

THE SELECTIVITY OF LEGAL SANCTIONS: AN EMPIRICAL INVESTIGATION OF SHOPLIFTING*

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This study examines the factors that determine the probability that a very common form of deviant behavior, shoplifting, will be detected, reported, and sanctioned. Data obtained both from self-reported crime, and from experiments in which researchers actually shoplifted goods from supermarkets and department stores with the authorization of their executive officers but without the knowledge of store employees, indicate that enforcement of the norm is highly selective. Less than 10 percent of all shoplifting is detected, and customers appear unwilling to report even flagrant cases. Even with an announced policy of full reporting and prosecution, only 70 percent of the shoplifting detected is reported, and only 55 percent is sanctioned. Foreigners, adults, and blue-collar workers are disproportionately represented among those sanctioned.

These findings challenge the common assumption that norms backed by legal sanctions are highly effective. One reason may be that the division of labor between stores, which detect, and police and prosecutor, who sanction, completes the differentiation of moral and legal norms, subverting the effectiveness of both. The results also highlight the misleading nature of criminal statistics, which purport to measure crime but in fact describe the behavior of detecting and enforcing agencies.

I. SCOPE OF THE STUDY

If "deviance" were to be defined statistically as behavior engaged in by only a minority of people, shoplifting might have to be considered as "normal." If we only criminalized "deviance," shoplifting would not be criminal. Stealing in certain situations is apparently "normal behavior." Attempting to detect and prosecute all shoplifters would immediately clog the criminal justice agencies with masses of files and cases.

Obviously, there are two ways to deal with such a mass phenomenon. The first would be to handle all cases of recorded shoplifting bureaucratically, as is done with many classic offenses. Legal authority could be given to the person who observes the shoplifting to issue some sort of "ticket," requiring payment of a fine, and developing a record of those who are habitual offenders. Although there have been attempts to devise such

* An earlier more detailed version of this paper appeared in German (Blankenburg, 1969). Several of our points have subsequently been made by other researchers, whose publications we try to include in our citations.

a bureaucratic procedure in Germany (as in many other countries), these have never been widely used. Instead, department stores, police and courts employ a second strategy to deal with the mass phenomenon of shoplifting: they look the other way in most cases, and they initiate formal prosecution very selectively. Deliberate inaction and selective prosecution occur at various stages and involve a number of choices.

The first is the means used to detect shoplifters. Department stores and smaller shops have an inherent interest in displaying their goods so that customers are stimulated to buy. Most measures of surveillance and protection from theft would interfere with this suggestive display. Thus, until recently, most small shops and some department stores in Germany did not introduce any special methods of personnel for protection from shoplifters, and those that did generally did so as unobtrusively as possible. In any case, whether detecting devices are absent or whether they are very elaborate, all estimates agree that the number of undetected shoplifters far exceeds the number of those detected.

Detection itself is selective, because detectives follow a "strategy of success-oriented suspicion" (Feest and Blankenburg, 1972; Cameron, 1964:26-32). Thus Cameron reports that store detectives single out persons with big bags or wide coats, or blacks. Whether such strategies are derived from prejudice, or whether they represent an instrumental identification of characteristics proven by previous experience to be associated with offenders, will not be discussed here. For our purposes it is essential only that all strategies of suspicion exhibit some kind of selectivity.

After detection, selective practice continues (Cameron, 1964: 20-24). Fear is not the only reason that creates hesitance in reporting detected shoplifters to the police. There are a number of other reasons, including the social consequences of penal prosecution for the offender, a desire to avoid exposure of conflict in front of other customers, or even a wish to retain the patronage of the offender. But even if shops declare vehemently that all apprehended shoplifters will be prosecuted (e.g., because inventory shrinkage is particularly high), there are still economic reasons not to invoke court procedures. Since each case will take several hours of the time of detectives or sales personnel, frequent prosecution will lead to a substantial increase in personnel costs (Cameron, 1964:32-38).

Thus, there are very good reasons for the victims of shop-

lifting not to invoke the criminal process. On the other hand, shopowners seem to believe in the symbolic value of criminal sanctions and in their general preventive effects. Therefore, rising crime rates are frequently published together with estimates of total losses, often leading to arguments for more severe punishment of this type of mass criminality. The effect of these contradictory motivations is selectivity: among all detected shoplifters some are reported to the police (perhaps to satisfy the symbolic function of the criminal law), and others are not.¹ Though there have been speculations on the likelihood of systematic class or racial discrimination, research on the patterns of selectivity has been difficult because statistics at the different stages of criminal process are often not comparable.²

This essay makes an attempt to bring together empirical studies at each stage of the factors influencing the sanctioning process. It examines data on self-reporting, the files of each shoplifter reported to the police by the biggest department store and the biggest chain of supermarkets in Freiburg (a university town in southwest Germany with a population of 140,000 at the time of this study), the files of the police, the state prosecutor's office and the courts, and finally experiments on the conditions of being detected and reported for shoplifting. The focus of the study is not the conditions or motivations of shoplifters, but rather the factors that determine the chances of being detected, reported, and penalized.³

II. TERMINOLOGY AND METHODOLOGICAL CONSIDERATIONS

If we reflect on our everyday behavior, we realize that we commonly act on the assumption that norms are effective; we underestimate how often there are deviations that will not be

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1. Rates of victims reporting to the police are given by Stephani (1968: 55). For recent studies, see Hindelang (1974), Minger (1974), and Cohen and Stark (1974). Survey studies on victimology usually investigate the propensity of private citizens to report to the police; selective reporting by companies and bureaucracies, as far as we know, has not yet been surveyed systematically.
 2. Peijster (1958) and Cameron (1964) both used noncomparable data for each of the institutions involved. However, an attempt is made in the very thorough study by Peijster (1958:106ff.) to give exact data on the frequency with which charges are dropped by comparing the statistics of department stores with those of the police. His social data are taken from the department store files, but unfortunately he did not compare them with the police data. Peijster himself points out that the social characteristics of the shoplifters who were caught by the department store are not necessarily identical to those of undetected shoplifters.
 3. German studies reporting on rising shoplifting figures without systematically reflecting their dependence on surveillance and detection policies are numerous. Cf. Gegenfurtner (1961), Loitz (1965), Kuratorium (1974).

sanctioned. The trust in normative efficiency seems to be particularly high if the norm is legal, i.e., supported by an agency responsible for the sanctioning of deviations. We shall define an "agency" as one or more persons who have been designated and equipped with the power to execute sanctions within the confines of certain rules. Sanctioning is a duty as well as a privilege: if there is information about deviance, there "ought" to be a sanction. In actuality, this "ought" knows many exceptions, for which the reasons may frequently be obvious, but so far our need to make legal rules look legitimate has hindered us from seeing this fact clearly.

In studying the application of sanctions we should, for practical purposes, pick a kind of behavior that can readily be observed and that furnishes us with enough instances to generate a statistically significant population at the different stages of the sanctioning process. As our theoretical interest is in the relation of legal and moral norms, the observed behavior should be salient to both. Shoplifting fits all of these conditions: here we have a delinquent action which is quite frequent and which can be observed with some confidence that the enumeration of instances is reasonably comprehensive; there is an active interest on the part of the owners of department stores and shops in preventing the crime; there is some moral indignation in the population; and it is a norm which—according to the law—should only be sanctioned by judicial agencies. However, shoplifting is also peculiar in that detection and sanctioning are institutionally separated. The agency for detecting shoplifters is the department store itself; however, it is the privilege of judicial agencies to decide upon the sanction. This institutional separation makes it possible to separate the conditions of detection from those of sanctioning.

We have developed a taxonomy which should help clarify the analysis. In any normative phenomenon there are two types of compliance to be discussed:

- (1) compliance with the "primary norm": behavior *x* should be observed;
- (2) compliance with the "secondary norm": deviance from the primary norm should be sanctioned.

In our analysis we focus mainly on the conditions of compliance with the secondary norm. Here the normative claim is directed toward a number of agencies, as well as toward accidental bystanders observing deviance. If we want information about compliance with primary and secondary norms, we should know

the quantitative distribution of norm-relevant behavior in these categories. In how many cases will a norm be followed, in how many cases will it be broken? Has the deviant act been detected at all? Does the sanctioning agency know who the actor is? In how many cases will a sanction follow, in how many cases will it not? Which conditions lead to a decision not to sanction? Has the deviant actor been caught?

TABLE 1
TAXONOMY DESCRIBING COMPLIANCE WITH AND SELECTIVE ENFORCEMENT OF SOCIAL NORMS

(a)	(b)	(c)	(d)	(e)
Behavioral compliance: norm-conforming behavior	Sanctioning compliance: deviant behavior, actor known, sanction implemented	Decision not to sanction: deviant actor known, not sanctioned	Deviance not cleared: deviant actor unknown, deviance known	Deviance not discovered (dark field): deviant actor unknown, deviance unknown

In the following analysis we shall explore a number of relations in our taxonomy (cf. Popitz, 1968). For each stage we have to use different methods: first of all we ascertain the frequency of deviant events ($\frac{a}{a+b+c+d+e}$) by interviewing a group of students; then we analyze the conditions under which a deviant act can be detected ($\frac{b+c+d}{b+c+d+e}$) by using both observational and experimental data; finally, we examine the sanctioning process in those cases where the deviant act has been detected ($\frac{b}{c}$) by using another experimental design, and also by analyzing the files of department stores, police, and courts.

A. The Effectiveness of the Behavioral Norm ($\frac{a}{b+c+d+e}$)

The most common method of sociological research, the interview, usually misses the goal of getting valid data on norm-relevant behavior: the interviewees either do not admit how often they break a norm or they brag about actions they would never dare to perform. They try to evade an answer by giving an opinion: they tell the interviewer what should be done, not what they do in fact. Interviews are very good if we want to know something about attitudes or opinions, but it is always dangerous to make inferences about actual behavior from such data.

In spite of all these difficulties a methodology has been developed to study undetected crime. "Self-reported crime interviews" start with instances of deviance which almost everybody has committed (staying away from school, passing a stop sign) and then slowly progress to more serious crimes such as theft, robbery, or embezzlement. If the interview situation is well designed and the interviewees trust that their responses will be kept truly anonymous, this method may lead to valid data. The first study of this sort in Germany was carried out in Giessen in 1967 and involved 220 vocational school students, 15-18 years old, who belong to the lower social strata.⁴ The subjects were asked: "How often have you taken something in a department store or in a self-service store?" Thirty-nine percent admitted that they had shoplifted before, 12 percent three or more times. Of the 89 who admitted shoplifting, only 4 had been known to the police.

TABLE 2
INCIDENCE OF SHOPLIFTING
AMONG VOCATIONAL SCHOOL STUDENTS IN GIESSEN.

Never shoplifted	60%
Once or twice	27
Three or four times	8
Very often	4
No comment	1
Total	100% (N = 220)

TABLE 3
THIRD PERSON KNOWLEDGE OF SHOPLIFTING BY
VOCATIONAL SCHOOL STUDENTS

Nobody knew	44%	
Somebody knew:	49	
Friend		35%
Family		7
School		3
Police		4
No comment	7	
Total	100%	

B. Conditions for Detecting Shoplifters $\left(\frac{b+c+d}{b+c+d+e} \right)$

Self-reporting studies give us data on the "dark figure" of shoplifting behavior as far as it relates to unknown *actors*. They

4. These data were kindly given to us by Ms. Trude Weyershäuser. They were collected for her as yet unfinished Ph.D. thesis at the University of Giessen.

show what percentage of the population has committed a certain delinquent act and how many of them have been detected. In examining the effectiveness of norms, however, we are more interested in the dark figure relating to delinquent *acts committed*. What is the likelihood that a shoplifter will be detected? And what conditions influence this probability?

In order to be quite sure that we knew the total population of deviant acts to be detected, we used an experimental design in which we performed the shoplifting ourselves. As we wanted to know something about the sanctioning process, not about the motivation of shoplifters, we could rely on data pertaining to cases where we had controlled all the circumstances of the shoplifting. The management of the firm was informed and consented. Sales personnel were not informed of the experiment, either by us or by the management. This way we made certain that our experiment was truly unobtrusive. On the other hand, we ensured that no information about the reactions of individual employees was reported back to the management, because we wanted to avoid giving rise to any personnel decisions.

We went into each of the branches of the largest supermarket chain in Freiburg between 3 and 6 P.M. and committed, in all, 40 acts of shoplifting while one of our observers took notes on the "thief's" behavior and that of customers and personnel. As we wanted to know the risk run by a shoplifter acting with "normal" skill, we had to simulate the behavior of a shoplifter without any training. Since our "thieves" would gain training during the experiments, we standardized their strategy well below the level of their skills. The behavior of the observer was standardized, too, in order not to attract attention.

The observer entered the supermarket first. He selected his goods in the prescribed manner, using the basket furnished by the store. He unobtrusively noted the size of the store, the number of customers and personnel, and how these were occupied. After a while the thief entered. He also took a basket, put one sizable item into it, and then a second which he could pack into his private bag at the most suitable opportunity. Then he took a third item, went to the cashier, paid for the two items in his basket, and left the store. The observer took notes on the behavior of the other customers, taking care not to draw attention to the thief, whom he had to treat with complete neutrality. When the thief had paid and left the store, the observer also went to the cashier. The goods bought or "stolen" were standardized: the "thieves" had to "steal" a pound of coffee or a can

of meat or vegetables, any of which is too big to disappear in a sleeve, and cost DM 3-8 (\$1-2). They carried a bag of the sort commonly used by young people and they looked "orderly" but not elegant. Immediately after the action, thief and observer independently filled out a standardized "protocol."

The strategic reflections of our "thief" may give us insights into those of real shoplifters.

As there is more danger of being detected by the personnel than by the customers, I was always sticking to the customers and avoiding the sales personnel. Furthermore, I looked around when entering to see whether there were any mirrors, etc. I was trying to find a place in a dead corner, which the sales personnel could not look into. At the same time I tried to act as a "normal customer." In cases when I felt insecure, i.e., I was afraid that I was being observed, I asked for some information. This made my role more believable, and also had a quieting effect on myself. Furthermore, I tried to impress more positively than negatively: I acted as a polite and helpful young man, thinking that if the theft were detected, the people around me would have to admit that they wouldn't have expected a person like me to do that. This way I hoped to have a good bargaining position with the sales manager.

In each store I tried to follow these rules: move around like a real customer, look for a dead corner to transfer the goods into your bag, keep near other customers, try to use favorable situations which might arise suddenly (e.g., if a sales girl is occupied by some other customer). As to the latter tactic, it seems to me important to note that there was a learning process: by and by I learned to use such situation without hesitating.

The learning process was also described by an observer.

During the first days the theft was observably a test situation ("thief" got a red face when packing, he was tired after three tries, he was very hectic in his movements). These symptoms disappeared afterwards, though not entirely. Besides remaining more cold-blooded, there was an improvement in his technique. The first day he withdrew into some dark corner, in order to avoid being near any other person—a technique which could have signaled an intention to steal. Afterwards he used other customers as a protection-shield against potential disturbance by the personnel in cases where there was no other possibility of hiding. As a rule, he used to keep near the customers who were busy choosing goods, and tried to give the impression that he was busy doing the same. To size up the situation in a quick, cognitive way was a learning process which could hardly be excluded (orientation in the shop, taking in the possibilities). Added to this, there was the usual effect that the quota of successes renders a person self-assured.

Managers of department stores estimate that about ten percent of all shoplifters are detected. However, these are mere guesses. Stephani (1968), who investigated the bookkeeping of a Migros-Shop in Switzerland, concluded that the "dark figure" of undetected crime is about 94 percent. All other statistics in the criminological literature are little more than informed estimates (Niggemeyer *et al.*, 1967; Suttinger, 1966; Tegel, 1962;

Wehner, 1957). In our experiments we expected to have a "dark figure" of about 90 percent, i.e., about 10 percent of our thieves would be apprehended, and there would be a chance of studying the sanctioning process. However, as a matter of fact, *not one of our "thieves" was detected*. Thirty-nine "thefts" were carried out successfully, and only in one case did our "thief" give up stealing because he felt he was being observed too closely. Thus, our prognosis was far too high. Although our thieves were not unusually sophisticated, the rate of detection was even lower than we had expected.

The observers' "protocols" give us some clues to why the shoplifters had no trouble in remaining undetected. The difficulties of shoplifters vary with three factors: the construction of the store and arrangement of goods, the behavior of sales personnel, and the behavior of other customers. With respect to the first, it seems quite plausible that a department store which is easy to survey will facilitate detection *and* will keep potential thieves from stealing. For example, one of our thieves did not carry out his theft because there was no point at which he was sure he could not be observed. Some of our conclusions are less obvious. Our "thieves" reported that they felt much safer in small stores because there were fewer persons whose view they had to avoid. This is not because small shops are arranged for greater visibility; the observers' protocols show that the arrangement of goods varies independently of the size of the shop. But in a small shop that allows high visibility it is still much simpler to steal because there are fewer persons who participate in the situation—the "thief" can judge more easily whether they are observing him or whether they are otherwise occupied. In a big store he cannot keep an eye on the whole place and hence must look for a dead corner in order to recreate the situation characteristic of smaller stores. If criminal statistics show that shoplifting occurs in big department and other self-service stores, this could indicate the increased likelihood of detection and prosecution rather than a higher rate of theft.

The second factor, the behavior of the sales personnel, plays a decisive role in preventing and detecting shoplifters. Our "thieves" stole successfully even in shops affording high visibility supplemented by mirrors. The observers' protocols show why: a nearby saleswoman was busy talking to another client; the cashier was fully occupied in looking for change; a young man had just knocked over a load of cans and was busy putting them back. The more the sales personnel are busy with their regular

duties, the less they look for shoplifters. Preoccupation can also be a by-product of polite behavior. On one occasion our "thief" had paid for goods he carried in his basket and had put them into his bag next to the package of coffee he had "stolen." Then he remarked that he had not gotten a receipt. When he asked the cashier she unexpectedly looked into his bag, rearranging the goods he had bought, as well as the "stolen" coffee, in order to look for the receipt. Had she been even slightly distrustful, she might have noticed that there were three packages in the bag, but that only two had been paid for. Her behavior, however, was so completely oriented to politeness and helpfulness that there was no room for developing distrust. From this we draw the conclusion that the definition of the role of a salesperson does not include behavior necessary to detect shoplifters. A good salesperson is characterized by polite and helpful behavior; a true detective, however, has to be suspicious and not preoccupied with helping. The behavior of salesperson and detective are inconsistent.

We tested these conclusions by interviewing twenty-one saleswomen from the department store chain. Eighteen, all of whom had held the job for at least two years, had observed shoppers putting away some goods without paying. They knew that this occurred quite frequently: "several times in a week," "almost every day." They know, too that the "dark figure" is very high. Of the thirty-two stores in which we conducted our experiments, eleven had not reported any shoplifters within the preceding fifteen months; among the other twenty-one stores, a shoplifter was reported on the average of once every seven weeks. Often salespeople would observe something that aroused suspicion, but were not sure whether the shopper had put the goods under his coat or into his bag. Asked what they would do in such situations they responded, without exception "nothing." "There you cannot do anything: you have to wait until the person comes another time. Then I am more suspicious and can observe more closely."

Our hypothesis that sales personnel do not regard it as part of their role to be distrustful of customers was confirmed by our respondents. We asked suggestively: "As a sales person you have to look after many different things—do you have enough time to look for shoplifters?" Fifteen replied that they were not able to do so. "Detection is purely accidental. That is not my business. I cannot bother about that." Some declared quite explicitly: "There should be a special person to be a detective,"

or "Service to our clients is more important to me." When saleswomen were asked what they would do if they actually saw a shoplifter, they typically responded that they would tell the cashier so that he could make sure that the goods were carried out without being paid for.⁵ The cashier, however, passed the buck to the manager and it was up to him to accost the shopper. This avoidance of responsibility shows that nobody likes to sanction a shoplifter; consequently his chances of escaping apprehension are quite high.

If the sales personnel do not like to accost the thief and accuse him, customers are even more reluctant to do so.⁶ In two of our experiments the observer was quite sure that other customers had observed the "theft." One stared at our "thief" for a long time, trying to punish him with her eyes; another young man observed one of our "thieves" when he was packing his bag. Yet neither of them reported the "thief." In order to test this observation, we designed another standardized series of thefts. Our "thief" concealed some article inside his coat while standing next to a woman customer who seemed to be more than thirty years old. It was not easy for our experimental "thieves" to act so that the customers actually observed the "theft;" they had to repeat their attempts quite often because the clients were too busy looking after their own goods. If the "thief" was sure that the customer had observed his theft, he slowly went to the cashier and paid for the goods in his basket. Then he left the store without paying for the "stolen" item. An observer confirmed that the other customer showed signs of noticing the shoplifting. When the other customer had passed the cashier the observer asked her for an interview; eight of the twenty-five refused, and we excluded three more because our observer could not be sure that the customer had noticed the "theft." The interview began with some neutral questions: whether the client had used this shop for a long time, how she found the service. Then there were general questions about shoplifting. Finally she was asked whether she had seen a theft herself, and what she would do in such a case. Eleven of the fourteen interviewees responded

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5. The reason for this "passing the buck" is that evidence can be challenged in court as long as the customer has not yet passed the cashier. Even though there is no such formal rule of evidence, most judges are likely to dismiss a case if the accused can claim with some credibility that he/she still intended to pay. The victims of shoplifting react by seeking to "trap" the customers, where they could well be preventing the delinquency.
 6. For recent studies on the reluctance of bystanders to report shoplifters see Latané and Darley (1970), Steffensmeier and Terry (1973), Gelfand *et al.* (1973), Mertesdorf (1973), Dertke *et al.* (1974), Bickmann (1976), Abele and Nowack (1976).

that they would report any thief to the cashier or at the manager's office. Two were uncertain what they would do. Only one said: "I wouldn't say anything to anybody, I wouldn't run around—that is the risk of the store." But despite this verbalized readiness to report, only two customers reported our "thieves." And none of our customers thought of accosting the "thief" herself, or of imposing a sanction on her own.

Our question, therefore, confronted the customer with what we knew about her actual behavior. First we described the "thief" and asked the customer if she had seen him. Then we informed her that we were engaged in an experiment, and asked whether she had seen the young man putting something into his bag. Of the twelve interviewees who had reported the theft, nine admitted that they had seen something "suspicious" about our "thief." The other three pretended that they had not seen anything, although our "thief" and the observer were quite sure that they had seen the actual stealing. There is often a gap between verbal expressions of a readiness to report and actual reporting. But this is not because of ambiguities in the norm against stealing. Few of the women interviewed offered any excuse for the shoplifter. When the interviewer elicited reactions to the statement: "If somebody steals in a big warehouse it doesn't matter as much as it would in a small store," only two of the fourteen women agreed. Half of our interviewees accepted the view: "Even if it is only a petty theft, punishment should be severe in order to deter others from stealing." It was only when the interviewees were asked whether the thief should be reported to the police that nine of them stated a preference that the store-manager settle the matter with the shoplifter privately. Customers, like sales personnel, apparently take refuge in the fact that there are others responsible for sanctioning the thief; this, of course, results in their not doing anything.

The client who observes a theft experiences a conflict between following or violating the norm of sanctioning. Lewin's analysis (1964) of the psychology of punishment is equally applicable to the person who is punished as it is to those who are punishing. The task of punishing is attended by many disagreeable circumstances. To accost a young man and tell him bluntly that he is a thief demands considerable courage. Even reporting to the manager of the store might be unpleasant enough. The client has to testify and possibly even show where the thief has concealed the stolen goods. There may be arguments and the thief may become aggressive or try to get away. It is much simpler not to follow the sanctioning norm. The cus-

tomers only has to feign ignorance; there will be no sanction for not sanctioning. Though our interviewees accept the norm of sanctioning, they do not have to follow it in practice because there is no sanction for noncompliance.

But despite this absence of external sanctions, violation of the norm appears to generate pangs of conscience. Of the eight customers who refused to be interviewed, half were so upset by what they had observed that they interrupted their buying in order to hurry out of the store. In our first experiment there was an equally clear case: a young man observed our "thief" queuing for the cashier. He immediately turned, rushed to the cashier, paid, and left the store in a panic. This helped him to solve the uncomfortable conflict between the normative expectation that he invoke a sanction and the unpleasant consequences this might have entailed.

Thus two conditions are lacking for compliance with the norm that third persons report thieves. There is no risk in violating it and there is nothing to prevent the third person from fleeing the conflict-ridden situation.

C. Selective Enforcement of Sanctions $\left(\frac{b}{c}\right)$

Since shoplifting is a crime with a victim, it would seem to be in the victim's interest to detect the offense and apprehend the offenders. Department stores and their managers have developed many different methods. Because shoplifting occurs frequently, they sometimes keep a record of all detected shoplifters. However, they are not entitled to administer their own sanctions (even if they sometimes try to do so⁷), but are supposed to report the case to the public penal agencies. They usually report to the police rather than the public prosecutor because then evidence is established immediately. If they do so, the police investigate, taking the stolen goods into their custody. At the time of our study German law allowed the police two choices: if the shoplifting concerned food, which could be consumed immediately, the accused could be charged with illegal consumption, a minor offense that could be reported by the police directly to the courts with a suggested penalty. The police

7. Some small shopowners and even some department stores tried to apply sanctions of their own by demanding a fee "for administrative costs of handling shoplifters," in exchange for not reporting to the police if this was paid (cf. Mey, 1966). While this is common practice in Germany for freeloading on public transport, courts have ruled out such attempts for shoplifting. Recently, there have been proposals to legalize private sanctions for minor damages and to establish legal procedure for them, cf. Arzt *et al.* (1974).

could also drop the charge.⁸ In none of our cases did they do this, but in a few they asked the courts to drop the charge "because there is no public interest." If the accused was not charged with illegal consumption, the theft was a major offense and had to be reported to the state prosecutor, who advised the court whether the charge should be dropped or which penal measure was appropriate.

At each step there is a possibility of terminating the formal procedure. The department store may not summon the police; the police may charge the accused too late to initiate a formal prosecution; the policeman may suggest to the store owner that it is not worth filing a charge because the act has not adequately been proven; the department store may withdraw the charge. Legally the police have little discretion; they have to report even trivial cases to the court, and at best may make suggestions. The state prosecutor, on the other hand, can drop the charge;⁹ and though, at the time of our study, this decision had to be countersigned by a judge, in practice it was rarely questioned. The prosecutor must also decide whether the theft should be punished by fine (*Strafbefehl*),¹⁰ or whether it should be taken to a court session. Only when there actually are court proceedings are decisions made by a judge.¹¹

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8. German Penal Code § 370 (StBG), provides for exemption from compulsory accusation and lower maximum penalties for theft, if the stolen goods were "designed for immediate use." The statute of limitations for such an offense was three months. It was used very unevenly, as far as we can see, and was finally omitted from the StGB by amendment of 1 January 1975. However, § 248a StGB (1 January 1975) is functionally equivalent for cases of petty theft if they have been committed in a situation of need ("aus Not"). At the time of our study § 370 StGB could be handled by *Strafverfügung* without participation of the state prosecutor (§ 413 StPO); in Baden-Württemberg such cases were handled by local "law offices" (*Ordnungsamt*). This procedure was omitted from the StPO by amendment of 1 January 1969. At this time many infractions were taken into the "Petty Infractions Law" (*Ordnungswidrigkeiten-OWiG*), but not theft for immediate use or shoplifting.
 9. German Code of Criminal Procedure §§ 153, 153a (StPO). An amendment to the StPO, which became legally binding on 1 January 1975, enlarged the discretion of state prosecutors to drop petty cases. The practice followed by some state prosecution offices of dropping cases if the offender makes restitution for the damage and/or pays a sum to some charitable organization was also legalized (§ 153a StPO, 1 January 1975).
 10. §§ 407-412 StPO allow state prosecutors to issue a "Strafbefehl" which has to be countersigned by a judge; it is frequently used by most, though not all, state prosecutors (cf. Blankenburg, 1976). If the judge questions its issuance (which rarely ever happens) or if the accused challenges it, a normal court procedure takes place. As long as nobody challenges the decision, the procedure is strictly a written one. That is why we cannot follow Langbein (1974) in calling the *Strafbefehl* "the German guilty plea;" rather the equivalent is dropping a case according to § 153a StPO, because it entails some elements of bargaining.
 11. For recent studies on the decisions of state prosecutors see Blankenburg and Steffen (1975), Gillig (1976).

In order to analyze the process of sanctioning shoplifters we sought data on the proportion of known offenders who are punished, the number of cases in which the prosecution is dropped, the agency which decides this, and the variables governing this decision. We began by investigating all known shoplifting in the biggest department store in Freiburg and in thirty-two branches of the largest chainstore in town. Both firms had a list of all known shoplifters. Looking through these we identified four hundred shoplifters who had been caught, and learned whether or not they had been reported to the police. We looked up these cases in the police books for the day on which they had been reported, and then followed their progress in the administration files of the "Bureau of Law" of the City of Freiburg, the state prosecutor's office, and the courts.

We discovered that 50 percent of all known shoplifting had been reported to the police or prosecutor; in 10 percent of all known cases the agencies had dropped the charges; of the remaining 38 percent, slightly over half (20 percent of known cases) were sanctioned by the courts at the instance of the state prosecutor, and slightly under half (18 percent of known cases), were sanctioned through a simplified court procedure. However, these figures cannot be generalized. The propensity to report and the decision to sanction depend on policies that vary from town to town, especially between rural and urban areas. Some department stores report the greater part of all shoplifters, others only major cases. Some department stores make categorical exceptions for children or regular clients. Smaller department stores and small shops are more reluctant to report and often decide on a case-to-case basis. Furthermore, the penal agencies of smaller towns, which tend to be less well organized, prosecute a smaller proportion of reported cases; the high rate of prosecution for Freiburg, where 80 percent of known cases are reported to the police, may be typical only of the larger cities.

The effectiveness of the sanctioning process is thus dependent on the policy followed by the agencies involved. Our research shows this in a very dramatic way. Our overall statistics turned out to be an average of figures from two years, which show quite different characteristics. We compared the first three months of 1966 with those of 1967, because late in 1966 the companies we investigated had changed their policy. They formally resolved to sanction shoplifters more severely and, at the urging of the police, to report all cases, "without exception."

TABLE 4

RESPONSE TO KNOWN OFFENSES BEFORE AND AFTER
DEPARTMENT STORES AND POLICE CHANGED THEIR PENAL POLICIES

	January- March 1966	January- March 1967
Department store fails to report	67%	30%
Prosecutor or court drops charge:	5	13
because of insufficient evidence	0%	8%
because accused below minimum age for penal sanctions (14 years)	2	2
because not of public interest	3	2
because of statute of limitations	0	1
Sanction imposed:	26	55
at juvenile court	8	2
by court ticket	6	50
by order of punishment	12	19
sentenced in court	0	4
No data	2	2
Total	100 (N = 89)	100 (N = 84)

The number of cases of shoplifting known to the two companies did not change significantly; indeed, there was a decrease of approximately 5 percent (perhaps employees grew more reluctant to report shoplifters, knowing that they would be punished more severely). But the police statistics tell another story, an increase in reported cases from twenty-nine to fifty-seven. The newspapers interpreted this as "an alarming rise of shop-lifting—from 1966 to 1967 the figures rose about 100 percent!" What had actually happened? The number of known shoplifters had fallen slightly, but the proportion of cases reported had risen dramatically, from 31 percent to 68 percent. The resolution by department stores and police to report "without any exception" had been followed in two-thirds of all the cases, which meant an increase in actual sanctions from 25 percent to 55 percent of all known cases. At the same time we observe some interesting changes in the judicial response: while in 1966 no cases of insufficient evidence were found, in 1967, 8 percent of all cases reported were dropped because "evidence was not sufficiently established." Apparently shop managers had previously omitted all cases in which the evidence was doubtful, while in 1967 the screening had to be done by the state prosecutors.

D. Criteria for Terminating Formal Proceedings

Shoplifting may be an extreme example of the tolerance shown toward accused criminals. But our suspicions about the

ambiguity of criminal and court statistics can be generalized. We cannot draw conclusions about actual criminality from trends in crime rates if we do not know how far the behavior patterns of the sanctioning agencies have changed (Black 1970; Seidman and Couzens, 1974). Even with more serious offenses, rising crime rates may be explained by a strategic decision to devote police resources to certain crimes, or by improved means of detection. The more variable the rate of detection, and the more discretionary the decision to prosecute, the more will crime statistics reflect administrative rather than criminal behavior. This is true not only of aggregate statistics, but even more of statistics purporting to describe specific crimes or criminals: the social characteristics of the offender, the time and place of the typical crime, etc. The propensity to report and the persistence in prosecuting often correlate poorly with the actual frequency of crimes. Of the 398 instances of shoplifting on which we have data, a high proportion occurred at times when many people were present—between 10 A.M. and noon, after 4 P.M., and on Saturday mornings—but the propensity to report at these times is very low. And many shoplifters are caught between 6 P.M. and closing time, but the rate of reporting is lowest at this time because the sales personnel want to go home.

The social characteristics of the accused can also influence whether he is reported to the police. Of the 398 shoplifters who were apprehended by the stores, 8 percent were foreigners; but of the 156 who received a sanction, 15 percent were foreign. This greater tendency to report foreigners is independent of the value of the object stolen, and persists if we compare only thefts of objects worth less than five Deutschemarks (a little more than

TABLE 5
IMPOSITION OF SANCTIONS UPON GERMANS AND FOREIGNERS

	Germans	Foreigners
Percentage of all apprehended thieves who were reported	55% (311)	77% (30)
Percentage of apprehended thieves who were reported, where the object stolen was worth less than DM 5	44 (142)	60 (10)
Of those reported to the police:		
Percentage in which charges were dropped under § 170 StPO ^a	8%	4%
Percentage in which charges were dropped for other reasons	10	4
Percentage in which accused was sanctioned	78	92
Percentage in which disposition is unknown	4	0
Total	100% (N = 172)	100% (N = 23)

a. StPO: Strafprozessordnung (Criminal Procedure)

a dollar). This same bias is found in the discretion exercised by public officials in dropping charges.

Age also has an influence on the exercise of official discretion. Both the young and the old have a better chance of being excused without a sanction. Children under fourteen cannot be legally punished, but those between fourteen and eighteen and people older than sixty-five are more likely to have the charges dropped than any other age group. The result of this is that, once again, statistics on crimes reported and punished do not give an accurate picture of criminal activity, as the following table indicates.

TABLE 6
AGE DISTRIBUTION OF POPULATION OF FREIBURG
AND OF APPREHENDED, REPORTED, AND SANCTIONED SHOPLIFTERS

Age Group	Population Percentage	Shoplifters		
		Apprehended	Reported	Sanctioned
6-13	10%	7%	4%	0%
14-17	6	12	9	10
18-24	15	13	14	14
25-64	56	56	65	68
65 and older	13	12	8	8
Total	100%	100%	100%	100%
	(N = 141, 326)	(N = 380)	(N = 195)	(N = 151)

Unfortunately, the files contain only fragmentary data on other characteristics, such as occupation and income, so that we can make only a rough estimate on the influence of class on the exercise of official discretion. Occupational bias does seem to be present: blue-collar workers are punished more often than white-collar. But income has the opposite effect—likelihood of prosecution diminishes as income falls. Some differences may be an artefact of age differentials: housewives are more often punished than pensioners or students, especially if evidence has been established (as should be the case if dropping the charge is not according to §170 StPO). Both social status and age may explain the willingness of officials to drop more than a third of the charges against poorly paid actors, on grounds that the case lacked public importance or the statute of limitations had run.

From detection to punishment, the cumulative effect of the numerous choices made by stores and officials is to overrepresent certain social groups: foreigners, adults, and blue-collar workers. Yet the crime statistics that result from this selectivity do not represent actual behavior, for these categories are only *apprehended* by stores in proportion to their share of the population.

TABLE 7
IMPOSITION OF SANCTIONS BY OCCUPATION AND INCOME

	Total sample of those reported whose occupation and income is known	Students more than 14 years old	Housewives	Pensioners	Blue-collar workers	White-collar workers	Income less than DM 250 per week
Charges dropped under § 170 StPO	9%	5%	7%	10%	8%	17%	12%
Charges dropped for other reasons	11	14	2	10	8	17	35
Punished	75	81	90	75	79	66	53
Not known	9	0	1	5	5	0	0
Total (N)	100% (184)	100% (21)	100% (76)	100% (27)	100% (40)	100% (18)	100% (17)

Inversely, the statistics underrepresent the predisposition of youths under eighteen to shoplift, because of the greater leniency of the sanctioning agencies toward this category.

IV. SELECTIVE SANCTIONING AND THE DEFINITION OF "NORMS"

Shoplifting as an everyday infraction of a norm is subject to changing judgments depending upon the normative levels—by which it is measured: as a normative rule it is found in custom, it is asserted in a private claim, and it is stated in a formal law (cf. Bohannan, 1965).

Though the shopowner's property right is protected by law against shoplifting and though he is clearly interested in conformity with this norm, he is not necessarily anxious to sanction the shoplifter. Punishment is of no immediate use to the owner, and in small shops there could be serious disadvantages: regular customers could be lost, and goodwill in the neighborhood dissipated. Maintaining friendly social relations may be more important than sanctioning a deviant. The strength of this motivation to mitigate punishment is shown by the behavior of the shopowners in Freiburg after their formal decision to report "every shoplifter without an exception." Thirty percent of those apprehended were still not reported; "every" shoplifter apparently could not mean more than 70 percent. Police and prosecutors do not initiate action to detect shoplifting; unlike certain other

crimes—e.g., drug use, murder, or traffic violations—where the police have their own “strategies of suspicion,” in shoplifting cases they do not engage in surveillance but react only to other people’s (cf. Black, 1973). Prevention and detection are private matters; there are not even any norms against the display in a manner that facilitates, even invites the crime. At the same time, legal agencies have a monopoly of authority to sanction.

This division of labor increases the chance that sanctioning will be aborted. The effectiveness of a social norm is dependent on the ability of private individuals to impose a sanction when they see it violated by another; but this process is frustrated when a special agency has a monopoly over sanctions. The effectiveness of a legal norm, on the other hand, lies in the existence of an agency endowed with a specialized staff devoted to the maintenance of conformity. But in shoplifting, the agency is in turn dependent upon the shopowner, who often prefers not to sanction. If a norm is maintained by legal sanctions, this inhibits spontaneous sanctioning by victims or third persons. But legal agencies, by themselves, must always be highly selective in imposing sanctions.

In addition to these theoretical conclusions, our study produced confirmation of some doubts about the use of crime statistics. Comparison of store and police files for two successive years showed that the doubling of instances of shoplifting in official crime statistics could be explained entirely by a change in the store policy of reporting offenses to the police. The number of undetected and unreported instances of shoplifting is so high, and practices of detection and reporting depend so heavily on organizational conditions, that any trend in official statistics is just as likely to indicate an administrative change as it is to describe a change in actual patterns of criminal behavior.

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