'EVERYBODY DOES IT!' CRIME BY THE PUBLIC by Thomas Gabor (Toronto: University of Toronto Press, 1994).

The study of criminology has not traditionally been part of a lawyer's education. However, important public issues and developments in legal research may point to a necessary convergence between legal theory and criminology. The debate about the legal treatment of young offenders, the questioning of traditional legal approaches to the definition of crime and the effectiveness of punishment, and even the growth in feminist legal studies combine to make the arrival of a new general theory of crime a matter of significance to criminal defence and prosecution lawyers and judges.

Thomas Gabor's *'Everybody Does It!' Crime by the Public*[1] succeeds in presenting, in an informative and engaging fashion, a new and useful approach to criminology. Gabor announces at the outset of his work that while criminology has traditionally focused on the incidence (the total number or rate) of crimes, his main goal is to examine the prevalence of criminality which Gabor states is the proportion of the population or of specific populations which engage in criminal behaviour. Gabor writes:

> I contend that criminality is most accurately viewed as a matter of degree, rather than as an attribute that we either possess or lack. The polarities of good and evil and criminal and non-criminal are subscribed to by those who take the position, mentioned earlier, that criminals constitute a marginal group of maladjusted or plain 'wicked' individuals very distinct from the rest of the population. The evidence I present refutes this notion, showing that many people take the plunge occasionally in criminal and socially disreputable behaviour.[2]

Gabor addresses his thesis by examining different categories of crime including property crime, violent and sex crimes, corporate crime, and crime by "society's leaders and law enforcers." An additional chapter is devoted to other wide-ranging forms of criminal activity including illicit drug use, environmental and animal abuse, and technological crime. Each of these topics is examined in commendable depth by Gabor. His argument is overwhelming. For example, the property crime chapter cites studies claiming that upwards of 90 percent of the population will engage in some kinds of crime or dishonest behaviour in "favourable" environments. The literature reviews are supplemented by twenty-three "case studies". In each case study, Gabor provides a brief but detailed example of a specific type of crime or disreputable behaviour which is committed usually by an apparently law abiding citizen.

Gabor's work raises some disturbing questions. One such question is, if it is true that almost all people violate the law at some time or another, as Gabor effectively demonstrates, what are the appropriate social responses to crime? Further, if criminality is most accurately viewed as a matter of degree, can some time-honoured nostrums of the law survive close scrutiny? For example, both criminal law and employment law contain the notion of a fundamental breach of trust by an employee. In Alberta, the courts have generally taken the view that a criminal breach of trust by an employee,

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1 T. Gabor, *'Everybody Does It!' Crime by the Public* (Toronto: University of Toronto Press, 1994).

2 *Ibid.* at xiii.

even on a small scale, should *prima facie* result in incarceration, at least in the absence of significant mitigating circumstances. In an employment law context, many arbitrators take the position that a proven, one-time breach of trust, even where the financial amount is trivial, shatters a trust relationship between the employer and employee which can never be restored. As Gabor indicates:

> The view of behaviour does not paint as flattering or as simple a picture of human beings as the more self-righteous view. Apart from noting the flaws in the self-righteous position, I wanted to take issue with the hypocrisy displayed by many citizens who routinely condemn what they consider to be our leniency towards convicted criminals, while they justify their own illegalities.[3]

Following his review of the prevalence of crime in general, Gabor provides four chapters setting out common general rationalizations for criminal behaviour (attributable both to those committed to crime as well as to casual criminals), the lack of commitment to the social contract, and sociological explanations of criminality. Gabor concludes that criminality is essentially a learned behaviour. He writes:

> It should not be surprising that criminal involvement is so widespread when our culture contains so many criminogenic (crime-producing) characteristics. Each generation assimilates these cultural elements through observing role models: parents, peers, celebrities and society's leaders.[4]

Gabor then turns to the question of predicting the prevalence of different crimes in society and proposes a predictive model based on need, opportunity, skills, and proclivities and attitudes. Gabor acknowledges that this model is not attuned to predicting individual behaviour. Rather, it is a tool enabling us to understand the behaviour of the public rather than that of specific individuals. A highly prevalent crime like tax evasion can be explained, Gabor argues, by the high level of needs, the moderate to high level of opportunity, the low level of skills required and the high level of favourable attitudes. At the other end of the scale, crimes such as murder or computer crimes have low prevalence reflected by low levels of needs, low to moderate levels of opportunities, moderate to high levels of skills, and low to moderate levels of favourable attitudes.

Most encouragingly, Gabor's predictive model allows for the possibility of changes in the prevalence of crimes bases on enforcement and changes in social attitudes. For example, spousal assault, which Gabor describes as currently falling within the middle range of prevalence, is potentially subject to increasing levels of risk. Gabor notes:

> As society becomes more sensitized to this issue, women are coming forward and reporting the crime in greater numbers. Furthermore, more programs and shelters are becoming available for battered women, so that they are now able to leave an abusive situation more easily. As a result of this elevated risk, the overall opportunity for this crime is at a moderate level only.[5]

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3 *Ibid.* at xiii-xiv.
4 *Ibid.* at 226.
5 *Ibid.* at 282.

Gabor also notes that educational and media programs which stress the repugnance of attitudes condoning spousal violence can have an effect on social attitudes towards this crime, which in the end can affect prevalence.

The social policy implications of Gabor's predictive model should not be understated. The model does not imply any naive notion of progress. Indeed, the model makes clear that destructive political decisions, for example a reduction in funding for programs and shelters available for battered women, or a decline in the quality or prevalence of programs for educating the public will necessarily result in enhanced opportunities to commit crime and a greater degree of tolerance for anti-social behaviour. The acceptance of Gabor's model of crime prevalence prediction implies an acknowledgement that social and political decisions can have an impact on the general prevalence in society of specific types of crime.

However, Gabor's prescriptive efforts do not stop here. In a chapter devoted to dealing with crime by the public, Gabor stresses the need to combat social inequality, develop positive allegiances to the community, and mitigate the effects of urbanization in order to reduce the prevalence of certain crimes.

I raise two small concerns with Gabor's propositions. One is that at times Gabor combines discussion of clearly criminal behaviour with behaviour that is, at most, at the very boundaries of criminality. While part of the explanation for that is, no doubt, the fact that the boundaries of criminality are largely arbitrary, the blurring may call into question some of Gabor's assertions about very high levels of prevalence. The mere fact that a certain activity is legally defined as a crime may represent a significant deterrence to some members of the public.

My second concern is that Gabor has had to rely extensively on United States behaviourial research and literature in preparing this work. No doubt he would have preferred to rely primarily on Canadian sources, as Gabor repeatedly acknowledges there is no easy transferability of United States social data to a Canadian context. This lack of automatic applicability is probably stronger in the area of crime than anywhere else. Gabor has not attempted to gloss over these differences, but nevertheless the heavy reliance on American material must be noted.

Gabor's work will be of benefit to judges and lawyers who read this book as it provides an unconventional perspective on the question of crime prevalence which should raise doubts about accepted wisdom in this area. As a result, this book is highly recommended.

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