste Pollution: Why  
Is the Insurance Industry Raising Such a Stink?

Periodicals : University of Illinois Law Review

Current : 1991, no. 1

issues to  
Faculty Lib.:

then Reserve: EMORY LAW LIBRARY

received 05/02/91

# University of Illinois Law Review

VOLUME 1991

NUMBER 1

## ARTICLES

- "A Strange Liking": Our Admiration  
for Criminals ..... *Martha Grace Duncan* 1
- Laidlaw v. Organ*, Gulian C. Verplanck,  
and the Shaping of Early Nineteenth Century  
Contract Law: A Tale of a  
Case and a Commentary ..... *M.H. Hoeflich* 55
- Changing Our Perspective on Arbitration:  
A Traditional and a Feminist View ..... *Jane Byeff Korn* 67

## NOTES

- Plea Bargains and Nonprosecution Agreements:  
What Interests Should Be Protected  
When Prosecutors Renege? ..... *William M. Ejzak* 107
- Attorney Subpoenas: The Dilemma Over a  
Preliminary Showing Requirement ..... *Robert Burkart Ellis* 137
- Paying the Costs of Hazardous Waste  
Pollution: Why Is the Insurance Industry  
Raising Such a Stink? ..... *Katherine Taylor Eubank* 173
- Target Standing Under Section 16 of the  
Clayton Act: When Your Antitrust Injury  
Hurts, Standing Can Be a Problem ..... *Glenn Alan Graff* 219

# "A STRANGE LIKING": OUR ADMIRATION FOR CRIMINALS

Martha Grace Duncan\*

[F]elony . . . says Maitland, is "as bad a word as you can give to man or thing."

*Morissette v. United States*<sup>1</sup>

Prick up your ears, Albert! Here's a bandit for you at last!  
Alexandre Dumas, *The Count of Monte Cristo*<sup>2</sup>

## I. INTRODUCTION

The law regards the felon as ignominious; it assumes the convict will be held in dishonor. Indeed, the stigma that is believed to flow from conviction of a particular offense is one factor courts consider in determining whether *mens rea* shall be required for that crime.<sup>3</sup> Yet, criminals—even serious offenders—are not invariably the objects of opprobrium. Noncriminals often enjoy, love, even admire, criminals. They admire them not in spite of their criminality but because of it—or at least because of qualities that are inextricably linked to their criminality. That they sometimes do so wonderingly, against considerable inner resistance, serves only to highlight the strength of the attraction.

From a psychoanalytic perspective, this attraction to criminals is not surprising. On an unconscious level, the law, which exercises authority over the citizen, represents the parent, who exercises authority over the child. The law thus serves as a repository of powerful feelings from early childhood—complex feelings of love and hatred, or ambivalence, and concomitant attitudes of submission and defiance.<sup>4</sup>

---

\* Associate Professor of Law, Emory University. Ph.D. 1976, Columbia University; J.D. 1983, Yale Law School.

For their encouragement and helpful comments on this article, I wish to thank Thomas Arthur, Harold Berman, Jennifer Brown, Morgan Cloud, Richard Duncan, Donald Fyr, Harriet King, Andrew Kull, Richard Levin, Bruce Lindsay, Marc Miller, David Papke, Ralph Roughton, and Pamela Samuelson. In addition, I owe a debt of gratitude to my research assistants: Lynn Gaffigan, Constandina Kallos, and Joseph Murphey.

1. 342 U.S. 246, 260 (1952).

2. A. DUMAS, *THE COUNT OF MONTE CRISTO* 158 (1988).

3. See *Morissette*, 342 U.S. at 256-57.

4. For a discussion of the tendency to displace feelings from parents to the state, see C. BRENNER, *AN ELEMENTARY TEXTBOOK OF PSYCHOANALYSIS* 246 (rev. ed. 1973). For a discussion of the ambivalence that characterizes important early relationships, such as those with parents, see *id.* at 109-10. See also J. FRANK, *LAW AND THE MODERN MIND* 18-21, 249-50 (1930); Manheim, *The*



The negative side of our ambivalence toward the law finds expression in various ways. Some people become revolutionaries or anarchists, fighting to transform or abolish the law; others become criminals, living their lives outside the law. Still others avoid flagrant criminal conduct themselves, while identifying with criminals and vicariously participating in their illegal deeds. Among this last group are those who watch out-laws and listen to their stories, admiring, repudiating, persecuting, and endeavoring to rescue criminals.

This article explores noncriminals' admiration for the lawbreaker. Drawing on literature, films, history, and psychoanalysis, the article seeks to delineate and explain this paradox. Each part of the article adopts a different approach to the subject of admiration for criminals. Part II, "Reluctant Admiration," sets the stage by presenting evidence that such admiration, and conflict over it, are pervasive. Parts III and IV present two quite different strategies that noncriminals employ to cope with their inner conflict over criminality. Thus, Part III, "Rationalized Admiration," depicts noncriminals who express undisguised enjoyment in, and reverence for, criminals. These noncriminals justify their attraction to the lawbreaker by attributing it to consciously acceptable values, such as justice or freedom.

By contrast, the noncriminals in Part IV, "Repressed Admiration," energetically bar from consciousness their admiration for criminals. These noncriminals deal with their esteem for criminals not only by repression but also by other defense mechanisms: converting admiration to loathing, repudiation, and persecution. As persecutors, noncriminals sometimes step over the line and commit crimes themselves. They are then in the psychological position of "having their cake and eating it too," as they imitate criminal behavior in the service of bringing criminals to justice. As will be apparent by now, this article adopts a psychoanalytic approach to understanding admiration for criminals.<sup>5</sup> It thus takes for granted such axioms of psychoanalysis as the following: the meaningfulness of all mental and emotional manifestations, the existence of an unconscious, the defense mechanisms, infantile sexuality, and the causal significance of early life.

The article draws on fictional characters rather than psychoanalytic patients to illustrate many of its points about noncriminals' attitudes toward criminals. While not a traditional approach in either psychoanaly-

---

*Law As "Father": An Aspect of the Dickens Pattern*, in 9 U. HARTFORD STUD. LITERATURE 100, 100-04 (1977); Redmount, *Psychological Views in Jurisprudential Theories*, 107 U. PA. L. REV. 472, 504-05 (1959).

5. For works exploring the applications of psychoanalysis to law, see J. KATZ, J. GOLDSTEIN & A. DERSHOWITZ, *PSYCHOANALYSIS, PSYCHIATRY AND LAW* (1967); C. SCHOENFELD, *PSYCHOANALYSIS AND THE LAW* (1973); G. ZILBOORG, *THE PSYCHOLOGY OF THE CRIMINAL ACT AND PUNISHMENT* (1954); Bienfeld, *Prologomena to a Psychoanalysis of Law and Justice*, 53 CALIF. L. REV. 957 (1965); Ehrenzweig, *Psychoanalytic Jurisprudence: A Common Language for Babylon*, 65 COLUM. L. REV. 1331 (1965); Goldstein, *Psychoanalysis and Jurisprudence*, 77 YALE L.J. 1053 (1968).

sis or law, extrapolation from literature to life is a method with ample precedents in both disciplines.<sup>6</sup> Moreover, this approach offers advantages over the use of patients or a scientific sample of the nonpatient population. For one, readers of this article will recognize many of the literary examples and thus will be able to form their own opinions of the interpretations offered. Second, where the work in question is a classic, its status as a story that has been read through decades and across cultures will provide evidence of a widespread resonance to its themes.

#### A. *The Theoretical Literature on the "Noble Bandit"*

Nonlegal scholars have appreciated the paradox of admiration for criminals and have offered explanations for it. However, they have limited their analyses to the "noble bandit" or "social bandit" type—a category first identified by the eminent British historian E. J. Hobsbawm. On the basis of his research on protest movements, Hobsbawm argued that what he called "social banditry" is a universal phenomenon in peasant societies.<sup>7</sup> He defined social bandits as "outlaws whom the lord and state regard as criminals, but who remain within peasant society, and are considered by their people as heroes, as champions, avengers, fighters for justice . . . ."<sup>8</sup> Based on the lives or legends of such outlaws as Robin Hood (England), Diego Corrientes (Spain), Janosik (Poland and Slovakia), Mandrin (France), and Stenka Razin (Russia), Hobsbawm delineated nine characteristic features of the social bandit:

First, the noble robber begins his career of outlawry not by crime, but as the victim of injustice, or through being persecuted by the authorities for some act which they, but not the custom of his people, consider criminal.

Second, he "rights wrongs."

Third, he "takes from the rich to give to the poor."

Fourth, he "never kills but in self-defense or just revenge."

Fifth, if he survives, he returns to his people as an honourable citi-

6. For psychoanalytic works that treat fictional characters as clinical examples, see S. FREUD, *Some Character-Types Met with in Psycho-Analytic Work*, in 14 THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 309, 318-31 (1957) [hereinafter THE STANDARD EDITION] (discussing Lady Macbeth and Ibsen's Rebecca West as examples of "those wrecked by success"); A. ROTHSTEIN, *THE NARCISSISTIC PURSUIT OF PERFECTION* (1984) (examining characters in novels of Tolstoy and John Fowles to illustrate types of narcissism); L. SHENGOLD, *SOUL MURDER* (1989) (employing novels by Orwell, Dickens, and others to illustrate psychodynamics of child abuse and neglect).

For legal works that draw on literature to illuminate life, see R. POSNER, *LAW AND LITERATURE* 25-70 (1988); R. WEISBERG, *THE FAILURE OF THE WORD* (1984); Duncan, "*Cradled On The Sea*": *Positive Images of Prison and Theories of Punishment*, 76 CALIF. L. REV. 1201 (1988); Morris, *The Watching Brief*, 54 U. CHI. L. REV. 1215 (1987) (one of a series of stories that Morris has written to dramatize and examine issues in criminal law); West, *Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner*, 99 HARV. L. REV. 384 (1985).

7. See E. HOBSBAWM, *PRIMITIVE REBELS* 5 (1959).

8. E. HOBSBAWM, *BANDITS* 13 (1969).



zen and member of the community. Indeed, he never actually leaves the community.

Sixth, he is admired, helped and supported by his people.

Seventh, he dies invariably and only through treason, since no decent member of the community would help the authorities against him.

Eighth, he is—at least in theory—invisible and invulnerable.

Ninth, he is not the enemy of the king or emperor, who is the fountain of justice, but only of the local gentry, clergy or other oppressors.<sup>9</sup>

Hobsbawm briefly adduced several bases for the appeal of the noble bandit: “the longing for lost innocence and adventure,” and “freedom, heroism, and the dream of justice.”<sup>10</sup> Above all, Hobsbawm emphasized the appeal of justice: “[s]ocial banditry . . . is little more than endemic peasant protest against oppression and poverty: a cry for vengeance on the rich and the oppressors, a vague dream of some curb upon them, a righting of individual wrongs.”<sup>11</sup> In an analysis similar to Hobsbawm’s, Paul Angiolillo attributes the noble bandit’s appeal to man’s longing for freedom, exciting adventures, heroism, and fair treatment.<sup>12</sup>

An interesting variation on the explanations proposed by Hobsbawm and Angiolillo appears in Stephen Tatum’s book *Inventing Billy the Kid*.<sup>13</sup> Noting that the Kid and other outlaw heroes ultimately receive punishment from legal authorities, Tatum suggests that stories about noble bandits meet our twofold need: (1) for excitement and unpredictability (through the criminal adventures); and (2) for order and stability (through the criminal’s defeat by the law).<sup>14</sup>

There is an element of truth in these analyses, but as a complete explanation of our admiration for criminals, they are inadequate. In the first place, many of the criminals whom noncriminals admire fall outside the genre of “noble bandits.” Some of the best-loved outlaws in litera-

9. *Id.* at 35-36.

10. *Id.* at 113.

11. E. HOBSBAWM, *PRIMITIVE REBELS* (1959).

12. See P. ANGIOLILLO, *A CRIMINAL AS HERO* 4-5 (1979).

13. S. TATUM, *INVENTING BILLY THE KID: VISIONS OF THE OUTLAW IN AMERICA, 1881-1981* (1982).

14. *Id.* at 196-97. In addition to the theorists discussed in the text, others have offered explanations for the criminal’s appeal. For scholarly attempts to explain the love of the criminal in the United States in particular, see F. ALEXANDER & W. HEALY, *ROOTS OF CRIME* 282-83 (1935) (implying that “heroic exhibitionistic evaluation of criminal deeds in America” has its roots in the American individualistic ethos, coupled with the absence of opportunities to express one’s individuality); R. MERTON, *SOCIAL STRUCTURE AND ANOMIE*, in *SOCIAL THEORY AND SOCIAL STRUCTURE* 195-96 (1968) (suggesting that Americans’ admiration for white-collar criminals flows from a “cultural structure in which the sacrosanct goal virtually consecrates the means”); White, *Outlaw Gangs of the Middle Border: American Social Bandits*, 12 *W. HIST. Q.* 387, 397, 402-06 (1981) (arguing that in postwar Missouri and Oklahoma in 1890s bandits were admired because they embodied masculine virtues in a context where belief in public law enforcement had been eroded).

For an imprisoned criminal’s attempt to account for what he calls the “cult of the rogue” among the American public, see E. DALTON, *WHEN THE DALTONS RODE* 276-77 (1931) (suggesting that the criminal represents the common person’s fight against authority, wealth, and pretension).

ture—Moll Flanders and Long John Silver, to name two—do not “steal from the rich and give to the poor” or in any sense behave as instruments of justice. Thus, Hobsbawm’s and Angiolillo’s central explanation does not account for their appeal. Furthermore, these criminals do not ultimately succumb to punishment at the hands of the law. Hence, Tatum’s emphasis on the need for order and stability cannot explain their attraction.

Second, the same criminals whom these scholars identify as “noble bandits” often were not generous and idealistic, but rather brutal and selfish. Even Hobsbawm admits at one point, “[i]n real life most Robin Hoods were far from noble.”<sup>15</sup> This suggests that, in admiring criminals, noncriminals are not merely expressing appreciation for qualities that are objectively present; rather, they are going out of their way to perceive criminals in a positive light.

Third, the previous theories have been presented on a very general level, which limits their explanatory power and sometimes renders them misleading. For example, Hobsbawm and Angiolillo offer “the appeal of freedom” as one explanation for our attraction to criminals. Stated in this abstract way, their formulation might lead one to believe that criminals embodied a love of democracy. In fact, as I will show in a later section,<sup>16</sup> the freedom that is most closely associated with criminals appears to be of a more primitive variety—either an anal, oppositional kind of freedom that is freedom *against* the law, not within it, or freedom of movement—a somatic kind of freedom.

Tatum’s analysis, too, proceeds on an abstract plane, with its emphasis on man’s need for disorder and order, for excitement and stability. From his language, one might easily forget that Tatum is writing, not about Carnival time in Rio, but about *crime*. The moral and legal dimensions of the phenomenon he is explaining are entirely missing.

More generally, all of the standard explanations for our admiration for criminals seem unduly charitable to the noncriminal. They focus on values we can admire without shame, while ignoring less noble features of criminality, such as violence, greed, sadism, and anger. Psychoanalysis teaches us to “pay attention,” to “ignore nothing,” because all manifestations of the human mind have meaning.<sup>17</sup> From this perspective, the more sordid aspects of the criminality are not accidental but essential to its appeal. I am suggesting that in addition to the yearning for freedom and justice, the respect for courage, and the vicarious pleasure in adventure, there is a dark side to our admiration for the criminal.

I will return to the question of why we admire criminals in Part III

---

15. E. HOBSBAWM 34 (1969).

16. See *infra* text accompanying notes 94-103.

17. See, e.g., M. SKURA, *THE LITERARY USES OF THE PSYCHOANALYTIC PROCESS* 200-01 (1981).



of this article. First, let us examine the strategies that noncriminals unconsciously employ to resist awareness of their esteem for criminals.

## II. RELUCTANT ADMIRATION: THE FORMS OF OUR CONFLICT OVER CRIMINALS

When I thought to know this, it was too painful for me.

*Psalms 73:16*

In his novel *Rob Roy*, Sir Walter Scott portrays a violent outlaw who extorts fees from his Scottish countrymen in exchange for protection. At one point in the novel, Nicol Jarvie, a prudent businessman, ruefully puzzles over his attraction to the bandit and his illegal deeds:

It's a queer thing o' me, gentlemen, that am a man o' peace mysell, and a peacefu' man's son, for the deacon my father quarrelled wi' nane out o' the town-council—its a queer thing I say, but I think the Hieland blude o' me warms at thae daft tales [of Rob Roy], and whiles I like better to hear them than a word o' profit, Gude forgie me! But they are vanities—sinfu' vanities, and moreover, again the statute law—again the statute and gospel law.<sup>18</sup>

Honestly acknowledging that Rob's criminal adventures appeal to him more than "a word o' profit," Jarvie recognizes that this fascination is paradoxical in someone of his character. At the end of his statement, he endeavors to appease his superego, or inner moral voice, by roundly condemning Rob's acts.

Wilkie Collins's mystery novel *The Woman in White* offers another example of ambivalence toward criminality and another way of resolving this inner conflict. The sober and mature heroine, Marian Halcombe, finds herself deeply attracted to Count Fosco, whom she has known for only a few days. Although she does not yet realize on a conscious level that he is a psychopathic criminal, her unconscious mind may sense his depravity. This would help to explain why she finds her attraction to him perplexing and disturbing. As she writes in her journal: "I am almost afraid to confess it, even to these secret pages. The man has interested me, has attracted me, *has forced me to like him.*"<sup>19</sup> And again: "I can only repeat that I do assuredly feel . . . *a strange, half-willing, half-unwilling liking* for the Count."<sup>20</sup> Thus, attempting to resolve the paradox of her captivation, Marian Halcombe attributes her "strange liking" to a power beyond her control—a resolution that we see again in Joseph Conrad's classic tale *Heart of Darkness*.

In this novel of self-discovery, Marlow makes a journey into the Belgian Congo to search for Kurtz, a man with a reputation for uniqueness and greatness. Gradually, Marlow learns that Kurtz's dreams have led him to "step across the threshold" into evil and crime, including large-

18. W. SCOTT, 2 *ROB ROY* 104 (1923).

19. W. COLLINS, *THE WOMAN IN WHITE* 195 (1975) (emphasis added).

20. *Id.* at 201 (emphasis added).

scale plundering of ivory and killing of Africans. Yet, even after he has made this discovery, Marlow feels a sympathy for Kurtz and finds himself unable to betray the man. Like Marian Halcombe, he perceives this alliance as something he has not totally chosen: "It is strange" he ponders, "how I accepted this unforeseen partnership, this choice of nightmares *forced upon me* in the tenebrous land invaded by these mean and greedy phantoms."<sup>21</sup>

Nicol Jarvie, Marian Halcombe, and Marlow are characters in works of fiction who exhibit both admiration for criminals and resistance to their admiration. In real life, too, we see individuals in conflict over their esteem for criminals. Arthur Penn, director of the movie about the notorious bank robbers, *Bonnie and Clyde*, provides one such example in the following excerpt from an interview. Here Penn, like Jarvie, oscillates between his id's attraction to the lawbreakers and his superego's prohibition on admiring criminals.

[Interviewer:] *What was it in Bonnie and Clyde that first intrigued you? Any particular aspects?*

Penn: I suppose I have always been involved with the outlaw to a pretty large extent; I can't say without admiration for them. *Although I find myself offended at saying it*, because I have a large belief in the law . . . .<sup>22</sup>

Immediately he returns to the theme of admiration, followed by another repudiation:

The history of laws in this country is one of constant change based upon the fact that individuals either spoke out or acted against the oppressive laws . . . . *Now I know it's absurd to be applying it to Bonnie and Clyde* because I don't think of them as being in any sense the noble outlaw of the breed of Robin Hood or William Tell

. . . .<sup>23</sup>

Once more he repeats the cycle:

I suppose that what intrigued me was the enterprise of Bonnie and Clyde, the bravura with which they decided to assault the system. And I have to say it again and again, *I don't mean to suggest that they had heroic character*, because I don't believe that they did.<sup>24</sup>

Finally, giving up his attempt to merge the historical reality with his wishes, Penn expresses his yearning for criminals he could admire without guilt: "But if they didn't [have heroic character], *I wish that Bonnie and Clyde had had it.*"<sup>25</sup>

Throughout the excerpt quoted above, Penn sequentially appeases his id and his superego by alternately applauding and denouncing the

21. J. CONRAD, *HEART OF DARKNESS* 69 (1971) (emphasis added).

22. Hanson, *Arthur Penn as Director*, in *THE BONNIE AND CLYDE BOOK* 182, 184 (1972) (emphasis added).

23. *Id.* at 185 (emphasis added).

24. *Id.* (emphasis added).

25. *Id.* (emphasis added).



criminal. It may have been a similar unconscious conflict that led *Newsweek* film critic Joseph Morgenstern to publish two reviews of *Bonnie and Clyde* one week apart, the first condemning, the second praising, the film and its casual, illicit violence.<sup>26</sup>

Alternating appeasement of the id and the superego can also be seen in the behavior of parents with their delinquent children. Here, too, we see a more poignant expression of the conflict over admiration for criminals; to wit, parents' unconsciously fostering criminality in their children to gratify their own unacknowledged criminal impulses. In one of many similar cases reported by Dr. Ruth Eissler, she describes her treatment of a twelve-year-old boy, the only child of a widow whose husband had been an embezzler and confidence man.<sup>27</sup> Soon after his father's death, when he was seven, the child had begun to steal, lie, miss school, and engage in rude and aggressive behavior. These symptoms of delinquency were very pronounced at the time he entered treatment with Eissler.

As the treatment progressed, it became apparent that whenever the boy showed improvement, some temptation occurred, causing a resurgence of the delinquent behaviour. For example, his mother's purse would be left out, or a cabinet containing valuable items would be left unlocked. Hoping to gain understanding into these incidents, Eissler sent the mother to another psychiatrist. This colleague reported that whenever the boy ceased stealing, the mother became depressed and created a situation that would tempt her son to steal again. In giving in to the temptation, the boy was not merely taking advantage of the opportunity; more importantly, he was also responding to his mother's depression and restoring the psychological balance between them. Both the boy and the mother were unconscious of their own motives.

In cases such as this, the child's criminal behavior vicariously satisfies the parent's unacceptable antisocial impulses. Moreover, the same parents who unwittingly turn their children into criminals in this manner frequently go on to denounce their children to the authorities.<sup>28</sup> By doing this, they gratify their superego's demand for punishment, again in the vicarious mode.<sup>29</sup>

Besides alternating gratification of the id and the superego, another way of coping with ambivalence toward criminality is through negation. A psychoanalytic concept, *negation* refers to the breakthrough of a re-

26. See Morgenstern, *Bonnie and Clyde: Two Reviews by Joseph Morgenstern*, in *THE BONNIE AND CLYDE BOOK*, *supra* note 22, at 218.

27. See Eissler, *Scapagoats of Society*, in *SEARCHLIGHTS ON DELINQUENCY* 288, 289-90 (K. Eissler ed. 1949).

28. See Johnson, *Sanctions for Superego Lacunae of Adolescents*, in *SEARCHLIGHTS ON DELINQUENCY*, *supra* note 27, at 225, 227-28.

29. My interpretation is consistent with the analysis of vicarious punishment in J.C. Flugel's work, *MANKIND AND SOCIETY* 164-74 (1945). As Johnson points out, the parents' denunciation of their children may also be an expression of hostile impulses toward the children. See Johnson, *supra* note 28, at 228.



pressed idea, but in negative form.<sup>30</sup> For example, a patient's words "I have not been hating my mother today" might be interpreted as a sign that the patient had, indeed, been feeling hatred for his mother but could admit this unacceptable idea to consciousness only in the negative. As Norman O. Brown writes, "[n]egation . . . is a dialectical or ambivalent phenomenon, containing always a distorted affirmation of what is officially denied."<sup>31</sup>

A 1989 television documentary entitled "Gangsters: A Golden Age," provides an example of this technique in the context of the conflict over criminality. At the beginning of the film the words "This is not a tribute" appear on the screen while they are also spoken on the sound track. There follows a detailed auditory and visual statement emphasizing that the gangsters had been evil people, who inflicted pain on many. The statement concludes with the words: "But such audacity . . . must be saluted."<sup>32</sup> All the language up to the final sentence functions as a negation.

Fredrich Schiller's play *The Robbers* furnishes another illustration of a negation that implies repressed admiration for criminals. In the preface, Schiller defends himself at length against the anticipated charge that he has made criminals praiseworthy. Other writers, he says, have found it necessary to portray outlaws as laudable in some respects: "[t]he Medea of the old dramatists is, in spite of all her crimes, a great and wondrous woman, and Shakespeare's Richard III is sure to excite the admiration of the reader, much as he would hate the reality."<sup>33</sup> Moreover, he continues, it is necessary to depict the criminal's allure; otherwise the reader may unknowingly succumb to his charms: "If I would warn mankind against the tiger, I must not omit to describe his glossy, beautifully-marked skin, lest, owing to this omission, the ferocious animal should not be recognized till too late."<sup>34</sup> The play itself, with its glamorous portrayal of Charles Moor, the outlaw-hero, suggests that Schiller's explanations are but a "distorted affirmation of what is officially denied."

Prohibitions perform, on a cultural level, the role that negations play on an individual level. That is, interdictions against admiring criminals disclose the presence of the very feelings being enjoined. An early warning of this kind comes from *Proverbs*:

Be not thou envious against evil men, neither desire to be with them.  
For their heart studieth destruction and their lips talk of mischief.<sup>35</sup>

30. See S. FREUD, *Negation*, in THE STANDARD EDITION, supra note 6, at vol. 19, 235, 235-39 (1961).

31. N. BROWN, *LIFE AGAINST DEATH* 160 (1959).

32. *Gangsters: A Golden Age* (television broadcast, Sept. 28, 1989) (on file with author).

33. F. SCHILLER, *Preface to the First Edition of The Robbers*, in 2 THE WORKS OF FREDERICK SCHILLER 133, 135 (n.d.) (1781) [hereinafter WORKS].

34. *Id.* at 135-36.

35. *Proverbs* 24:1-2.

Prohibitions on "envying evil men" reached a peak in England after the publication of John Gay's *The Beggar's Opera* in 1728. Preachers gave sermons and publicists wrote tracts protesting the play's idealization of the criminal.<sup>36</sup> Among those condemning Gay's glamorous depiction of criminals was Charles Dickens, who observed that in *The Beggar's Opera* thieves lead "a life which is rather to be envied than otherwise," with the criminal protagonist Macheath enjoying "all the captivations of command, and the devotions of the most beautiful girl . . . ."<sup>37</sup> Dickens concludes that anyone with a criminal bent will see nothing in the play "but a flowery and pleasant road, conducting an honorable ambition—in course of time—to Tyburn Tree."<sup>38</sup> A more subtle condemnation of the same play for encouraging criminality appears in William Hogarth's series of etchings entitled *A Harlot's Progress*. Plate 3 depicts the protagonist about to be arrested as a whore. Enjoying pride of place on her wall is a portrait of Gay's highwayman-hero Macheath.<sup>39</sup>

Like Dickens and Hogarth, the eighteenth-century writer and magistrate Henry Fielding was concerned about the problem of admiration for criminals. In particular, he excoriated the popular practice of celebrating thieves on the day they were hanged, as we see in his 1751 tract *Inquiry into the Causes of the Late Increase of Robbers*:

The day appointed by law for the thief's shame is the day of glory in his own opinion. His procession to Tyburn and his last moments there are all triumphant; attended with the compassion of the weak and tender-hearted, and with the applause, admiration, and envy of all the bold and hardened. . . . [I]f he hath sense enough to temper his boldness with any degree of decency, his death is spoken of by many with honour, by most with pity, and by all with approbation.<sup>40</sup>

Injunctions against admiration for criminals continue in the present era. Consider, for example, a 1967 magazine article ironically entitled "Crooks Are So 'Romantic.'" The author, who had studied criminals' lives as a journalist and biographer, urges his readers to "be adult and say that crime is a dirty, sordid, squalid, tragically futile business"<sup>41</sup> engaged in by "fundamentally unhappy people."<sup>42</sup> "The romance, thrill and adventure," he asserts, "are largely fake."<sup>43</sup> Earnestly, he points out that burglars sometimes defecate on the floors of the places they rob in

36. C. HIBBERT, *HIGHWAYMEN* 103 (1967).

37. C. DICKENS, *Preface to the Third Edition* (1867), in *OLIVER TWIST* xv (1980).

38. *Id.* at xv-xvi.

39. J. BENDER, *IMAGINING THE PENITENTIARY* 117 (1987) (reproduced from W. HOGARTH, *A HARLOT'S PROGRESS*, plate 3 (1732)).

40. C. HIBBERT, *supra* note 36, at 90 (quoting H. FIELDING, *INQUIRY INTO THE CAUSES OF THE LATE INCREASE OF ROBBERS* (1751)); see also R. HUGHES, *THE FATAL SHORE* 31 (1987) ("[H]anging was clearly the most popular mass spectacle in England; nothing could match the drawing-power of the gallows or its grip as a secular image.").

41. Allen, *Crooks Are So "Romantic,"* 210 *CONTEMP. REV.* 213, 213 (1967).

42. *Id.* at 214.

43. *Id.* at 215.



order to relieve tension. Such sordid facts, he believes, are little known because they would not correspond to our romantic image of criminals.<sup>44</sup> That this writer, like others through the ages, entreats people to desist from their "envy of evil men" suggests the continuing pervasiveness of this very attraction.

Yet another example of an injunction against admiration for criminals comes from a well-regarded modern textbook, *The Psychiatric Interview*. The authors warn that beginning psychiatrists may "experience unconscious admiration or even envy of psychopathic patients"<sup>45</sup>—people whose diagnosis is based partly on a history of immoral or illegal behavior. Notwithstanding their intellectual awareness that psychopaths lack the capacity for one of life's greatest joys, affectionate human relationships, clinicians may find themselves envying the psychopath's ability to "get away with" behavior that is internally prohibited for normal people. In the absence of self-knowledge, the authors caution, psychiatrists may express this admiration in damaging ways, including inadvertent encouragement of the psychopathic actions.<sup>46</sup>

Beyond such verbal warnings, efforts to curb admiration for criminals may have taken a more concrete form in late eighteenth-century Europe. In his work on the birth of the prison, French social historian Michel Foucault suggests that bourgeois concern about the prevailing "amiable acceptable illegality"<sup>47</sup> played a causal role in the creation of the modern penitentiary. With the coming of the industrial era, he argues, the ruling authorities faced a need to sever the association between popular protest and crime, thereby reducing admiration for criminals and disciplining the working class to the exigencies of factory production. In part for these reasons, governments undertook a revolution in punishment: they converted imprisonment into the principal penal sanction and diminished reliance on the spectacular executions which had often generated a carnival atmosphere in which criminals were lauded as heroes.<sup>48</sup> Thus, unable to eliminate admiration for criminals, governments endeavored to eliminate an arena that fostered the admiration.

The conflict over admiration for criminals takes many forms—denial of responsibility for one's attraction to criminals, alternating gratification of the id and the superego, negations, and injunctions against worshipping criminals. The very plethora of mechanisms for struggling against attraction to criminals underscores the depth of the attraction. It

44. *Id.*

45. R. MACKINNON & R. MICHELS, *THE PSYCHIATRIC INTERVIEW* 300 (1971).

46. *Id.* at 336.

47. Brocheir, *Prison Talk: An Interview with Michel Foucault*, 16 *RADICAL PHIL.* 10, 11 (1977).

48. See M. FOUCAULT, *DISCIPLINE AND PUNISH* 61 (1979); Davis, *The London Garrotting Panic of 1862: A Moral Panic and the Creation of a Criminal Class in Mid-Victorian England*, in *CRIME AND THE LAW* 190, 210-12 (1988).



also encourages us to inquire into the sources of this profound captivation, this wondering esteem for those who break the law. In Part III, I turn to a direct exploration of this topic.

### III. RATIONALIZED ADMIRATION: OVERT DELIGHT IN CAMOUFLAGED CRIMINALS

#### A. "An Honourable Kind of Thievery":<sup>49</sup> *The Criminal As an Instrument of Justice*

For the foreigner and the rich . . . the *cangaceiro* is an outlaw who should be punished. For the true Brazilian, he is a man of justice, a liberator.

Maria Isaura Pereira de Queiroz<sup>50</sup>

A courageous idealist, an instrument of fairness and right, and at the same time a violent outlaw—such is the type of admired criminal that we will consider first. Unlike the criminals we will examine in later sections, these lawbreakers evoke admiration from people who despise the law, which they view as cruel and oppressive.

Under what circumstances are noncriminals likely to perceive the law as illegitimate and, consequently, to experience conscious admiration for the lawbreaker? In the story of the admired criminal *par excellence*, *The Adventures of Robin Hood*, one condition tending to diminish the law's legitimacy is foreign rule. Set in twelfth-century England, this well-known story depicts an outlaw band that commits crimes against the evil rich and powerful and uses its ill-gotten gains to help the poor and oppressed. Throughout the tale, Robin and his men associate evil with the Norman conquerors, right and goodness with their Saxon subjects. Our admiration for Robin is rendered all the more acceptable to our consciences because Robin approximates the political revolutionary, fighting against his countrymen's foreign oppressors.<sup>51</sup>

The reader may protest my characterization of Robin Hood as a criminal. For Robin Hood, so this argument would go, was always loyal to the true king, Richard the Lion-hearted, who was away fighting in the Crusades. Robin committed his crimes not against the representative of the highest law of the land, but against local authorities, such as the Sheriff of Nottingham, or against the usurper, King John. Thus, Robin was not really fighting the law—only the inauthentic expressions of law.

Armed with a psychoanalytic perspective, one can rebut this objec-

49. W. SHAKESPEARE, *The Two Gentlemen of Verona*, at act 4, sc. 1, line 38, in WILLIAM SHAKESPEARE: *THE COMPLETE WORKS* 19 (Clarendon Press 1986) (1623) [hereinafter *THE COMPLETE WORKS*]. Valentine, having been ambushed by outlaws and invited to join their band, receives words of encouragement from his servant Speed: "Master, be one of them. It's an honourable kind of thievery." *Id.*

50. Lewin, *The Oligarchical Limitations of Social Banditry in Brazil: The Case of the "Good" Thief Antonio Silvino*, in *BANDIDOS* 67, 67 (R. Slatta ed. 1987) (quoting M. PEREIRA DE QUEIROZ, *CANGACEIROS* 196 (1965)).

51. See H. PYLE, *THE MERRY ADVENTURES OF ROBIN HOOD* (n.d.).

tion as follows: when the critic says that Robin is not fighting the true law, he presupposes a psychological state of affairs that is too simple. In fact, Robin's divergent attitudes toward the usurping king and the true king are both aspects of his emotional stance toward law, which is best described as one of ambivalence—love and hate, submission and defiance. As portrayed in the legend, Robin copes with his internal conflict over law by externalizing it; more specifically, he splits the law's representatives into two people and expresses his positive feelings toward one, his negative feelings toward the other. The point becomes clearer if we consider the parallel situation in fairy tales, where it is conventional to split the mother into a hated and feared stepmother and a beloved but absent mother. In fairy tales, this dichotomy is thought to reflect the child listener's difficulty in dealing with her negative feelings toward the mother.<sup>52</sup> Similarly, in Robin Hood, the outlaw's loyalty to King Richard reflects the reader's difficulty in accepting her negative feelings toward the law. By the same token, the outlaw's loyalty to the "true" King serves to camouflage his criminal status, so that the reader may admire him without guilt.

Robert Louis Stevenson's novel *Kidnapped* provides a variation on the theme of admiration for a criminal resulting from the foreign-ruled state's illegitimacy. The novel is set in the years following the events of 1745, when the Jacobite Scots rebelled against English rule and attempted to restore Stuart rule in Scotland. *Kidnapped* portrays the complex relationship between a boy, David Balfour, whose clan is allied with England, and Alan Breck, a Jacobite terrorist. Though initially attracted to the glamorous Breck, David repudiates him after witnessing a murder for which he blames the outlaw: "[M]y only friend in that wild country was blood-guilty in the first degree; I held him in horror; I could not look upon his face; I would rather have lain alone in the rain on my cold isle than in that warm wood beside a murderer."<sup>53</sup>

Notwithstanding these words of deepest rejection, David soon comes to see the criminal in a more favorable light: "Alan's morals were all tail-first; but he was ready to give his life for them, such as they were."<sup>54</sup> Upon reaching this conclusion, David seeks a reconciliation with the terrorist: "'Alan,' said I, 'I'll not say it's the good Christianity as I understand it, but it's good enough. And here I offer ye my hand for a second time.'"<sup>55</sup> Although David does not share Alan's political views, he can admire the terrorist for his willingness to die fighting what Alan perceives to be an unjust state.

52. See B. BETTLEHEIM, *THE USES OF ENCHANTMENT* 69 (Vintage Books ed. 1989) ("So the typical fairy-tale splitting of the mother into a good (usually dead) mother and an evil stepmother serves the child well. It is not only a means of preserving an internal all-good mother when the real mother is not all-good, but it also permits anger at this bad 'stepmother' without endangering the goodwill of the true mother, who is viewed as a different person.")

53. R.L. STEVENSON, *KIDNAPPED* 167 (1926).

54. *Id.* at 171.

55. *Id.*



The theme of respect for a criminal's idealistic fight against foreign encroachment on indigenous values appears in real life as well. Consider, for example, a 1989 sentencing opinion by a district judge in Alaska.<sup>56</sup> The defendant, an Inupiat whaling captain named Percy Nusunginya, stands convicted of hunting whales out of season. In explaining why he feels that an appropriate sentence should be at the bottom level of the guidelines, Judge Kleinfeld repeatedly expresses his regard for Nusunginya's courage in the service of principles. For example, he describes Nusunginya as "a man of serious and honest convictions"<sup>57</sup> and one who "is entitled to respect" for having "honestly and forthrightly engaged in civil disobedience."<sup>58</sup> Rejecting an analogy to marijuana and alcohol violations that he had drawn previously, the Judge empathically reflects that Nusunginya's illegal action is probably closer to a draft violation during the Vietnam War "in terms of the kind of conviction that Mr. Nusunginya brings to the matter."<sup>59</sup> Finally, directly addressing the defendant in the opinion, the Judge tells him: "I have no doubt . . . that your position is a principled one and that you sincerely believe that you are, by engaging in this civil disobedience, preserving what you believe to be the right of the Inupiat people, since time immemorial, to hunt whales."<sup>60</sup> Like the fictional David Balfour, Judge Kleinfeld respects the lawbreaker because he recognizes that, to this criminal, the law appears unjust, since it is imposed by a foreign power.

John Steinbeck's novel *The Grapes of Wrath* also depicts veneration for the criminal as a function of the law's illegitimacy, but here the rulers are domestic. The law is perceived as unjust because it is impossible to obey the law and survive with any self-respect. The story begins as Tom Joad, just paroled after serving four years in prison for manslaughter, hitchhikes his way home to Depression-ridden Oklahoma. Upon arrival, Tom finds that his family and most of his neighbors have left, driven off the land by large, faceless, faraway companies that do not even provide their victims with the satisfaction of a visible enemy. Only Muley, a man half-crazed from frustration and poverty, remains behind to tell Tom what has happened:

Well, the guy that came aroun' talked nice as pie. "You got to get off. It ain't my fault." "Well," I says, "whose fault is it? I'll go an' I'll nut the fella." "It's the Shawnee Lan' an' Cattle Company. I jus' got orders." "Who's the Shawnee Lan' an' Cattle Company?" "It ain't nobody. It's a company." Got a fella crazy. There wasn't nobody you could lay for.<sup>61</sup>

While this excerpt does not focus on the evil of the law in particular, it

---

56. *United States v. Nusunginya*, No. F88-063 CR (Alaska Feb. 24, 1989).

57. *Id.* at 67.

58. *Id.* at 75.

59. *Id.* at 67.

60. *Id.* at 75.

61. J. STEINBECK, *THE GRAPES OF WRATH* 65 (1939).



does sound the theme of alienation from a system that is perceived as remote and unfair. Because the law facilitated the tragedy that has befallen people like Muley, these early events pave the way for the novel's subsequent attack on the law.

Before elaborating on this theme, Steinbeck establishes the other motif, that of admiration for criminals—an idea he develops partly through the reaction of noncriminals to Tom. For example, as old friends and family members greet the returned convict, they repeatedly ask Tom whether he has "busted out of jail," sometimes with the implied gleeful hope that the answer will be affirmative.<sup>62</sup> Tom's grandfather does not ask but delightedly assumes that Tom has left prison illegally: "Jus' like I said, they ain't a gonna keep no Joad in jail. I says, 'Tommy'll come a-bustin' outa that jail like a bull through a corral fence.' An' you done it.'" <sup>63</sup> Tom allows the old man to keep his exciting fantasy, but when he disabuses others of their expectation that he is still an outlaw, they cannot hide their disappointment.

Although he is now a law-abiding citizen, Tom continues to elicit hero-worship because of his criminal past. For instance, here is Tom's brother Al responding to the prisoner's return:

Cockily, he walked close before he recognized Tom; and when he did, his boasting face changed, and *admiration and veneration shone in his eyes*, and his swagger fell away. His stiff jeans, with the bottoms turned up eight inches to show his heeled boots, his three-inch belt with copper figures on it, *even the red arm bands on his blue shirt and the rakish angle of his Stetson hat could not build him up to his brother's stature; for his brother had killed a man; and no one would ever forget it.*<sup>64</sup>

Such is the awe in which Tom is held that those close to him partake of his glory: "Al knew that even he had inspired some admiration among boys of his own age because his brother had killed a man. He had heard in Sallisaw how he was pointed out: 'That's Al Joad. His brother killed a fella with a shovel.'" <sup>65</sup>

Like Al, the younger Joad children look up to their brother in part because he has been a criminal: "[T]hey stood apart and watched him secretly, the great brother who had killed a man and been in prison. They remembered how they had played prison in the chicken coop and fought for the right to be prisoner."<sup>66</sup> In this phase of the novel, the criminal is admired simply as a larger-than-life figure, but as the story proceeds, Tom will increasingly become a criminal who is admired as an

62. *Id.* at 116. The film version, even more than the book, highlights the noncriminals' delight in supposing that Tom has illegally escaped from prison. See *The Grapes of Wrath* (Twentieth Century-Fox 1940).

63. J. STEINBECK, *supra* note 61, at 107.

64. *Id.* at 114-15 (emphasis added).

65. *Id.* at 115.

66. *Id.* at 134.

instrument of justice. Before this evolution occurs, Steinbeck enriches the other theme, that of the law's association with injustice and oppression.

The subject of the divergence between the law and fairness first arises when the Joad family is on the road to California to find work. Ma Joad worries aloud that Tom is breaking parole by crossing the state line. Attempting to reassure her, Tom says that the authorities will not care as long as he commits no crime, but Ma replies: " 'Well, I'm a-scairt about it. Sometimes you do a crime, an' you don't even know it's bad. Maybe they got crimes in California we don't even know about. Maybe you gonna do somepin an' it's all right, an' in California it ain't all right.' "<sup>67</sup> Because the law is divorced from morality, one cannot predict what the law requires or be sure of staying within its bounds.

The theme of the law's arbitrariness comes up again when Grandpa dies on the journey and the family must decide whether to bury him illegally. If they do what the law requires, they will have to pay forty dollars for a decent burial or let Grandpa be buried a pauper. Mulling over the problem, Pa nostalgically recalls the past, when it was legal to bury your own kin. When Uncle John reminds him that the law has changed, Pa replies:

Sometimes the law can't be foller'd no way . . . . Not in decency, anyways. They's lots a times you can't. When Floyd [Pretty Boy Floyd] was loose an' goin' wild, law said we got to give him up—an' nobody give him up. Sometimes a fella got to sift the law. I'm sayin' now I got the right to bury my own pa. Anybody got somepin to say?<sup>68</sup>

The preacher, Casy, confirms Pa's judgment: " 'Law changes,' he said, 'but "got to's" go on. You got the right to do what you got to do.' "<sup>69</sup> The law's prohibition on private burials becomes a symbol of the disparity between the law and morality, for Grandpa's burial is the first of three such illegal deeds that the Joad family will feel compelled to do.

If, thus far in the novel, the law has been portrayed as merely arbitrary and unpredictable, as time goes on, the law is more and more associated with evil and oppression. Thus, after the Joad family has reached California, we see a dishonest labor contractor accompanied and assisted by a police officer. When one of the migrants, Floyd Knowles, speaks up, insisting on fairness and trying to warn the other men, the contractor uses the policeman to suppress him. Lying, the policeman claims to have seen Floyd in the vicinity of a theft and tells Floyd to get in the police car. Tom trips the policeman, and Reverend Casy kicks the officer unconscious, enabling Floyd to escape. Sometime after this incident, Tom's second crime, we learn of Ma Joad's view that this son is special:

67. *Id.* at 181-82.

68. *Id.* at 190-91.

69. *Id.* at 191.



" 'There's Al,' " she observes, " 'he's jus' a young fella after a girl. You wasn't never like that, Tom . . . Ever'thing you do is more'n you. When they sent you up to prison I knowed it. You're spoke for.' "70 Significantly, it was society's act of branding Tom as a criminal that confirmed his mother's belief in Tom's specialness.

Eventually, Tom commits his third and, arguably, his most serious offense: killing a man in retaliation for Casy's murder. As the book ends, Tom is leading the life of a fugitive, and the family has just buried yet another person, a baby, absent the authorization of law.

I have recounted the events of *The Grapes of Wrath* at some length to emphasize the close relationship between admiration for the criminal and contempt for unjust laws. While the causal connection is rarely made explicit, it seems clear that the noncriminals in the book admire Tom's criminality largely because they cannot respect the laws that he is breaking.

Like *The Grapes of Wrath*, Sophocles' play *Antigone* portrays a state whose laws are problematic because they are unfair and oppressive. Moreover, Sophocles, like Steinbeck, employs a conflict over a burial to tell the story of a criminal who is an instrument of justice. Just before the action of this classic tale begins, Antigone's two brothers have been killed. One, Eteocles, has received a state burial, while the other, Polynices, has been declared a traitor, and his body left to be torn and devoured by birds and beasts. The ruler, Creon, has ordered that no one may perform burial rites for Polynices, on pain of death.

As the play opens, Antigone is telling her sister, Ismene, of her plan to defy Creon's mandate, which she believes violates the higher laws of the gods. Ismene entreats Antigone not to embark on her daring enterprise, arguing that she is too weak to go against the mighty. Nevertheless, Antigone twice scatters dust over her brother's body and performs sacred rites over him. After Creon decrees that she must die for disobeying his laws, Creon's son comes forward to tell his father that the people are siding with Antigone:

but I secretly can  
gather this; how the folk mourn this maid,  
"Who of all women most unmeriting,  
For noblest acts dies by the worst of deaths,  
Who her own brother battle-slain—unburied—  
Would not allow to perish in the fangs  
Of carrion hounds or any bird of prey;  
And" (so the whisper darkling passes round)  
"Is she not worthy to be carved in gold?"71

"Worthy to be carved in gold": this is high praise indeed for a criminal, even a noble criminal. The noncriminals' admiring reaction to An-

70. *Id.* at 482.

71. Sophocles, *Antigone*, in 1 *WORLD DRAMA* 31-32 (B. Clark ed. 1933) (441 B.C.).



tigone can be explained not only by her courage, but also by the particular crime she committed, for in the ancient Greeks' religion, the souls of the unburied were doomed to wander forever, without rest. It was, therefore, a sacred duty to bury any dead one encountered, whether strangers or kin.<sup>72</sup> More generally, the phenomenon of death is apt to evoke an awareness that the rulers of this realm have but limited power, limited legitimacy. Not only in fictional portrayals, but also in life, laws infringing on the rights of the dead may foster a consciousness of the positive law's illegitimacy. Thus, in the 1950s, when impoverished sharecroppers formed the first of what would later become the radical Peasant Leagues of northeast Brazil, their original goal was the right to be buried in a coffin.<sup>73</sup>

If criminals are sometimes admired because the state is tyrannical, at other times they are admired because the state is weak. Insofar as we experience hate as well as love for authority, we derive pleasure from acts that render the state ridiculous or highlight its vulnerability. Interestingly, the very word *outlaw*, which is now used to mean a notorious or habitual criminal, reflects the weakness of the state. In medieval times, an outlaw was one who, because of his bad acts, had been banished from society and placed outside the protection of the law.<sup>74</sup> This original concept of the criminal can also be seen in the word *bandit*, which derives from the Italian word for banish.<sup>75</sup> By declaring someone an outlaw, a banished person, the state was acknowledging its inability to punish someone who had violated its laws.<sup>76</sup> The impotence of the state that could cope with its unruly elements only through banishment is conveyed by the light tone of this outlaw song in Robert Louis Stevenson's adventure story *The Black Arrow*: "Then up and spake the master, the king of the outlaws: 'What make ye here, my merry men, among the greenwood shaws?' And Gamelyn made answer—he looked never adown: 'O, they must need to walk in wood that may not walk in town.'"<sup>77</sup> No wonder that the common people often venerated those who, by their very existence, put the state to shame.

The sentence of outlawry ceased to be used after the end of the Middle Ages, when states became powerful enough to enforce their laws throughout their territories. Nevertheless, admiration for criminals as a function of the state's weakness continues to be a striking feature of some societies. In Sicily, for example, successful bandits are honored and described as men who "make themselves respected."<sup>78</sup> According to histo-

72. See E. HAMILTON, MYTHOLOGY 263 (1942).

73. See J. DE CASTRO, DEATH IN THE NORTHEAST 7-8 (1966).

74. See M. KEEN, THE OUTLAWS OF MEDIEVAL LEGEND 10 (1961).

75. See WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 213 (2d ed. 1947).

76. See M. KEEN, *supra* note 74, at 10.

77. R.L. STEVENSON, THE BLACK ARROW 51-52 (Airmont Classic ed. 1963).

78. Blok, *The Peasant and the Brigand: Social Banditry Reconsidered*, 14 COMP. STUD. SOC. & HIST. 494, 500 (1972).

rian Anton Blok, the preoccupation with honor, along with its particular meaning centering on forcible control of resources, flows from the weakness of the state in Mediterranean societies:

In the absence of stable central control over the means of violence, *people could not rely for protection on State institutions*. With respect to sheer physical survival, they were largely dependent on their own, or on the protection of more powerful persons. *Successful bandits inspire fear and respect. Hence the fascination they radiate . . .*<sup>79</sup>

In highly industrialized societies as well, admiration for criminals may arise out of contempt for the state's weakness. For example, in 1989, a front-page article in the *Wall Street Journal* described a man charged with murder who became a romantic folk hero to residents of Missouri after he managed to elude the law for fifty-nine days.<sup>80</sup> This, the longest and largest manhunt in Missouri's history, inspired songs, stories, and clothing. Explaining the public's reaction, one local resident observed that "[d]efiance of authority tends to draw admiration in rural places like this."<sup>81</sup>

The public response to subway vigilante Bernhard Goetz is another example of admiration for a criminal that reflects disdain for the law's weakness. The basic facts of this case are well known: in 1984, Goetz, a white man, was seated in a subway car in New York City when four black youths approached him and asked for five dollars.<sup>82</sup> There was conflicting testimony as to the subsequent events, but all agree that Goetz drew a pistol and fired at the youths, leaving one paralyzed and brain-damaged for life. Many legal scholars believe that, under the most credible version of the facts, Goetz failed to meet the imminence requirement for self-defense, because a reasonable person would not have thought that the fourth victim posed an immediate danger to Goetz.<sup>83</sup> Nevertheless, the jury acquitted Goetz on all charges except illegal possession of a handgun.

What is interesting for our purposes is not so much the verdict, which can be explained in a variety of ways, as the widespread admiration for Goetz,<sup>84</sup> and its meaning. That the positive response to Goetz's

79. *Id.* at 500-01.

80. See Richards, *As Legend Has It, He Used Pepper to Elude the Law*, *Wall St. J.*, July 17, 1989, at 1, col. 4.

81. *Id.*

82. See *People v. Goetz*, 68 N.Y.2d 96, 497 N.E.2d 41, 506 N.Y.S.2d 18 (1986).

83. See, e.g., Massaro, *Peremptories or Peers?—Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 N.C.L. REV. 501, 512 n.77 (1986); Berger, *Goetz Case: Commentary on Nature*, *N.Y. Times*, June 18, 1987, at B6, col. 1 (quoting Professors Alan Dershowitz and Burt Neuborne to the effect that what Goetz did was illegal).

84. See G. FLETCHER, *A CRIME OF SELF-DEFENSE* 28 (1988) (referring to Goetz as a "folk hero"); Goldfarb, *Violence, Vigilantism and Justice*, 6 CRIM. JUST. ETHICS 2, 2 (1987) (suggesting that Goetz became a "national hero" to many people); *Vigilante Justice*, 7 Nat'l L.J., Jan. 14, 1985, at 12, col. 1 (referring to Goetz's "lawlessness" as "so easily admired by the public"); cf. Lichtenstein, *Polls, Public Opinion, Pre-Trial Publicity and the Prosecution of Bernhard H. Goetz*, 10 SOC.



crime reflects scorn for the state's ineptitude can be seen in the lyrics of this song recorded by Ronny and the Urban Watchdogs:

He's the subway vigilante  
 The brave subway vigilante  
*Where law and order can't*  
*he showed us how to take a stand*  
 He had enough and came out fightin'  
 Drove the rats back into hidin'  
 Let's cheer the subway vigilante  
 He's one special kind of man<sup>85</sup>

Interpreting the popular celebration of Goetz in a similar vein, George Fletcher writes: "The group that fears finally found its folk hero in Bernhard Goetz. . . . *Goetz demonstrated the impotency of law enforcement.* A single individual, well armed and properly trained, can do a better job of thwarting crime than all the men in blue . . . ."<sup>86</sup>

From the perspective I am suggesting in this article, Goetz can be understood as a camouflaged criminal. He is a criminal in that he acted illegally when he fired the shots; however, his criminality is camouflaged in that some can see him as an instrument of legitimate vengeance against evil and dangerous people. This camouflage enables non-criminals to admire Goetz without guilt. Nevertheless, the unconscious source of admiration may be, not that he is an instrument of justice, but rather that he expresses the noncriminals' own hostility to authority and to limitations on their instinctual freedom.

On the basis of the preceding examples, we are now in a position to distinguish between two types of criminals who are admired as instruments of justice: the vigilante and the noble bandit. Those, like Goetz, whom we call vigilantes commit illegal acts against other *criminals* out of contempt for the law's weakness and frustration at its inefficiency. By contrast, those, like Robin Hood, whom we consider noble bandits typically commit illegal offenses against evil *noncriminals*—the Sheriff of Nottingham or the greedy vicars and bishops. Unlike the vigilantes, noble bandits act out of opposition to the state's tyranny and its unfairness to the poor. Correlatively, those who admire either type of criminal may do so on a conscious level because they share that type's attitude—whether impatience with the slowness of the legal process or outrage at the cruelty and oppression that the law embodies.

Of course, some may object to my interpretations of both noble bandits and vigilantes along the following lines. There is nothing wonderful in the fact that noncriminals admire these outlaws, for they are criminals

ACTION & L. 95, 95-97 (1985) (describing news reports that the police hotline was inundated with calls expressing support for the still unidentified gunman and presenting results of polls showing that a majority of the public approved of the gunman's shooting the young men).

85. See G. FLETCHER, *supra* note 84, at 201 (quoting Ronny and the Urban Watchdogs) (emphasis added).

86. *Id.* (emphasis added).



in name only. Their stories depict situations of moral inversion, where the law represents evil, or inefficiency, and those who break the law symbolize virtue, or effective law enforcement. Naturally, we would regard such criminals highly; that we do so says nothing about our esteem for criminals in more normal situations where the law and morality converge.

The problem with this common-sense view lies in its failure to take into account psychoanalytic findings about human nature; more specifically, the clinical findings that all people harbor sadistic trends (sexual pleasure in another's pain)<sup>87</sup> and ambivalence (hate as well as love) toward authority.<sup>88</sup> The existence of these tendencies renders it more plausible than not that noncriminals derive unconscious satisfaction from the cruelty and aggression that characterize criminal exploits. It is important to stress that, for most noncriminals, the gratification received from the criminal acts is truly *unconscious*; it is not accessible to awareness. Indeed, on a conscious level, noncriminals may strongly object to the idea that criminality has any attraction for them. This objection, too, is consistent with psychoanalytic theory, which emphasizes the universality of repression<sup>89</sup> and of an unwillingness to know the unpleasant truths about ourselves.<sup>90</sup>

In the face of the psychoanalytic evidence—both of unconscious drives and of an aversion to becoming aware of those drives—it seems naive to suppose that we admire criminals for their noble qualities alone. I propose an alternative explanation—an explanation that is already implicit in this section's heading, "Rationalized Admiration: Overt Delight in Camouflaged Criminals." Briefly, my hypothesis is as follows: we admire criminals on many levels and for many reasons—reasons that we feel comfortable acknowledging to ourselves and reasons that, as the Psalm has it, are "too painful to know." When a given criminal seems to have no redeeming features, we will not consciously honor that person, although we may esteem him unconsciously and express the admiration in a distorted form, such as loathing or persecution.

If, however, as is true of the examples in this section, the criminal

87. See O. FENICHEL, *THE PSYCHOANALYTIC THEORY OF NEUROSIS* 73 (1945). See generally S. FREUD, *Three Essays on the Theory of Sexuality*, in 7 *THE STANDARD EDITION*, *supra* note 6, at 123, 157-60 (1953).

88. See *supra* note 4.

89. For a brief definition of repression, see A GLOSSARY OF PSYCHOANALYTIC TERMS AND CONCEPTS 30 (2d ed. 1968). For a more extensive discussion, see R. MUNROE, *SCHOOLS OF PSYCHOANALYTIC THOUGHT* 245-49 (1955).

90. Psychoanalysts employ the term *resistance* to describe patients' opposition to becoming aware of their unconscious mental processes. I have refrained from employing this word here, because its use is typically confined to the analytic situation. For a general psychoanalytic discussion of the difficulties of knowing oneself, see P. RIEFF, *FREUD: THE MIND OF THE MORALIST* 71, 71-112 (Anchor ed. 1961). Psychoanalysis is not, of course, alone in emphasizing how painful it is for human beings to confront the truth about themselves. Consider, for example, the New Testament expression of this idea in *Luke*: "And why beholdest thou the mote that is in thy brother's eye, but perceivest not the beam that is in thine own eye?" *Luke* 6:41.

has some features we can appreciate without guilt, we may consciously respect him for those features, while unconsciously also enjoying and lauding the greed, sadism, or anti-authoritarian aggression. In this view, the explanations we offer ourselves for being attracted to criminals serve as rationalizations, not in the sense that they play *no* role in our attraction, but that they serve to disguise other, less acceptable reasons.

The remainder of this article will examine criminals who are not perceived as instruments of justice and who do not live in societies where the law is viewed as evil; nevertheless, they are greatly admired. I turn now to the first category of such criminals—those whose violent, illegal acts are camouflaged by their embodiment of freedom.

B. *"The Highwayman Came Riding": The Criminal As a Symbol of Freedom*

The urge for freedom, therefore, is directed against particular forms and demands of civilization or against civilization altogether.

Freud, *Civilization And Its Discontents*<sup>91</sup>

Banditry is freedom, but in a peasant society few can be free.

Hobsbawm, *Bandits*<sup>92</sup>

The novella *Carmen*, by Prosper Merimee, depicts a criminal whose appeal is that of freedom. Carmen, who belongs to a gang of smugglers, regularly provides information to her fellow thieves about any travelers who would be good prospects for robbery. Overtly, boldly sexual, Carmen is irresistibly attractive. Her lawless ways are a part of her appeal and an essential part of her being.<sup>93</sup> The central role of freedom in her character can be seen in her response when her suitor, Don Jose, forbids her to speak to the *picador* Lucas: "'Beware!'" she retorts. "'If any one defies me to do a thing, it's very quickly done.'"<sup>94</sup> Here we see the anal, oppositional meaning that freedom has for Carmen.<sup>95</sup> She is a rebel rather than a revolutionary; she is still reacting to authority, albeit in a negative way.<sup>96</sup>

Charles Moor, the hero of Schiller's *The Robbers*, embodies a simi-

91. S. FREUD, *Civilization and Its Discontents*, in 21 THE STANDARD EDITION, *supra* note 6, at 59, 96 (1961).

92. E. HOBSBAWM, *BANDITS* 24 (1969).

93. For example, it was Carmen's freedom from moral and legal scruples that attracted soprano Jessye Norman to her. Asked why she had departed from her usual repertoire to sing *Carmen*, Ms. Norman replied, "I enjoy having this character *who will do whatever is necessary to get what she wants*." *Jessye Norman Sings Carmen* (PBS television broadcast, Nov. 20, 1989).

94. P. MERIMEE, *Carmen*, in COLOMBA AND CARMEN 72 (1901).

95. For an explanation of the connection between the anal zone and the struggle over autonomy, see E. ERIKSON, *CHILDHOOD AND SOCIETY* 81-82 (1963). See also R. MUNROE, *supra* note 89, at 197 (discussing children whose "inner determination tends to develop in opposition to the outside world").

96. See Slotte, *Case Analysis of a Revolutionary*, in A STRATEGY FOR RESEARCH ON SOCIAL POLICY 241, 308 (1967) (proposing a distinction between the rebel, who fights against, and the revolutionary, who fights for).



lar notion of freedom. As he talks himself into becoming a criminal, Moor associates criminality with freedom, and freedom with life outside the law: "Am I to squeeze my body into stays, and straightlace my will in the trammels of law. What might have risen to an eagle's flight has been reduced to a snail's pace by law. Never yet has law formed a great man; 'tis liberty that breeds giants and heroes."<sup>97</sup> Thus, law, instead of being the necessary condition for liberty, is seen here as an obstacle to liberty.

In addition to freedom as an oppositional struggle against authority, criminality is often linked with freedom of *movement*. This association appears in the following dialogue from the operatic version of *Carmen*, where the gypsy *femme fatale* tries to convince her suitor that he should be glad to join the band of thieves:

Carmen: Are you one of us now?

Don Jose: (with resignation): I have to be!

Carmen: Ah! That's not very complimentary! But what's the difference? Come—you'll get used to it when you see *how fine life on the road is, with the world for your country*; and for law, what you want to do! And most of all what makes you alive: Freedom! Freedom!<sup>98</sup>

Freedom of movement also plays an important role in the original story by Merimee. Here Don Jose explains what enticed him to the criminal life: "I had often heard talk of certain smugglers who *travelled about Andalusia each riding a good horse*, with his mistress behind him and his blunderbuss in his fist. Already *I saw myself trotting up and down the world*, with a pretty gypsy behind me."<sup>99</sup> The gypsy, a symbol of the wandering life, heightens the association here between criminality and a somatic kind of freedom.

The image of the gypsy performs a similar function in Alfred Noyes' poem *The Highwayman*, where the road over which the robber gallops is described as "a gypsy's ribbon." Throughout this poem, rapid movement is expressed in both the content and the rhythm of the lines. Consider, for example, the first stanza:

The wind was a torrent of  
darkness among the gusty trees.  
The moon was a ghostly galleon  
tossed upon cloudy seas.  
The road was a ribbon of moonlight  
over the purple moor,  
And the highwayman came riding—  
Riding—riding—  
The highwayman came riding,

97. F. SCHILLER, *The Robbers*, in *WORKS*, *supra* note 33, at act 1, sc. 2.

98. G. BIZET, *CARMEN*, act 2, sc. 4 (libretto by L. Halevy & H. Meilac) (1970) (emphasis added).

99. P. MERIMEE, *supra* note 94, at 53 (emphasis added).



up to the old inn door.<sup>100</sup>

As in *Carmen*, here the sensation of speed serves to render the abstract concept *freedom* more immediate and concrete.

A particularly interesting example of admiration for criminals who are associated with speed of movement comes from Harrison Ainsworth, author of the popular nineteenth-century novel *Rookwood*. At one point in the novel, Ainsworth reproduces highwayman Dick Turpin's famed two-hundred-and-twenty-mile ride from London to York. Describing how he wrote this part of the book, a total of one hundred pages, in less than twenty-four hours, Ainsworth stresses his admiring identification with the robber and his swiftness:

Well do I remember the fever into which I was thrown during the time of composition. My pen literally galloped over the pages. So thoroughly did I identify myself with the highwayman, that, once started I found it impossible to halt . . . . In his company I mounted the hillside, dashed through the bustling village . . . and kept an onward course, without fatigue. With him I shouted, sang, laughed, exulted, wept.<sup>101</sup>

Psychoanalytic theory helps to explain the powerful attraction that rapid movement exerts. Freud suggested that the ego (used here to mean the mental self) originally "includes everything . . . . The ego-feeling we are aware of now is thus only a shrunken vestige of a far more extensive feeling . . . of limitless extension and oneness with the universe—the same feeling as that described . . . as 'oceanic.'"<sup>102</sup> Exemplifying the pleasure that comes from an extension of ego boundaries, another psychoanalyst offers these descriptions of a child:

I. A little boy of one and a half years was taken to an ocean beach for the first time. His sudden view of the tremendous expanse of sand and water, an almost unlimited or infinite expanse, was met with tremendous excitement, one might almost say intoxication. The moment he got on the beach, he ran and ran as fast as his little legs could carry him, his arms outstretched, shrieking with delight. He did not stop running until he was exhausted. In his running one could see how he tried to encompass this tremendous expanse of what must have appeared to him as limitless space, and how his ego seemed to identify with it.

II. The same boy at the age of four and a half was walking in the woods with his father and others. They came to a kind of clearing where the trees were far apart down a large clear hill. He broke away from the group and ran gleefully down the hill singing, "I'm free, I'm free, I'm free like a bird."<sup>103</sup>

100. A. NOYES, *The Highwayman*, in COLLECTED POEMS 11, 11 (1963).

101. See C. HIBBERT, *supra* note 36, at 115 (quoting Harrison Ainsworth).

102. See Grinstein, *Vacations: A Psychoanalytic Study*, 36 INT'L J. PSYCHOANALYSIS 177, 183-84 (1955) (quoting Sigmund Freud).

103. *Id.* at 184.

In the same vein, a small boy of my own acquaintance used to exhort me in tones of joy and awe: "Kick the ball so it touches the sky!" Similar to the children in these vignettes, grown-ups may undergo a feeling of ego expansion when they vicariously participate in the rapid journeys of the highwaymen.

If freedom of movement is an important reason for our attraction to the criminal, this would help to explain why highwaymen were extolled more than other criminals in eighteenth- and nineteenth-century England. Evidence of the highwaymen's popularity comes from the memoirs of the Abbe Le Blanc. During his travels in England in 1737, the Abbe wrote that he was continuously meeting Englishmen "who were not less vain in boasting of the success of their highwaymen than of the bravery of their troops." Everyone, he continued, had a story to tell of the highwaymen's generosity and "cunning" and "a noted thief was a kind of hero."<sup>104</sup> In keeping with Le Blanc's impressionistic account is a historian's conclusion that highway robbery "was a kind of thievery that seems to have *been considered fit for a gentleman.*"<sup>105</sup> Also symptomatic of the veneration for men who robbed highway travellers is the popularity of *The Beggar's Opera*. With its glamorous highwayman-hero Macheath, this play was the most successful theatrical production of the eighteenth century.<sup>106</sup>

In the nineteenth century, too, outlaw "gentlemen of the road" attracted great interest and admiration. The novel *Rookwood*, which idealized the highwayman Dick Turpin, was immediately successful,<sup>107</sup> while sales of *Jack Sheppard*, a tale about the highwayman of the same name, outnumbered those of *Oliver Twist*.<sup>108</sup> Popular esteem for highwaymen expressed itself not only in reading and theater-going; members of society also paid social calls on highwaymen who were imprisoned in Newgate, awaiting death.<sup>109</sup>

Yet another sign of the enduring glamour associated with this kind of criminal is the use of the term *highwayman* to describe fashionable clothes. For example, in 1901, the *Daily Chronicle* described Sarah Bernhardt as looking "very striking in a wonderful gown . . . half-concealed by a long paletot of white silk, made in the 'highwayman' shape, with a number of natty little capes." Similarly, a 1966 issue of *Vogue* contains the caption: "Vogue's adventurers wear . . . highwaymen's coats."<sup>110</sup> That garments should become more appealing by virtue of their connection to highwaymen is particularly interesting in view of the historical facts about this type of criminal: in reality, many highwaymen were vi-

104. See C. Hibbert, *supra* note 36, at 120 (quoting Abbe Le Blanc).

105. F. AYDELOTTE, *ELIZABETHAN ROGUES AND VAGABONDS* 137 (1913).

106. See C. HIBBERT, *supra* note 36, at 65.

107. *Id.* at 116.

108. *Id.* at 117.

109. *Id.* at 23.

110. 7 *OXFORD ENGLISH DICTIONARY* 233 (2d ed. 1989).



cious rapists and murderers.<sup>111</sup>

Like the English robbers on fast horses, the famous American outlaws of the 1930s are associated with freedom and, more specifically, with speed of movement. On the modern highways that emerged in the early 1930s, bandits such as Bonnie Parker and Clyde Barrow could rob a bank and be two hundred miles away by nightfall. Cars that were faster than ever before, cars that could travel up to ninety miles per hour, not only contributed to the flourishing of these criminals; they are also an intrinsic part of their illustrious image.<sup>112</sup>

Another variation on the association of criminality with freedom is the motif of the criminal as child. This idea is embodied in the pirate Long John Silver in Robert Louis Stevenson's novel *Treasure Island*. Like other criminals we have considered, Long John can be understood in relation to at least two admiring noncriminals: the reader and a fictional character, the cabin boy and narrator, Jim Hawkins. Upon first meeting Long John, Jim describes him positively: "I thought I knew what a buccaneer was like—a very different creature, according to me, from this clean and pleasant-tempered landlord."<sup>113</sup> Concluding that Silver is not a pirate, Jim becomes friends with him and finds Silver to be "unweariedly kind"<sup>114</sup> and "the best of men."<sup>115</sup> Later, after learning of Silver's scheme to take over the boat and kill many good men, Jim reacts with revulsion to his former friend: "I had, by this time, taken such a horror of his cruelty, duplicity, and power, that I could scarce conceal a shudder when he laid his hand upon my arm."<sup>116</sup> Upon overhearing Silver knife a man to death, Jim describes the buccaneer as a "monster" and "murderer," obviously "cleansing his blood-stained knife the while upon a wisp of grass."<sup>117</sup> Jim now resists Silver's charms but cannot help noticing, "He was brave and no mistake."<sup>118</sup>

Stevenson's *Treasure Island* never fully resolves the tension between Jim's attraction to Silver and his disapproval of him. In the movie versions of this story, however, Jim's love for Silver proves stronger than his moral scruples. For example, in Victor Fleming's 1934 production, Jim enables Silver to escape prosecution, accepts his parrot as a parting gift, and weeps upon separating from his pirate friend.<sup>119</sup> The Disney film

111. For a discussion of the discrepancy between the myth and the reality of the highwaymen, see C. HIBBERT, *supra* note 36, at 35-38, 49-51. For similar discussions about other kinds of noble bandits, see B. MOORE, *SOCIAL ORIGINS OF DICTATORSHIP AND DEMOCRACY* 214 (1966); Lewin, *supra* note 50, at 69; Steckmesser, *Robin Hood and the American Outlaw*, 79 *J. AMER. FOLKLORE* 348, 349-54 (1966).

112. See Newman & Benton, *Lightning in a Bottle*, in *THE BONNIE AND CLYDE BOOK*, *supra* note 22, at 13, 17-18.

113. R.L. STEVENSON, *TREASURE ISLAND* 60 (1911).

114. *Id.* at 76.

115. *Id.* at 77.

116. *Id.* at 90.

117. *Id.* at 109.

118. *Id.* at 260.

119. *Treasure Island* (Metro-Goldwyn-Mayer 1934).



version also suggests that the positive side of Jim's ambivalence toward Silver prevails in the end. Nicely epitomizing Jim's psychological conflict in the final scene, the film depicts Silver sailing away from the honest men, waving good-bye to them. Jim is seen putting up his hand halfway, bringing it down again, then finally raising it all the way in the air to wave to Silver in return.<sup>120</sup>

The typical noncriminal reader's response to Silver can be gauged by the summary on the back cover of the Bantam Classic Edition. In an amusing non sequitur, the editors describe Long John as "the merry unscrupulous buccaneer rogue whose greedy quest for gold cannot help but win the heart of every soul who ever longed for romance, treasure, and adventure."<sup>121</sup> Unscrupulousness and greed are not usually thought of as loveable traits, yet here the editors suggest that they may be the very basis for Silver's appeal. Indeed, the essence of his charm seems to lie in an utter obliviousness to the moral code, together with a childlike assumption that people will not hold him accountable for his evil deeds. The following exchange, which occurs near the end of the book, throws these qualities into relief:

At the top, the squire met us . . . . At Silver's polite salute he somewhat flushed. "John Silver," he said, "you're a prodigious villain and imposter—a monstrous impostor, sir. I am told I am not to prosecute you. Well, then, I will not. But the dead men, sir, hang about your neck like millstones."

"Thank you kindly, sir," replied Long John, again saluting.

"I dare you to thank me!" cried the squire. "It is a gross dereliction of my duty."<sup>122</sup>

Notwithstanding the humorous effect of such passages, it is important to note that Long John is no innocuous outlaw, but rather a thoroughly immoral criminal who commits deeds that are heinous by any standard. Yet, such is his appeal that, in addition to the original book and the movies, at least one play and a children's book have been written celebrating Silver and his exploits.<sup>123</sup>

Shakespeare's thief, Sir John Falstaff, exerts an attraction on a similar basis, both for the noncriminal playgoer and for Falstaff's fictional friend Prince Hal. Prince Hal's love for his criminal friend comes through in the speech he makes when he believes Falstaff to be dead. Significantly, he alludes to Falstaff's immorality in the very sentence where he stresses his abiding affection: "What, old acquaintance! Could not all this flesh keep in a little life? Poor Jack, farewell. I could have

120. *Treasure Island* (Walt Disney 1950).

121. R.L. STEVENSON, *TREASURE ISLAND* (Bantam Classic ed. 1989).

122. R.L. STEVENSON, *TREASURE ISLAND* 264-65 (1911).

123. See D. MOORE, *THE END OF LONG JOHN SILVER* (1946); S. RICHMOND, *TREASURE ISLAND: A PLAY IN SIX SCENES* (1946).

better spared a better man."<sup>124</sup> Although some critics have denied that Falstaff's appeal lies in his criminality, Robert Hapgood seems right in saying that this view understates our own guilt,<sup>125</sup> for Falstaff's stealing is central to his personality. More specifically, as Hapgood notes, "his thieving is of a piece with his lying: both are appealingly childlike in their uninhibited expansiveness."<sup>126</sup>

Although Falstaff is an old man, he is associated both with childlike qualities and with youth itself. For example, in one scene when he and his cohorts rob some travellers, he exclaims: "Hang ye, gorbellied knaves, are ye undone? No, ye fat chuffs; I would your store were here. On, bacons, on! *What, ye knaves, young men must live.*"<sup>127</sup> Like a child, Falstaff allows other people, specifically Prince Hal and the tavern hostess, to provide for his needs. When the hostess endeavors to collect her debt, Falstaff preemptively charges that someone has picked his pockets. The hostess replies: "No, Sir John, you do not know me, Sir John; I know you, Sir John. You owe me money, Sir John, and now you pick a quarrel to beguile me of it. I bought you a dozen of shirts to your back."<sup>128</sup> She goes on to charge that Falstaff also owes her for his food, drink, and money previously loaned to him.<sup>129</sup> Falstaff thus represents freedom in the sense of a childlike irresponsibility. Prince Hal, a non-criminal, is attracted to Falstaff in part because he knows that eventually, when he becomes king, he will have to put away childish things.

The playgoing public has shared Prince Hal's affection for Falstaff. *Henry IV, Part I* went through six editions in its first twenty-five years.<sup>130</sup> Moreover, contemporary authors referred to Falstaff more than to any other Shakespearean character.<sup>131</sup> According to tradition, the rogue so pleased Queen Elizabeth that she asked to see Falstaff in love. In response to her request, so the tradition continues, Shakespeare wrote the *Merry Wives of Windsor*.<sup>132</sup>

Yet another dimension of the freedom that the criminal symbolizes is freedom from social pressures. Daniel Defoe's heroine Moll Flanders, in his novel by the same name, attracts our admiration by embodying this kind of freedom.<sup>133</sup> A chronic thief, prostitute, and convicted felon, Moll has been described by one critic as "immoral, shallow, hypocritical,

124. W. SHAKESPEARE, *I Henry IV*, at act 5, sc. 4, lines 101-03, in *THE COMPLETE WORKS*, *supra* note 49, at 540 (1598).

125. Hapgood, *Falstaff's Vocation*, 16 *SHAKESPEARE Q.* 91, 94 (1965).

126. *Id.* at 94.

127. W. SHAKESPEARE, *supra* note 124, at act 2, sc. 2, lines 86-88 (emphasis added).

128. *Id.* at act 3, sc. 3, lines 64-67.

129. *Id.*

130. *Introduction*, in *I HENRY IV* (R. Bald ed. 1946).

131. *Id.*

132. *Id.*

133. See D. DEFOE, *MOLL FLANDERS* (Norton Critical ed. 1973) (1st ed. 1722 under title *THE FORTUNES AND MISFORTUNES OF THE FAMOUS MOLL FLANDERS*).



heartless."<sup>134</sup> Yet, the same scholar continues, "Moll is marvellous."<sup>135</sup> This very positive assessment of Moll—and the reasons for it—are widely shared by readers of the novel. Virginia Woolf speaks for many in rejecting Defoe's self-declared purpose in writing the book, which was to provide a negative example to his readers. "Defoe," she asserts, "did not pronounce more than a judgement of the lips upon . . . [the criminals'] failings. But their courage and resource and tenacity delighted him."<sup>136</sup>

Woolf points out that Moll enjoyed "the freedom of the outcast," because she had broken the laws of society when very young.<sup>137</sup> Other readers have noted Moll's high valuation of independence. They have confirmed Moll's assessment of the options open to her as an eighteenth-century woman: to be a criminal and maintain her independence, or to be a maidservant and lose all hope of individual freedom and development.<sup>138</sup> Because we sense that these are Moll's only choices, we appreciate her decision to be free as a criminal rather than enslaved as an honest person. In the words of Moll's admirer:

What makes her splendid—a great heroine—is that she wants her independence, to work for herself in freedom. She is . . . determined to be a human being, not a servant, and the feeling of what it means to be a servant is what generates the impulses which carry her through most of the book . . . .<sup>139</sup>

A similar conception of the criminal as a hero who is free from social pressures pervades Patricia Highsmith's detective novels. Highsmith portrays a society where most people are trapped within families, organizations, and other collectivities. Criminals, by contrast, lead lives outside of these structures. Often the criminals are the heroes of her novels: they are not only the central protagonists but also the most likeable characters in the books.<sup>140</sup> Highsmith herself adduces their embodiment of freedom to explain the appeal of her criminal-heroes: "Criminals are dramatically interesting, because for a time at least they are active, free in spirit, and they do not knuckle down to anyone . . . ."<sup>141</sup> Significantly, in *The Talented Mr. Ripley*, the book that many of Highsmith's readers like best, the protagonist, a murderer and thief, goes free in the end.<sup>142</sup>

In the next section, I turn from the criminal's association with freedom to the criminal's association with greatness. Here I take up the

134. Kettle, *In Defense of Moll Flanders*, in *id.* at 385, 391.

135. *Id.*

136. Woolf, *Defoe*, in *MOLL FLANDERS*, *supra* note 133, at 337, 342.

137. *Id.* at 339.

138. Kettle, *supra* note 134, at 392.

139. *Id.* at 391-92.

140. See J. SYMONS, *MORTAL CONSEQUENCES* 183-84 (1972).

141. *Id.* at 184.

142. *Id.* For essays offering thoughtful explanations for the widespread appeal of the detective story, see Auden, *The Guilty Vicarage: Notes on the Detective Story, by an Addict*, 196 *HARPER'S MAG.* 406, 406-12 (1948); Rycroft, *A Detective Story: Psychoanalytic Observations*, 26 *PSYCHOANALYTIC Q.* 229, 229-45 (1957) (suggesting that the criminal represents the reader). For a summary of this literature and a history of crime fiction, see J. SYMONS, *supra* note 140, at 5-9.



powerful link between criminality and pride, especially overweening pride, or hubris.

C. "A Function Of His Virtue": The Criminal As  
An Embodiment of Greatness

For I was envious of the arrogant, when I saw the prosperity of the wicked.

[P]ride is their necklace; violence covers them as a garment.

They set their mouths against the heavens, and their tongue struts through the earth.

Therefore the people turn and praise them;  
And find no fault with them.

*Psalms 73:3-10.*

The criminal as a dreamer of dreams, as one who aspires to immortality, as a character larger than life, albeit with feet of clay—such is the type of admired criminal to be considered first under the rubric of "greatness." Robert Penn Warren's novel *All the King's Men* portrays such a criminal in the character Willie Stark, who commits felonies to retain political power and to realize his sometimes idealistic ends. After he is assassinated, his wife names her supposed grandson for Willie. In a conversation with Jack Burden, Willie's loyal man Friday, she explains that she has done so "because Willie was a great man."<sup>143</sup> She goes on: "Oh, I know he made mistakes," she said, and lifted up her chin as though facing something, "bad mistakes. Maybe he did bad things like they say. But inside—in here, deep down—" and she laid her hand to her bosom—"he was a great man."<sup>144</sup> Jack comments that, in the end, he came to believe that too.<sup>145</sup> For Jack, Lucy, and Willie's other admirers, the magnitude of Willie's deeds and aspirations outweighed the evil of the means he employed. But more than that, perhaps the criminal means were an inextricable part of his greatness and thus an essential basis of his appeal.

This association is clearer in Jack's relationship to another criminal, Judge Irwin. As the story unfolds, Jack discovers that the Judge, now an upright citizen, committed a crime many years earlier by covering up a felony to keep his house. Reflecting that he himself would not commit a crime to save the house, Jack observes that perhaps this is merely because he does not love the house as much as the Judge had loved it, "and a man's virtue may be but the defect of his desire, as his crime may be but a function of his virtue."<sup>146</sup>

143. R. WARREN, *ALL THE KING'S MEN* 452 (1953).

144. *Id.*

145. *Id.*

146. *Id.* at 463.

The paradoxical motif of crime as a "function of one's virtue" also runs through Peter Shaffer's modern play-cum-detective-story *Equus*. The play focuses on the relationship between a psychiatrist, Martin Dysart, and his patient, Alan Strang, a seventeen-year-old stableboy who plunged a steel spike into the eyes of six horses. In the following passage, Dysart struggles with his fear that, in treating the boy and rendering him less dangerous, he will deprive Alan of a rare and valued quality:

Look, . . . to go through life and call it yours—*your life*—you first have to get your own pain. Pain that's unique to you. You can't just dip into the common bin and say, 'That's enough!'

. . . He's done that. All right he's sick. He's full of misery and fear.

He was dangerous and could be again . . . . But that boy has known a passion more ferocious than I have felt in any second of my life.

And let me tell you something: I envy it.<sup>147</sup>

By contrast with Alan, who has created a religion centering on horses and characterized by emotional, secret, night-time rituals, Dysart believes that he himself leads a paltry existence. As he confesses to his friend Hesther: "I shrank my *own* life. No one can do it for you. I settled for being pallid and provincial, out of my own eternal timidity."<sup>148</sup>

The idea that criminal behavior may be inextricably entwined with the criminal's greatest qualities also appears in Joseph Conrad's novel *Heart of Darkness*. Like Lucy Stark in relation to her husband, and Martin Dysart in relation to Alan, Marlow finds himself overlooking Kurtz's crimes because they pale in relation to the man's great gifts: "Hadn't I been told in all the tones of jealousy and admiration that he [Kurtz] had collected, bartered, swindled, or stolen more ivory than all the other agents together? *That was not the point. The point was in his being a gifted creature . . .*"<sup>149</sup> More important even than the magnitude of his talent is the grandeur of Kurtz's vision: "Better his cry ['The horror!']—much better. It was an affirmation, a moral victory paid for by abominable terrors, by abominable satisfactions. But it was a victory! That is why I have remained loyal to Kurtz to the last . . ." <sup>150</sup>

Like other noncriminals in relationships with criminals, Marlow acknowledges Kurtz's transgressions: "True, he had made that last stride, he had stepped over the edge . . ." <sup>151</sup> But, for Marlow, Kurtz's "abominable terrors" (including murdering natives and displaying their heads on posts) were outweighed by his profound understanding. Marlow's description of his reaction to Brussels upon returning from the Belgian Congo highlights the nature of Kurtz's appeal:

I found myself back in the sepulchral city resenting the sight of peo-

147. P. SHAFFER, *EQUUS* 94 (Act II) (Avon Books ed. 1974).

148. *Id.* at 95.

149. J. CONRAD, *supra* note 21, at 48.

150. *Id.* at 72.

151. *Id.*



ple hurrying through the streets to filch a little money from each other, to devour their infamous cookery, to gulp their unwholesome beer, to dream their insignificant and silly dreams. . . . I felt so sure they could not possibly know what I knew. Their bearing, which was simply the bearing of commonplace individuals . . . was offensive to me like the outrageous flauntings of folly in the face of a danger it is unable to comprehend.<sup>152</sup>

To these noncriminal but trivial and ignorant lives, Marlow implicitly opposes his own life based on superior knowledge—knowledge he gained from the criminal, Kurtz.

The theme of the criminal as one who sees beyond the obvious, who is in touch with a truer or more significant realm, also runs through Colin MacInnes's novel *Mr. Love and Justice*. The book concerns the evolving relationship between a policeman, Edward Justice, and a pimp, Frankie Love. At one point, while Mr. Justice is still learning his job, an informer endeavors to teach him some fundamental truths:

"The fact is this," the nark<sup>153</sup> continued, . . . "You may not approve of what I say, but you and me have one big thing in common: neither of us is mugs: both of us sees below the surface of how things seem."

"Yeah," Edward said.

"And I'll tell you something more," the nark went on. "It's even the same between you and the criminals, as you'll discover. Neither they nor you belong to the great world of the mugs: you know what I mean: the millions who pay their taxes by the pea-eh-why-ee, read their Sunday papers for the scandals, do their pools on Thursdays, watch the jingles on the telly, travel to and fro to work on tubes and buses in the rush hour, take a fortnight's annual holiday by the sea, and think the world is just like that."<sup>154</sup>

Removed from the routinized and benighted domain of ordinary people, criminals lead elevated lives; to borrow a phrase from another novel about criminals, they belong to "the Realm."<sup>155</sup>

Like *Heart of Darkness* and *Mr. Love and Justice*, Schiller's play *The Robbers* contrasts criminals' important undertakings with the inglorious activities of their noncriminal contemporaries. Near the beginning of the play, the protagonist, Charles Moor, reflects on the pettiness of men's enterprises in his time:

"I am disgusted with this age of puny scribblers when I read of great men in my Plutarch."<sup>156</sup>

Significantly, his thoughts fall on the ancient god-thief, Prometheus, who stole fire and gave it to man:

152. *Id.*

153. In British slang, *nark* means stool pigeon.

154. C. MACINNES, *MR. LOVE AND JUSTICE* 59-60 (1960).

155. E. DOCTOROW, *BILLY BATHGATE* 11, 23 (1989).

156. F. SCHILLER, *The Robbers*, in *WORKS*, *supra* note 33, at act 1, sc. 2.

The glowing spark of Prometheus is burnt out, and now they substitute for it the flesh of lycopodium, a stage fire which will not so much as light a pipe.

. . . .

Fie! Fie upon this weak, effeminate age, fit for nothing but to ponder over the deeds of former times . . . .<sup>157</sup>

In this mood, Charles turns a receptive ear to the exhortations of an acquaintance, Spiegel, who promises greatness if Charles will join in forming a band of robbers:

Cowards, cripples, lame dogs are ye all if you have not courage enough to venture upon something great.

. . . .

My plan will exalt you the most, and it holds out glory and immortality into the bargain.<sup>158</sup>

The motif of the criminal as an embodiment of greatness also pervades Arthur Conan Doyle's short story "The Adventure of the Final Problem." Here, too, we see a variation on this motif: the criminal as a worthy opponent. Sherlock Holmes's high esteem for the criminal, Professor Moriarty, comes through in the following passage:

He is the Napoleon of crime, Watson. He is the organizer of half that is evil and of nearly all that is undetected in this city. He is a genius, a philosopher, an abstract thinker. He has a brain of the first order. He sits motionless, like a spider in the centre of its web, but that web has a thousand radiations, and he knows well every quiver of each of them.<sup>159</sup>

Not only does Holmes take vicarious pleasure in Moriarty's power and ability; more specifically, he delights in having found an enemy he can respect. Speaking to Dr. Watson, he exults: "'You know my powers, my dear Watson, and yet at the end of three months I was forced to confess that I had at last met an antagonist who was my intellectual equal. My horror at his crimes was lost in my admiration at his skill.'"<sup>160</sup> Elaborating on this theme, Holmes tells of the enjoyment he derived from pursuing the criminal:

I tell you, my friend, that if a detailed account of that silent contest could be written, it would take its place as the most brilliant bit of thrust-and-parry work in the history of detection. Never have I risen to such a height, and never have I been so hard pressed by an opponent.<sup>161</sup>

Thus, the magnitude of the criminal's talent made him a match for the hero, enlivening the hero's existence and challenging him to his best ef-

157. *Id.*

158. *Id.*

159. A. DOYLE, *The Adventure of the Final Problem*, in *THE ILLUSTRATED SHERLOCK HOLMES TREASURY* 315, 317 (1976) [hereinafter *TREASURY*].

160. *Id.* at 317.

161. *Id.*



forts. After Holmes and Moriarty meet violent, conjoined deaths, Watson equates the two men, pronouncing that there in the water would "lie for all time the most dangerous criminal and the foremost champion of the law of their generation."<sup>162</sup>

Holmes's need of a great criminal becomes even more apparent in subsequent stories, after Holmes, but not Moriarty, has been restored to life. In "The Adventure of the Norwood Builder," the detective complains, "London has become a singularly uninteresting city since the death of the late lamented Professor Moriarty."<sup>163</sup> He adds that with Moriarty alive, the morning paper had "presented infinite possibilities,"<sup>164</sup> by contrast with its sorry state in the criminal's absence. In a still later story, Holmes wistfully observes to Watson that a certain physician would make a wonderful criminal opponent: "'Dr. Leslie Armstrong is certainly a man of energy and character,' said he. 'I have not seen a man, who if he turned his talents that way, was more calculated to fill the gap left by the illustrious Moriarty.'"<sup>165</sup> Here we have not the usual mitigation of a criminal's sordid qualities to allow for guiltless admiration, but rather the fantasy that a noncriminal might become a great criminal to allow for the pleasures of pursuing a worthy opponent.

Like Sherlock Holmes, Porfiry Petrovich, the inquisitor in Dostoevsky's *Crime and Punishment*, appreciates the greatness of his criminal counterpart, Raskolnikov. Porfiry speaks truthfully as well as manipulatively when he tells the murderer: "*I look on you as a most honourable man and one, indeed, with elements of greatness in you . . .*"<sup>166</sup> Moreover, Porfiry, again like Holmes, is comfortable acknowledging the similarity between himself and the criminal. In the final dialogue between the two men, Porfiry confesses to Raskolnikov that he too has committed excesses, deeds of questionable morality, in the process of seeking the truth about the murder of the old pawnbroker and her sister. He has covertly searched Raskolnikov's room and has spread false rumors through Raskolnikov's friend in an effort to confuse his prey.<sup>167</sup> Unlike Javert, the persecutive police officer in *Les Misérables*, Porfiry does not need to see the criminal as utterly different from himself to maintain his self-esteem.<sup>168</sup>

162. *Id.* at 326.

163. A. DOYLE, *The Adventure of the Norwood Builder*, in TREASURY, *supra* note 159, at 354, 354.

164. *Id.*

165. A. DOYLE, *The Adventure of the Missing Three Quarter*, in TREASURY, *supra* note 159, at 483, 491.

166. F. DOSTOEVSKY, *CRIME AND PUNISHMENT* 380 (Norton Critical ed. 1964) (1866) (emphasis added).

167. *See id.* at 382.

168. For a discussion of Javert's need to dichotomize the criminal and himself, see *infra* text accompanying notes 248-50. For an analysis of Porfiry's relationship with Raskolnikov that highlights Porfiry's fascination with the criminal and willingness to acknowledge his similarity to him, see Weisberg, *Comparative Law in Comparative Literature: The Figure of the 'Examining Magistrate' in Dostoevski and Camus*, 29 RUTGERS L. REV. 237, 244-48 (1976).

We have seen that noncriminals associate criminals with greatness in the following senses: (1) caring with passionate intensity (*All The King's Men* and *Equus*); (2) knowing things that noncriminals cannot know (*Heart of Darkness* and *Mr. Love and Justice*); (3) dwelling in a higher, more significant realm than noncriminals (*Mr. Love and Justice* and *The Robbers*); and (4) serving as gifted adversaries who enrich the lives of their noncriminal opponents (the stories about Sherlock Holmes and *Crime and Punishment*).

It is now time to ask what constitutes the appeal of greatness? Or, to put it more precisely, what needs are noncriminals gratifying when they choose to perceive the criminal as great? The psychoanalytic concept of narcissism throws some light on this question. The theory of narcissism takes as its starting point certain findings based on observations of children during the early years of life. These observations suggest that, as junior toddlers, from the age of about ten or twelve months to sixteen or eighteen months, we believe in our own omnipotence. In their seminal study *The Psychological Birth of The Human Infant*, Margaret Mahler and her co-authors describe this phase as follows:

[T]he child seems intoxicated with his own faculties and with the greatness of his own world. Narcissism is at it peak! . . . He is exhilarated by his own ability, continually delighted with the discoveries he makes in his expanding world and quasi-enamored with the world and his own grandeur and omnipotence.<sup>169</sup>

There comes a time, however, later in the second year of life, when we realize that we are not all-powerful but highly vulnerable to the many insults and injuries life has to offer.<sup>170</sup> Along with this discovery comes the acute realization that we are, in fact, separate from our parents—that their wishes are not necessarily ours, and ours are not invariably theirs.<sup>171</sup>

This twofold disappointment, this recognition of our essential helplessness and aloneness, is a blow from which we never fully recover.<sup>172</sup> Throughout life, we may at times defend against this narcissistic wound by the mechanism of denial—by creating a fantasy that obliterates the unpleasant reality. This fantasy may take either of two forms: "I am perfect," or "You are perfect, but I am a part of you."<sup>173</sup> It is the latter kind of fantasy, termed "narcissistic investment," that seems to characterize noncriminals' relationships with criminals whom they perceive as great. Thus, when Lucy Stark insists that, in spite of everything, Willie was a "great man," or when Marlow chooses the criminal but godlike Kurtz over the "commonplace" Belgians with their "insignificant and

169. M. MAHLER, F. PINE, & A. BERGMAN, *THE PSYCHOLOGICAL BIRTH OF THE HUMAN INFANT* 71 (1975).

170. See *id.* at 78.

171. See *id.*

172. See A. ROTHSTEIN, *THE NARCISSISTIC PURSUIT OF PERFECTION* 22 (1984).

173. H. KOHUT, *THE ANALYSIS OF THE SELF* 27 (1971).



silly dreams," Lucy and Marlow appear to be narcissistically investing Willie and Kurtz respectively. That is, they are idealizing and identifying with the criminals to deny their own nature as limited, mortal creatures. Similarly, when Sherlock Holmes waxes eloquent about the omnipotence of Professor Moriarty, we can understand this as a technique for "self-aggrandizement and subtle self-delusion that . . . [he, like all people] finds necessary to assuage the insult of his true being."<sup>174</sup> That criminals should serve as narcissistically-invested objects for non-criminals is not accidental. Criminals are readily assimilated to the category of greatness because they are, by definition, people who refuse to be limited by the rules and scruples that circumscribe normal lives.

I turn now from the criminal who manifests greatness to the criminal who attracts us by virtue of being different, who represents our yearning for the long ago and far away. I have already anticipated this theme with the examples of the respected adversary—the criminal who is opposite yet the same. The criminal who attracts us by his exotic qualities also embodies an intriguing mix of difference and similarity.

#### D. "People of a Foreign Country": The Criminal As a Glamorous Stranger

In a beautiful essay, Georg Simmel has defined the stranger as the "potential wanderer," explaining: "although he has not moved on, he has not quite overcome the freedom of coming and going."<sup>175</sup> Simmel points out that to be a stranger is actually a "very positive relation."<sup>176</sup> The inhabitants of a distant star, by contrast, "are not really strangers to us, at least not in any sociologically relevant sense: they do not exist for us at all; they are beyond far and near. The stranger, like the poor and like sundry 'inner enemies' is an element of the group itself."<sup>177</sup> More specifically, the stranger represents the "unity of nearness and remoteness,"<sup>178</sup> of wandering and fixation: "[I]n the relationship to him, distance means that he, who is close by, is far, and strangeness means that he, who is also far, is actually near."<sup>179</sup>

The association between the criminal and the stranger in Simmel's sense appears near the beginning of Prosper Merimee's novella *Carmen*, when the narrator finds himself traveling with a man who seems to frighten his guide, Antonio: "Antonio's mysterious signals, his evident anxiety, a few words dropped by the stranger . . . had already enabled me to form an opinion of the identity of my fellow-traveller."<sup>180</sup> But the

174. A. ROTHSTEIN, *supra* note 172, at 45-46.

175. G. SIMMEL, *The Stranger*, in *THE SOCIOLOGY OF GEORG SIMMEL* 402 (K. Wolff ed. 1950) (emphasis deleted).

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. P. MERIMEE, *supra* note 94, at 7.

narrator remains unperturbed and even takes pleasure in the knowledge that he is travelling with an outlaw:

I had no doubt at all that I was in the company of a smuggler, and possibly a brigand. What cared I? . . . I was very glad to know what a brigand was really like. One doesn't come across such gentry every day. And there is a certain charm about *finding oneself in close proximity to a dangerous being*, especially when one feels the being in question to be gentle and tame.<sup>181</sup>

The narrator views the brigand as representing a "unity of nearness and remoteness," nearness by virtue of being "gentle and tame" and remoteness by virtue of being "a dangerous being"—thus epitomizing the qualities of the stranger.

Like the narrator of *Carmen*, the narrator of Stevenson's *Kidnapped* perceives the criminal as a glamorous stranger whose company he seeks. The relevant scene occurs when David Balfour, who has been abducted and forced to serve aboard the brig *Covenant*, first encounters Alan Breck, the notorious Jacobite terrorist. David, the narrator of the novel, explains to the reader that "there were many exiled gentlemen coming back at the peril of their lives . . . [running] the gauntlet of our great navy"<sup>182</sup> in the aftermath of a failed Scottish uprising against English rule. He continues:

All this I had, of course, heard tell of; and now *I had a man under my eyes* whose life was forfeit on all those counts and upon one more, for he was not only a smuggler of rents, but had taken service with *King Louis of France*. And as if all this were not enough, he had a belt full of golden guineas round the loins. *Whatever my opinions, I could not look on such a man without a lively interest.*<sup>183</sup>

Although Breck represents everything that David has been taught to abhor, the youth cannot resist a man "under [his own] eyes," who is associated with danger, wealth, and a foreign country. In the next line, his fascination leads to an overture: "'And so you're a Jacobite?" said I, as I set meat before him."<sup>184</sup>

F. Scott Fitzgerald's novel *The Great Gatsby* provides another example of a man who attracts others by his embodiment of criminality and exoticism. To take up the theme of criminality first, Jay Gatsby's career as a bootlegger, his involvement with a hit and run accident, and his association with other criminals play only a minor role in the plot of the novel. Nevertheless, his connection to crime is an important part of his allure, as we see in the following passage where Gatsby's dinner guests speculate about their host's identity: "The two girls and Jordan leaned together confidentially. 'Somebody told me they thought he killed a man once.' A thrill passed over all of us. The three Mr. Mumbles bent for-

181. *Id.* (emphasis added).

182. R.L. STEVENSON, *KIDNAPPED* 66 (1926).

183. *Id.* (emphasis added).

184. *Id.*



ward and listened eagerly."<sup>185</sup> After further debate about Gatsby's background, the guests return to the theme of homicide:

"You look at him sometimes when he thinks nobody's looking at him. I'll bet he's killed a man." She narrowed her eyes and shivered. Lucille shivered. We all turned and looked around for Gatsby. It was testimony to the romantic speculation he inspired that there were whispers about him from those who had found little that it was necessary to whisper about in this world.<sup>186</sup>

The fantasy that their host has taken a life arouses these jaundiced guests to an unaccustomed level of excitement.<sup>187</sup>

Gatsby inspires interest not only by being a probable killer but also by being a stranger, an embodiment of nearness and remoteness. In a passage that exemplifies this theme, the narrator, Nick Carraway, refers to "those who accepted Gatsby's hospitality and paid him the subtle tribute of knowing nothing whatever about him."<sup>188</sup> In the following exchange between Nick and his date, we see even more clearly that Gatsby's allure is based on his association with the unknown:

"Who is he?" I demanded. "Do you know?"

"He's just a man named Gatsby."

"Where is he from, I mean? And what does he do?"

"Now *you're* started on the subject", she answered with a wan smile.

Something in her tone reminded me of the other girl's "I think he killed a man," and had the effect of stimulating my curiosity . . . [Y]oung men didn't . . . drift coolly out of nowhere and buy a palace on Long Island Sound.<sup>189</sup>

The theme of the criminal as an admired stranger also appears in Thomas Mott Osborne's memoir *Within Prison Walls*.<sup>190</sup> The book is an account of Osborne's week-long voluntary incarceration in the state prison at Auburn, New York. Osborne's view of the prisoners is centrally informed by the concept of the criminal as stranger. Consider, for example, this excerpt from a speech he makes to the inmates before becoming a prisoner himself: "When a man wishes to understand as fully as possible the temper and character of the *people of a foreign country*—England or France, . . . he will not be satisfied until he has made a per-

185. F.S. FITZGERALD, *THE GREAT GATSBY* 44 (1925).

186. *Id.*

187. Similarly, in Hitchcock's film *To Catch a Thief*, Francine Simpson plainly wants to believe that John Robie has reverted to his former profession of jewelry thief. In her eyes, she implies, he would cut a more glamorous figure as an active criminal than as a reformed one. *To Catch a Thief* (Paramount Pictures Corp. 1954).

188. F.S. FITZGERALD, *supra* note 185, at 61.

189. *Id.* at 49.

190. T. OSBORNE, *WITHIN PRISON WALLS* (Patterson Smith Reprint Series 1969) (1st ed. 1914).

sonal visit to the country itself."<sup>191</sup> Later in the same speech, he makes clear that his goal is to attain an intimate understanding of these men who are near and yet far: "I have the feeling that after I have really lived among you . . . and not until then, can I feel the knowledge which will break down the barriers between my soul and the souls of my brothers."<sup>192</sup> Here one senses Osborne's elation at the prospect of intimacy with the very different. Throughout the book, he describes his prison sojourn as a "great adventure."<sup>193</sup>

Osborne is not only attracted to these criminal strangers; he also holds them in high regard, as we see in the following passages. Describing a prisoner, he writes: "He himself is a clean-cut, fine-looking fellow, with honest blue eyes and a good face—not a single trace of the 'Criminal' about him."<sup>194</sup> Of another inmate he writes: "A pair of honest gray eyes light up with a smile . . ."<sup>195</sup> The next prisoner is characterized as "a slightly built, pleasantly smiling young man . . ."<sup>196</sup> And again: "My working partner, Murphy, has a life term . . . He seems like such a good fellow; and the Chaplain has just spoken of him most highly."<sup>197</sup> And yet again: "Marching to breakfast I find myself by the side of a young fellow . . . He is tall and good-looking, with an air of refinement which is appealing."<sup>198</sup>

Osborne's characterizations of the prisoners are overwhelmingly positive, suggesting idealization. Idealization of inmates may reflect an unconscious hostility toward the authorities who are punishing these men. Indeed, we catch a glimpse of the rebel in Osborne when he comments on the gift of sugar that he has clandestinely received from a prisoner: "I find myself wondering if the sugar I'm eating has been honestly come by . . . I am quite sure that in my present state of mind I should enjoy it better if I knew it had been stolen."<sup>199</sup> Osborne's admiration for criminals came to play a central role in his life. As chairman of the New York State Prison Reform Commission, he initiated self-government among the inmates of Auburn penitentiary.<sup>200</sup> Later, at the Naval Prison at Portsmouth, he handled some six thousand inmates without using any guards within the prison compound.<sup>201</sup>

Like Osborne, the fictional character Nekliudov in Tolstoi's novel *Resurrection* associates criminals with the strange and far away. Traveling to Siberia in an effort to redeem Maslova, a prostitute convicted of

191. *Id.* at 15 (emphasis added).

192. *Id.* at 18.

193. *See, e.g., id.* at 11, 197; *cf. id.* at 187-88.

194. *Id.* at 43.

195. *Id.* at 51.

196. *Id.*

197. *Id.* at 63.

198. *Id.* at 74.

199. *Id.* at 76.

200. *See F. TANNENBAUM, OSBORNE OF SING SING* 66, 71-87 (1933).

201. *See id.* at 279.



murder, he looks about him at the workers on the train: "‘Yes, this is quite a new and different world,’ thought Nekliudov. . . . And he felt the joy of a traveller discovering a new, unknown and beautiful world."<sup>202</sup>

If noncriminals often admire criminals for their exotic glamour, their free, audacious life, and their pursuit of fairness and right, at other times noncriminals recoil from criminals with disgust—feeling themselves to be unbearably polluted by the criminals’ very nearness. In the next part, I examine the feeling of loathing that some noncriminals manifest toward criminals. Specifically, I will suggest that this sense of revulsion represents a defense against unconscious admiration for the criminal.

#### IV. REPRESSED ADMIRATION: LOATHING AS A VICISSITUDE OF ATTRACTION TO CRIMINALS

##### A. "Newgate in My Breath": Admiration, Loathing and Repudiation

In Guy de Maupassant’s novella *Ball-of-Fat*, a group of men and women are traveling by stagecoach through occupied France. Among them is a prostitute nicknamed "Ball-of-Fat."<sup>203</sup> Early in the novella, she wins the other passengers’ grudging respect for her ardent patriotism. When the passengers stop for the night, a Prussian army officer threatens to detain them indefinitely unless Ball-of-Fat will share his bed. Fiercely anti-German, Ball-of-Fat is initially adamant in her refusal—a stance which some of the other travellers fail to comprehend. One woman remarks to another:

Since it is the trade of this creature to accommodate herself to all kinds, I fail to see how she has the right to refuse one more than another . . . . For my part, I find that this officer conducts himself very well . . . . And we must remember too that he is master. He has only to say, "I wish," and he could take us by force with his soldiers.

202. L. TOLSTOI, *RESURRECTION* 215 (Foreign Languages Publishing House n.d.) (1899). For another example of the criminal-as-stranger theme, consider Albert Camus’s novel *The Stranger* (1946), in which the protagonist, Meursault, unlawfully kills an Arab. Following the crime, Meursault is tried and convicted on legal irrelevancies—aspects of his character that make Meursault seem a stranger or foreigner in his society (for instance, that he did not cry at his mother’s funeral and that he does not believe in God). For an analysis of Meursault’s estrangement that focuses on his inability to use words, see R. WEISBERG, *supra* note 6, at 115-23.

No character in the novel seems to embody an overt admiration for Meursault; however, his creator, Camus, exhibits a sympathy and regard for him. Camus chooses to write the novel in the first person, thereby allowing the reader to enter the criminal’s mind. Moreover, he portrays Meursault as a victim of injustice. Judge Posner interprets Camus’s portrait of Meursault as an admiring one, for he protests that *The Stranger* has "little . . . to do with law" and "much . . . to do with a form of neoromanticism in which criminals are made heroes." R. POSNER, *supra* note 6, at 90.

203. In nineteenth-century France, the legality of prostitution was "left conveniently vague." See J. HARSIN, *POLICING PROSTITUTION IN NINETEENTH-CENTURY PARIS* xvi (1985). In practice, women were allowed to work as prostitutes provided they registered with the police and abided by the regulations affecting them. *Id.* If arrested for a violation of the rules, they could be imprisoned without trial on the curious theory that by registering with the police they had put themselves "outside the law." *Id.* at 6-7.

The two women had a cold shiver. Pretty Madame Carre-Lamadon's eyes grew brilliant and she became a little pale, as if she saw herself already taken by force by the officer.<sup>204</sup>

As Maupassant presents it, the idea of engaging in sex with a stranger is, in fantasy, an exciting notion to these bourgeois women. Moreover, one of the women is portrayed as being attracted to the officer: "The genteel Madame Carre-Lamadon seemed to think that in her [Ball-of-Fat's] place, she would refuse this one less than some others."<sup>205</sup>

Eventually, worn down by the self-serving cajoling of the other passengers, Ball-of-Fat agrees to the officer's demand. During the act of intercourse, the passengers joke about what is happening, and sensuality charges the atmosphere among them.<sup>206</sup> While they wait, occasionally listening for sounds from the floor above, one woman tells her husband that Carre-Lamadon is yellow with envy of the prostitute.<sup>207</sup> After it is all over, the other passengers repudiate Ball-of-Fat, treating her with utter contempt.

So beautifully does Maupassant write this story, and so naturally do the events unfold, that the travellers' behavior seems quite predictable. It may not occur to us to question the basis of their repudiation and contempt. Why do the passengers make an about-face regarding the prostitute, after she has done the very thing that they had asked her to do? From the hints dropped in the story, the best explanation seems to be that the other passengers identify with Ball-of-Fat and her act of self-abasement. Precisely because they resonate to her behavior, while also regarding it as immoral, they cannot consciously accept Ball-of-Fat; they repudiate her as a way of avoiding awareness that they, too, are capable of prostitution. Indeed, because it was they who persuaded her to sacrifice her principles, they are her accomplices in the act of harlotry.

Another portrayal of a noncriminal who, at one stage, repudiates a criminal appears in Charles Dickens's novel *Great Expectations*.<sup>208</sup> In the opening pages, the small boy Pip, alone on the marshes, encounters an escaped convict, who, we subsequently learn, is named Magwitch. The convict demands that Pip obtain some food and a file for him. Terrified, Pip steals the wanted items from his sister and brother-in-law and returns to the marshes, where he nearly stumbles upon another convict before turning over the provisions to Magwitch.

During this phase of the story, Dickens repeatedly refers to Pip's guilt-ridden identification with Magwitch. For example, Pip feels like a thief, because he is stealing from his sister: "I felt fearfully sensible of the great convenience that the Hulks were handy for me. I was clearly on

204. De Maupassant, *Ball-of-Fat*, in *THE GREAT SHORT STORIES OF DE MAUPASSANT* 200, 237 (Pocket Library ed. 1955) (1880).

205. *Id.* at 238.

206. *Id.* at 244-45.

207. *Id.* at 246.

208. C. DICKENS, *GREAT EXPECTATIONS* (The Heritage Press 1939) (1861).



my way there. I had begun by asking questions, and I was going to rob Mrs. Joe."<sup>209</sup> Projecting his sense of guilt onto the world around him, he imagines the cows he passes calling out to him: "A boy with somebody else's pork pie! Stop him! Halloa young thief!"<sup>210</sup> While running back to the marshes, Pip compares the cold riveted to his feet, "as the iron was riveted to the leg of the man I was running to meet."<sup>211</sup>

In a later scene, when Pip and his brother-in-law participate in a search for the escaped criminals, Pip refers to Magwitch with the words "my convict."<sup>212</sup> Ostensibly, he employs this phrase to distinguish the man he had talked to, whose name he does not know, from the other felon. However, the expression, which Pip repeats as often as nine times in two pages, also conveys an affectionate and proprietary attitude toward the escaped felon. Pip's sympathy is, indeed, with the criminals, for he whispers to Joe that he hopes the party does not catch the men. Nevertheless, they are caught, and, in what will be the last communication between Pip and "his convict" for many years, Pip tries to signal to Magwitch that he has not betrayed him.

Thus far in the story, we have seen only empathy and identification in Pip's attitude toward the criminal. His reaction differs markedly the next time he meets Magwitch. Now a young gentleman, Pip has risen in the world thanks to an unknown benefactor whom he always assumed to be Miss Havisham, guardian of the beautiful Estella. One night, alone in his flat, Pip receives a visitor he quickly recognizes: the convict he had aided on the marshes so many years before. It becomes clear that it was Magwitch who financed Pip's advancement, and now the old man has returned to delight in the creature he has made.

At this stage, Pip describes his feelings toward Magwitch in the language of loathing; for example: "The abhorrence in which I held the man, the dread I had of him, the repugnance with which I shrank from him, could not have been exceeded if he had been some terrible beast."<sup>213</sup> Significantly, the criminal's affection for Pip only increases Pip's disgust: Pip "recoiled from his touch as if he had been a snake,"<sup>214</sup> and when Magwitch kisses Pip's hands, "the blood ran cold"<sup>215</sup> within Pip. So intense is Pip's revulsion that one night he experiences the impulse to leave the country to get away from him:

Every hour so increased my abhorrence of him, that I even think I might have yielded to this impulse . . . but for the knowledge that Herbert [his friend] must soon come back. Once, I actually did start out of my bed in the night, and begin to dress myself in my worst

---

209. *Id.* at 21.

210. *Id.* at 23.

211. *Id.* at 24.

212. *Id.* at 42-43.

213. *Id.* at 307.

214. *Id.*

215. *Id.* at 308.

clothes, hurriedly intending to leave him there with everything else I possessed, and enlist for India as a private soldier.<sup>216</sup>

In this phase of the novel, the disgusted young man presents a powerful contrast to the empathic little boy he had been, as we see in the grown Pip's description of Magwitch eating:

He ate in a ravenous way that was very disagreeable, and all his actions were uncouth, noisy and greedy. Some of his teeth had failed him since I saw him eat on the marshes, and as he turned his food in his mouth, and turned his head sideways to bring his strongest fangs to bear upon it, he looked terribly like a hungry old dog.<sup>217</sup>

As a child, Pip had also employed the metaphor of a dog to describe Magwitch's way of eating. But where, as a child, Pip's description was neutral, free of disgust, here it is pervaded by a profound repugnance.

Why does Pip, who formerly exhibited empathy and identification with the convict, now show such extreme loathing—to the point where he actually considers leaving everything and running off to India? To be sure, the discovery that the convict has been his benefactor is a disappointment; it means that his supposed patron, Miss Havisham, had not, as he had thought, been grooming him all those years to be Estella's mate. As another possibility, Pip may feel that his rise in life has been contaminated because it was financed by a convict. Finally, Pip may simply find Magwitch's rude ways more appalling now that he is a gentleman. But none of these explanations seems adequate to account for the exaggerated quality of Pip's reactions.

In psychoanalysis, any extreme trend in one direction is considered an indication that the person may be defending against awareness of the opposite impulse.<sup>218</sup> The prototypical example of this defense mechanism, termed a "reaction-formation," is the adult's disgust at feces, which fascinate small children. In this case, it is Pip's extreme disgust and repudiation that seem exaggerated, and the opposites of those are identification or fascination. What evidence is there that Pip is, indeed, defending against a feeling of kinship with Magwitch? Apart from the indications that Pip powerfully identified with the criminal as a child, another manifestation of Pip's now-largely repressed identification with Magwitch appears in the following passage: "Words cannot tell what a sense I had . . . of the dreadful mystery that he was to me. When he fell asleep of an evening, . . . I would sit and look at him, wondering what he had done, and loading him with all the crimes in the Calendar . . ." <sup>219</sup>

216. *Id.* at 322.

217. *Id.* at 315.

218. See R. MUNROE, *supra* note 89, at 261 ("The power of the repressed impulses is seen in the exaggeration of the opposite tendencies. Excessive tendencies in one direction—the 'virtues to a fault' of common parlance—typically (i.e., not always but very often) represent a buttressing of the repression of unacceptable, impulses of contrary nature."). For general discussions of reaction-formation, see *id.* at 251-54. See also O. FENICHEL, *supra* note 87, at 151-53.

219. C. DICKENS, *GREAT EXPECTATIONS*, *supra* note 208, at 322.



That Pip's disgust for Magwitch represents a disgust for his own prison-imbued life can be seen in the following excerpts describing his thoughts after a visit to Newgate prison:

I consumed the whole time in thinking how strange it was that I should be encompassed by all this taint of prison and crime; that, in my childhood out on our lonely marshes on a winter evening I should have first encountered it; that, it should have reappeared on two occasions, starting out like a stain that was faded but not gone; that, it should in this new way pervade my fortune and advancement.<sup>220</sup>

Pip goes on to wish that he had not chanced to enter the prison on that particular day, when he was to meet Estella's coach:

[s]o that, of all days in the year on this day, I might not have had Newgate in my breath and on my clothes. I beat the prison dust off my feet as I sauntered to and fro, and I shook it out of my dress, and I exhaled its air from my lungs. So contaminated did I feel, remembering who was coming, that the coach came quickly after all, and I was not yet free from the soiling consciousness . . . .<sup>221</sup>

In these passages we see the typical motifs of anality: taint, stain, dust, contamination, and soil. Pip's preoccupation with these themes, though couched in the language of disgust, reflects an underlying attraction—one that is inadmissible to his conscious mind. Rather than acknowledge his fascination with criminals and prisons, Pip develops a quasi-paranoid fantasy that Newgate prison has gotten inside of him, into his very breath, and has become a part of his being.

The meaning of Pip's attraction to criminals becomes still clearer if we look at the images of the criminal in the life of his creator, Dickens.<sup>222</sup> As all Dickens-lovers know, Charles Dickens's father was confined in the Marshalsea prison for inability to pay his debts. Unquestionably, this was a traumatic experience for Dickens, who, while he did not reside in the prison himself, often visited his family there and cried with his father over their frightening role reversal.<sup>223</sup> Adding to the pain and the lasting effects of this period was Dickens's own simultaneous immurement in a blacking factory—"a crazy, tumble-down old house . . . literally overrun with rats."<sup>224</sup> Working at his parents' behest to alleviate the family penury, Dickens spent his days monotonously pasting labels on pots of paste blacking. As an adult, he would describe "the secret agony of [his]

220. *Id.* at 253.

221. *Id.* at 254. A.O.J. Cockshut has called attention to the autobiographical significance of this passage: "In these words of Pip, Dickens expressed one of the great enigmas of his own life." See A. COCKSHUT, *THE IMAGINATION OF CHARLES DICKENS* 47 (1962).

222. For an interesting analysis of Pip's criminal guilt that is different from, yet compatible with, my interpretation, see Moynahan, *The Hero's Guilt: The Case of Great Expectations*, 10 *ESAYS IN CRITICISM* 60 (1960) (arguing that Pip is associated with violent aggressiveness through his surrogates, the sadistic Orlick and Drummle).

223. F. KAPLAN, *DICKENS* 41 (1988).

224. *Id.* at 38.

soul"<sup>225</sup> during this time when he felt his "early hopes of growing up to be a learned and distinguished man, crushed in [his] breast."<sup>226</sup> Significantly, he believed that only good fortune had prevented his becoming a criminal himself: "I know that, but for the mercy of God, I might easily have been, for any care that was taken of me, a little robber or a little vagabond."<sup>227</sup>

Thus, in Dickens's childhood, the theme of criminality appears in two forms: his father's punishment for indebtedness and Dickens's fantasy about the thief that he himself might have become. In addition, Dickens's maternal grandfather was an embezzler who fled to the Isle of Man to avoid imprisonment for his crime.<sup>228</sup> Occurring only two years prior to Dickens's birth, this event may have cast a taint over Dickens's early years—a taint like the one that Pip describes as "pervading his fortune and advancement." These facts suggest that underlying Pip's revulsion at the very presence of Magwitch is Dickens's profound consciousness that the criminal was, indeed, *his* convict—his father, his grandfather, and himself.

I have argued that some people experience repugnance toward criminals, proclaiming their disgust and loathing, avoiding physical contact, fearing contamination by the criminal's very presence or affection; yet, on the unconscious level, this revulsion functions to defend the non-criminals against their own fascination with criminals, who are perceived as self-indulgent (Ball-of-Fat) and free to dwell in the pleasures of anal messiness and instinctual greed (Magwitch and the other convicts in *Great Expectations*).

If, in some people, admiration for criminals is transmuted into loathing and avoidance, in others, it undergoes a different transformation: it is changed into loathing and persecution. Noncriminals in the latter category may attempt to punish criminals in a one-time incident or build lives centering on the role of avenger. Whereas those who shun criminals employ a reaction-formation, defending against attraction through avoidance, those who build lives around punishing criminals exhibit a compromise-formation.<sup>229</sup> They simultaneously gratify both their attraction to and their revulsion from criminals—the attraction through their ongoing involvement with lawbreakers, and the revulsion through the persecutory nature of their involvement. In the next section, I will examine this improbable and complex vicissitude of admiration for criminals.

225. *Id.* at 39.

226. *Id.*

227. L. SHENGOLD, *SOUL MURDER* 191 (1989) (quoting J. FORSTER, 1 *THE LIFE OF CHARLES DICKENS* 25 (1966)) (Shengold's emphasis deleted; other emphasis added).

228. See F. KAPLAN, *DICKENS* 21 (1988).

229. See generally C. BRENNER, *supra* note 4, at 201-09 (defining and providing illustrations of compromise formation); R. MUNROE, *supra* note 89, at 259-61 (explaining the technique of compromise).



B. "A Copper Needs Crime": *Admiration, Loathing, and Persecution*

They say that coppers suppress crime. My own belief is that they create it: they spread a criminal atmosphere where none existed . . . . A soldier to succeed needs wars . . . . In just the same way as a copper, to get on, needs crime.

C. MacInnes, *Mr. Love and Justice*<sup>230</sup>

For our first illustration of this theme, let us return to Wilkie Collins's mystery novel *The Woman in White*. As we have seen, the heroine, Marian Halcombe, initially feels a strong attraction for the psychopathic villain, Count Fosco. To her journal she confides: "In two short days he has made his way straight into my favorable estimation—and how he has worked the miracle, is more than I can tell."<sup>231</sup> As with Nicol Jarvie in *Rob Roy* and Marlow in *Heart of Darkness*, Marian's puzzlement suggests that her attraction to the criminal has an unconscious basis. This nonrational pull to the criminal is all the more striking in a woman who is portrayed as having excellent judgment, just as it is in Nicol Jarvie, the normally-prudent Scots businessman.

As the story develops, Marian learns that the Count is capable of any vile deed, including murder, and that he has attempted to condemn her sister to a living death in a sanatorium. Horrified as she is at these revelations, Marian's most intense feeling of revulsion emerges in connection with the Count's continued admiration for her. Describing her encounter with the Count to her friend Walter Hartright, she says:

All the horrible time at Blackwater came back to me the moment I set eyes on him. All the old loathing crept and crawled through me, when he took off his hat with a flourish, and spoke to me, as if we had parted on the friendliest terms hardly a day since.<sup>232</sup>

Marian feels so polluted by the Count's attentions that she cannot bring herself to repeat his words to Walter. Later, it becomes clear that the Count has hesitated in doing an evil act out of consideration for Marian. When she learns of this, Marian again experiences disgust:

It's hard to acknowledge it, Walter—and yet I must! I was his only consideration. No words can say how degraded I feel in my own estimation when I think of it—but the one weak point in that man's iron character is the horrible admiration he feels for *me*. I have tried, for the sake of my own self-respect, to disbelieve it as long as I could . . . .<sup>233</sup>

Why should it be the Count's fondness for Marian that most evokes Marian's loathing? And why should the *Count's* feelings threaten *Marian's* self-respect? So normal (in the sense of typical) is Marian's reaction that we may be disinclined to analyze it. Yet, to follow this disinclina-

230. C. MACINNES, *supra* note 154, at 137.

231. W. COLLINS, *supra* note 19, at 195.

232. *Id.* at 506.

233. *Id.* at 507.

tion would be to lose an important insight. For Marian's revulsion, I would submit, is not, at bottom, a revulsion for the Count, but for herself and for whatever it was in her that allowed her to be so powerfully drawn to him. Because Marian is not a patient on the couch, it is impossible to be sure that this analysis is correct. But the strength of her earlier, "half-unwilling" fascination with the Count, together with the exaggerated quality of her disgust at his attentions, make this a highly plausible interpretation.

When Marian begins to loathe Count Fosco, her impulse is not to snub the criminal or to remove herself physically from him. Rather, she seeks his destruction. Thus, after reading a note to herself from the Count, she urgently begs her friend Walter Hartright: "Walter! . . . if ever those two men [Sir Percival and the Count] are at your mercy, and you are obliged to spare one of them—don't let it be the Count."<sup>234</sup> And again, when Walter is discussing how to build a case against the two criminals, Marian flushes and whispers: "Begin with the Count! . . . For my sake, begin with the Count."<sup>235</sup>

The theme of admiration transmuted into loathing and persecution is even more richly developed in John Millington Synge's classic drama *The Playboy of the Western World*. The action revolves around a young man, Christy Mahon, who arrives in a poor, isolated Irish village claiming to have killed his father. The villagers, who have already been depicted as leading a limited and oppressed existence, welcome the ostensible parricide as a hero. So positive is the villagers' reaction that, on the first night of his arrival, Christy goes to sleep thinking:

Well it's a clean bed and soft with it, and it's great luck and company I've won me in the end of time—two fine women fighting for the likes of me—till I'm thinking this night wasn't I a foolish fellow not to kill my father in the years gone by.<sup>236</sup>

Early the next morning, three young women arrive to see him, worrying as they come that they may have missed their chance to meet a parricide: "Well, it'll be a hard case if he's gone off now, the way we'll never set our eyes on a man killed his father, and we after rising early and destroying ourselves running fast on the hill."<sup>237</sup>

Upon meeting the supposed murderer and fugitive, they welcome him and offer him duck's eggs, cakes, and chicken as gifts. Some time later, the father of the female protagonist, Pegeen Mike, agrees to Christy's engagement with his daughter, even though she is already engaged to another, a cowardly, timid man. Joining the hands of the newly betrothed couple, the father proclaims:

234. *Id.* at 413.

235. *Id.* at 414.

236. J. SYNGE, *THE PLAYBOY OF THE WESTERN WORLD*, act 1, lines 555-59 (Ernest Benn Limited ed. 1975).

237. *Id.* at act 2, lines 30-33.



A daring fellow is the jewel of the world, and a man did split his father's middle with a single clout, should have the bravery of ten, so may God and Mary and St. Patrick bless you, and increase you from this mortal day.<sup>238</sup>

While Christy is basking in the villagers' esteem, his father shows up, not dead but very much alive, with only a wounded head from the blow his son had given him. In a flash, the peasants turn on Christy, ridiculing and condemning him for having made himself out to be a murderer. Furious in her disillusionment, Pegeen lashes out:

And it's lies you told, letting on you had him slitted, and you nothing at all.<sup>239</sup>

Ruefully, she observes:

And to think of the coaxing glory we had given him . . .<sup>240</sup>

Overcome with all that he has lost along with the status of parricide, Christy again picks up a loy [a long, narrow spade] and bashes his father on the head. The onlookers believe old Mahon to be dead. This time, however, instead of reacting to the crime with "coaxing glory," they repudiate Christy's deed and make plans to hang him. Pegeen herself turns persecutor as she participates in the group that slips the noose over Christy's head and sadistically brands his leg with a burning stick. Explaining the change in the community's reaction, Pegeen observes:

I'll say, a strange man is a marvel, with his mighty talk; but what's a squabble in your back-yard, and the blow of a loy, have taught me that there's a great gap between a gallous story and a dirty deed.<sup>241</sup>

Before the villagers can complete the lynching, old Mahon revives. Father and son go off together, leaving Pegeen to undergo yet another change of heart. In the final scene of the play, realizing that she now must marry the dull, fearful Shawn, she puts her shawl over her head and laments:

Oh my grief, I've lost him surely. I've lost the only playboy of the Western World.<sup>242</sup>

Synge's play embodies our conflicting attitudes toward the criminal, our simultaneous admiration and condemnation for the one who dares to break society's laws. The slang word *gallous*, which Pegeen uses to describe Christy's story, epitomizes this conflict with its two opposed meanings: (1) deserving the gallows; hence, villainous; and (2) very great, fine, dashing.<sup>243</sup> Not only the play itself, but also the audiences' and the critics' reactions to it, highlight the simultaneous love and hatred for the

238. *Id.* at act 3, lines 414-18.

239. *Id.* at act 3, lines 424-25.

240. *Id.* at act 3, line 434.

241. *Id.* at act 3, lines 544-46.

242. *Id.* at act 3, lines 624-25.

243. See WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1029 (2d ed. unabridged 1947) (definition of *gallows*). The first meaning is now obsolete; the second is slang.

criminal that pervade our culture. During the play's opening performances at the Abbey Theater in 1907, audiences rioted against it, disrupting the show. Expecting to see a play that glorified Irish culture, they violently rejected the play's portrayal of their countrymen lauding a criminal. In self-defense, Synge emphasized that he had based his play on actual events: on the Aran Islands, peasants had protected a parricide from the authorities until he could escape to America, even though a substantial reward had been offered for his capture.<sup>244</sup>

For our purposes, one of the fascinating aspects of this play is the villagers' involvement in creating Christy's criminal persona and fostering his criminal deed. By their selective enthusiasm for the parts of his story centering on the parricide, the peasants encourage Christy to think of himself as a dashing murderer. By their scoffing repudiation of him when his father turns up alive, the community generates his second act of violence—an act that is more culpable than the first because it is without legal provocation. We have already seen that in real life, too, non-criminals sometimes foster criminality in others to gratify vicariously their own criminal impulses.<sup>245</sup> After unwittingly generating, and enjoying, the criminal behavior, the noncriminals often proceed to prosecute the criminal, who thus becomes a scapegoat—a symbol of everyone's unacknowledged guilt.

Another interesting issue raised by this play concerns the reversal that the community undergoes after the second supposed parricide. Christy Mahon himself is stunned by the disparity between the two reactions—the villagers' glorification of the criminal when he arrives, a stranger, announcing a previously-committed crime, and their violent persecution of him when he commits the same crime in their presence. From a psychoanalytic perspective, the divergence in the community's responses to the two supposed crimes is not surprising. For what is important in the unconscious is not one extreme or another, but *polarities*. Surface behavior that seems highly contradictory, then, may reflect some larger unconscious preoccupation, embracing both sides of the contradiction. In the play, the villagers' initial attraction to the criminal and their subsequent repudiation and persecution of him are but two sides of their abiding fascination with crime and the criminal. Their superficial shift from the roles of follower and admirer to the role of persecutor seems to reflect a need for the criminal to be, in some sense, a *stranger*. When his crimes are committed in, as Pegeen says, their "back yard," the villagers' own complicity becomes too apparent for their superegos to tolerate. They then undergo a shift from the id's delight in an act of aggression against authority to the superego's denunciation of the same act.

---

244. See Bowen, *Synge: The Playboy of the Western World*, in A. J. M. SYNGE LITERARY COMPANION 69, 69-71 (E. Kopper ed. 1988); Hirsh, *The Gallous Story and the Dirty Deed: The Two Playboys*, 26 MOD. DRAMA 85, 85, 91 (1983).

245. See *supra* text accompanying notes at 27-29.



On a deeper level, the villagers' persecution of Christy can be understood not as a gratification of the superego following a gratification of the id but rather as a compromise formation: behavior that simultaneously gratifies both sides of their inner conflict over criminality. For in branding and preparing to lynch Christy, the villagers themselves are behaving like criminals; they are acting outside the law. They are thus expressing their own sadistic and criminal impulses and also their defense against these impulses—their need to see themselves as opposed to crime. If imitation is the sincerest form of flattery,<sup>246</sup> then their illegal behavior represents admiration for criminals.

As in literature, so also in life: people may permit a breakthrough of their own antisocial impulses in the guise of bringing criminals to justice. For instance, in California in the early 1970s, government undercover agents intentionally and illegally slaughtered seven elk, sheep, and polar bears in the process of building a case against suspected hunting violators. The federal district judge who presided over the successful prosecution commented:

The fascinating aspect of this case is that the agents go out and kill these same animals that the defendant is charged with killing. They (the government) brought a road contractor all the way from Vermont to illegally kill animals. No matter what happens here, I am going to pursue this.<sup>247</sup>

In the conventional view, such illegal prosecutorial behavior is a lamentable accident resulting from excessive zeal. From the perspective I am advocating, however, the phenomenon of prosecutors' crossing over the line into illegality can best be understood as a foreseeable breakthrough of their repressed admiration for criminals.

Even where there is not, as in the preceding examples, a breakthrough of criminal behavior on the part of the prosecutor, it may still make sense to interpret prosecutorial behavior as a compromise formation—a symbolic expression of both instinctual and anti-instinctual forces, of attraction to the criminal and defense against this attraction. Victor Hugo's novel *Les Misérables* provides an example in the character of Javert, the police officer who obsessively, over the years, pursues the criminal Jean Valjean. Valjean is guilty only of having violated the conditions of his probation; however, Javert harbors an abiding contempt for this criminal, as he does for all those who exist outside the law. The all-consuming quality of Javert's belief in the law comes through in Hugo's description: "Order was his dogma and was enough for him; since he had been of the age of a man, and an official, he had put almost all of his

246. See J. BARTLETT, *FAMILIAR QUOTATIONS* 445 (15th ed. 1980) (quoting C. COLTON, 1 *LACAN* 113 (1851) (1st ed. 1820)) ("Imitation is the sincerest of flattery"); cf. L. EIDELBERG, *ENCYCLOPEDIA OF PSYCHOANALYSIS* 187 (1968) ("Imitation denotes both the act and the wish to copy an admired and hated object").

247. See S. KADISH & S. SCHULHOFER, *CRIMINAL LAW AND ITS PROCESSES* 686 (5th ed. 1989) (quoting S.F. Chronicle, Sept. 7, 1974, at 2, col. 1).

religion in the police."<sup>248</sup>

As with Pip, Marian, and the other characters in this part, Javert's revulsion from criminals can be understood as a defense against feelings that are inadmissible to his conscious mind. Hugo tells us that Javert himself was born in prison of a mother who was a "tramp" and a father who was a galley slave. Together with the exaggerated quality of his behavior, Javert's origins suggest that his prosecution of criminals fulfills an important psychological function: to defend against awareness of his own identification with criminals. But beyond serving a defensive function, Javert's profession also serves to gratify the very impulses he is defending against. For his role as a police officer allows him to be where the criminal is, to think like the criminal and think *about* the criminal for years on end—all the while justifying this behavior as required by his fight against criminality.

The best evidence that Javert indeed feels an attraction to the criminal appears toward the end of the book, when Javert's defense mechanism fails as he becomes conscious of his admiration for Jean Valjean. As Hugo describes this development, "Javert felt that something horrible was penetrating his soul, admiration for a convict. Respect for a galley-slave, can that be possible?"<sup>249</sup> In succeeding passages, Javert characterizes Valjean with oxymorons that bespeak his own confusion: "a beneficent malefactor, a compassionate convict[,] . . . Javert was compelled to acknowledge that this monster existed[,] . . . this infamous angel, this hideous hero."<sup>250</sup> As circumstances force him to recognize the goodness in his long-time prey, Javert loses his psychological balance. Perceiving Valjean as high-minded, he is no longer able to maintain his view of himself as pure. The rigid compromise formation had kept his self-loathing, his sense of inner pollution, repressed. Now, as these feelings surface, Javert commits suicide.

## V. CONCLUSION

The disappearance of repulsive (and, considered in isolation, destructive) energies does by no means always result in a richer and fuller social life (as the disappearance of liabilities results in larger property) but in as different and unrealizable a phenomenon as if the group were deprived of the forces of cooperation, affection, mutual aid, and harmony of interest.

Georg Simmel, *Conflict and the Web of Group Affiliations*<sup>251</sup>

In these pages I have pursued three interrelated goals: (1) to show the pervasiveness and conflicted nature of admiration for criminals; (2) to

248. V. HUGO, 5 *LES MISERABLES* 151 (Heritage Press ed. 1938) (1862).

249. *Id.* at 149.

250. *Id.*

251. G. SIMMEL, *Conflict*, in *GEORG SIMMEL ON INDIVIDUALITY AND SOCIAL FORMS* 70, 75 (1971) (reproduced from *CONFLICT AND THE WEB OF GROUP AFFILIATIONS* (1955)).



explore the bases of our admiration for criminals—not only the articulated, conscious explanations but also the unacceptable, darker sources of the criminal's appeal; and (3) to uncover the high regard for criminals that is hidden beneath such defense mechanisms as loathing, repudiation, and persecution.

In focusing on our admiration for criminals, I have not intended to deny the negative side of our ambivalence toward criminals, nor have I sought to minimize the terrible costs that lawbreakers inflict on their victims. Fear of criminals, anxiety about their likely acts, and nondefensive contempt and hatred for their ways—all these have been assumed throughout the article. But admiration for criminals is also an important aspect of our nature—an aspect that an adequate theory of criminal justice must include.

The question arises whether the preceding analysis can shed any light on the causes of criminality. If it can, the illumination might best be found at those junctures where admiration spills over into action. We have already glimpsed a few such instances: the parents cultivating criminality in their children,<sup>252</sup> the beginning psychiatrists encouraging anti-social acts in their patients,<sup>253</sup> and the prosecutors violating the law while in pursuit of criminals.<sup>254</sup> On a larger scale, whole communities have sometimes exhibited a remarkable insouciance about criminality going on in their midst. By deliberately ignoring such illegal activity, members of these communities have been able to enjoy the criminal behavior without incurring the guilt they would feel for doing the acts themselves.<sup>255</sup>

Extrapolating from these examples, we may conjecture that a society might contrive to foster criminality to guarantee that its citizens' psychological needs would be met.<sup>256</sup> This theory would help to explain, for example, our own nation's continued reliance on the penitentiary despite its poor record in deterring criminal acts and reforming criminals.<sup>257</sup> To

252. See *supra* text accompanying notes 27-29.

253. See *supra* text accompanying notes 45-46.

254. See *supra* text accompanying note 247.

255. See Eissler, *Scapegoats of Society*, in SEARCHLIGHTS ON DELINQUENCY, *supra* note 27, at 299-304.

256. Ruth Eissler suggests that society, needing criminals as scapegoats, ensures the criminals' existence in two ways: (1) by seducing individuals into lives of crime, and (2) by interfering with measures to prevent delinquency. See *id.* at 295.

From the discipline of sociology rather than psychoanalysis, Kai Erikson has also raised the question whether society is organized in such a way as to encourage deviant behavior, including criminality. See Erikson, *On the Sociology of Deviance*, in CRIME, LAW, AND SOCIETY 87, 94 (1971). Erikson's work builds on that of the great French sociologist Emile Durkheim, who observed, as early as 1895, that crime was really "an integral part of all healthy societies." See *id.* at 87 (quoting E. DURKHEIM, THE RULES OF SOCIOLOGICAL METHOD 67 (1958)). In his classic work *The Division of Labor in Society*, Durkheim had already proposed that crime performs an important function by uniting people in a common stance of righteous indignation, thereby strengthening the group's bond of solidarity. See E. DURKHEIM, THE DIVISION OF LABOR IN SOCIETY 108-09 (1933).

257. Cf. Erikson, *supra* note 256, at 94 ("[T]he agencies built by society for preventing deviance are often so poorly equipped for the task that we might well ask why this is regarded as their 'real' function in the first place."). For the suggestion that prisons actually generate crime, see J. ANDENAES, PUNISHMENT AND DETERRENCE 179 (1974); P. LOW, J. JEFFRIES & R. BONNIE,

the degree that this hypothesis is valid, it implies an unusual tactic in the "war on crime"—that of cultivating self-awareness. For if we non-criminals can truly accept the criminal impulses in ourselves, we will find it unnecessary to deal with these impulses by externalizing them. When, like Pip, we can call the convict "my convict," or when, like Porfiry Petrovich, we can admit our similarity to the criminal without being derailed, as Javert was, by the recognition of this kinship, then at least we will be able to see clearly and to act wholeheartedly as we endeavor to cope with criminal behavior.

In the meantime, we must content ourselves with a world that is nonutopian in principle, a world in which criminals and noncriminals are inextricably and profoundly bound together, in which criminals, by their very existence, perform psychological functions for noncriminals—gratifying their antisocial impulses, reassuring them of their comparative innocence, and assuaging their guilt through vicarious punishment. From this perspective, criminals are far from being an unequivocal evil; they are, in fact, necessary for us to be what we are. They are the Sancho Panza to our Don Quixote, the Fool to our King Lear, the partner we need to perform our complicated dance.

---

CRIMINAL LAW 27 (2d ed. 1986) ("much of the recent criminological literature" includes claims that "prisons breed crime"); Blecker, *Haven or Hell? Inside Lorton Central Prison: Experiences of Punishment Justified*, 42 STAN. L. REV. 1149, 1194-95 (1990) (quoting prisoners who assert that doing time makes a person more dangerous upon release).