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Booze, Drugs, and Rock & Roll: Crime During the College Years

I. Introduction

The college years define a period in life during which students are lawless, and such behavior is considered acceptable. Before and since the scenes of college life depicted in *Animal House*,¹ the popularly-understood status quo has been one in which students anarchically flaunt the rules that society places upon them. It is accepted that, even though potentially illegal, college is a place where youth goes to experiment with rebellion; underage drinking, drug use, vandalism and other behaviors that are against the law in decent society are the norm on and around college campuses. Although the popular visions of college that so-called “teensploitation” movies present are admittedly hardly-valid statistical or academic studies of college life, they nevertheless shape the popular conception of what college is life like, what college students should expect from administrators and their classmates, and how college students should act. For pre-college students, older friends and family who return from college with “war stories” from nights out and nights in reinforce what such movies do not already thoroughly inculcate.

This Essay attempts to explain the way in which crime prevails in college and in which social norms indicate that drug use, underage drinking, and willful file-trading are not simply common but perfectly natural. Part II begins by asking if this popular vision is actually an accurate one. It examines data regarding underage drinking, drug use on campus, and the use of peer-to-peer networks for file-sharing (or piracy, depending on who speaks) to show whether

¹ ANIMAL HOUSE (Twentieth Century Fox 1978).

college students truly commit “low-level” crime at a higher rate than their non-college peers. Part III tests the facts against various criminological theories. Testing theoretical frameworks allows us to determine what it is about the college experience that contributes to these behaviors or the acceptance thereof, and to ask, “What environmental factors are present or absent during the college experience that enhance the bravado of students or reduce their inhibitions?” Finally, Part IV presents an integrative explanation for the prevalence of “college crime,” looking for a theory that might effectively explain how crime occurs among college students.

II. The Problem

The purpose of this Section is to draw out the extent of crime on college campuses. In order to create a picture of the problem, this Essay draws on three crimes generally considered to be widespread in the college years. It should be noted at the outset that there are a number of variables not incorporated in such an illustration. As such, some caveats are appropriate. First, these are only intended to be “representative” crimes, rather than a conclusive or exhaustive survey of crime on campus. Second, because of the intoxicating effects of drugs and alcohol—which may be a large part of the reason for their illegal use²—there are “ripple effect” crimes on and around many campuses that will not be studied herein. Vandalism, public intoxication, public indecency, assault (both sexual and non-sexual), and driving under the influence are just a few of the ordinary results of students going out and getting drunk or high and which contribute to increased crime rates.³ Additionally, these crimes were chosen because they generally can and do exist discretely from other crimes. Although inebriated students no doubt return to their rooms and have a joint or download that song they just heard, these crimes do not co-exist the

² See RONALD K. SIEGEL, *INTOXICATION: LIFE IN PURSUIT OF ARTIFICIAL PARADISE* (1989).

³ See, e.g., Lewis D. Eigen, *College Students*, in *HANDBOOK ON DRUG ABUSE PREVENTION* 267, 269 (Robert H. Coombs & Douglas Ziedonis, eds., 1995) (more than 80% of campus vandalism and theft was alcohol related); see also, *Id.* at 272 (drinking involved in incidents of gang rape, theft, fights, and an increased chance of being a victim). Eigen emphasizes that there are also many “undesirable consequences of drinking” that are not reported as crimes.

way that—for instance—drinking and date rape do. Finally, the point of this Essay is not to evaluate the propriety of various statutes or college policies. Instead, it looks for an explanatory theory of why it is that college seems to engender crime of one variety or another, particularly these “victimless” crimes.

A. Alcohol Use in College

i. The General Picture

If the popular story is true, college is the time when formerly staid students throw off the shackles of high school and home to unearth their hidden party animals, burying the erstwhile wallflower and becoming Bluto Blutarsky. This story rarely mentions the prevalence in underage drinking among their non-college age peers, but it is submitted that since those people are not in college, there may not be as much time or as many resources for the reckless college partying.

To some extent, the notion of college as a time for shedding the bonds of home is accurate.⁴ Although most students have taken their first drink by the time they reach college, fifteen percent of students have their first direct experience with alcohol during their “college years,” between the ages of eighteen and twenty-five.⁵ It should also be noted that nearly a quarter of college students’ first alcohol use comes between the ages of sixteen and seventeen.⁶ This is significant because although the “traditional college age” is eighteen to twenty-five, many students begin college before they reach eighteen,⁷ and besides, many of those students who indulge during high school no doubt have their first drinks when visiting family or friends

⁴ John S. Baer *et al.*, *Secondary Prevention of Alcohol Abuse with College Student Populations: A Skills-Training Approach*, in *ALCOHOL USE AND MISUSE BY YOUNG ADULTS* 83, 84 (George S. Howard & Peter E. Nathan, eds., 1994) (“Many students believe their college years are a time to be irresponsible and reckless, and that safer drinking will later develop naturally”).

⁵ 3 CHERYL A. PRESLEY ET AL., *ALCOHOL AND DRUGS ON AMERICAN COLLEGE CAMPUSES* 22, (1996) (age of first use of alcohol: Less than 10 (3.7%), 10-11 (2.6%), 12-13 (12.7%), 14-15 (26.1%), 16-17 (26.4%), 18-25 (15.0%)).

⁶ *Id.* There are also some students who started using even before that age.

⁷ *See, e.g.*, SCOTT BOGGESS & CAMILLE RYAN, U.S. CENSUS BUREAU, *FINANCING THE FUTURE: POST-SECONDARY STUDENTS, COSTS, AND FINANCIAL AID* 3 (2002) (defining the college population from the age of 17, rather than 18).

already in college. For those who did start drinking in high school, studies indicate that their drinking rates and quantities continue unabated, with very few students reducing the amount that they drink while in college.⁸ In fact, “research shows that the proportion of heavy-drinking students jumps sharply from the senior year in high school to the first year of college.”⁹ Even if they did drink before, most are drinking more heavily than they ever did.

A further difference between the college and high school years is found in the number of regular drinkers. The college population studied by the FIPSE Study¹⁰ reports that over eighty-five percent had partaken of alcohol in the previous year.¹¹ More than sixty percent report consuming alcohol in the past week, so even while active abstention might be quite high, a tremendous proportion of students still consume at least one drink per week.¹² Not only that, but alcohol use increases as time goes on in college. Upperclassmen use alcohol with greater frequency than freshmen and sophomores, though graduate students, who are virtually guaranteed to have reached the age of majority, use alcohol at a rate between that of the average sophomore and junior.¹³ Naturally, the rate of alcohol-related consequences also increases during that period, such as hangovers and incidents of driving while intoxicated, which increase with each successive year in college.¹⁴

What traditionally concerns researchers, parents, college administrators and politicians of all stripes is not the fact that students use alcohol but the ways in which they do. More often than not, such use is characterized as abuse, because many students binge drink.¹⁵ When bingeing is

⁸ Eigen, *supra* note 3.

⁹ *Id.* (citation omitted).

¹⁰ PRESLEY ET AL., *supra* note 5

¹¹ *Id.* at 15.

¹² *Id.*

¹³ *Id.* at 51-52.

¹⁴ *Id.* at 53.

¹⁵ See William DeJong, *A Social Norms Approach to Building Campus Support for Policy Change*, in THE SOCIAL NORMS APPROACH TO PREVENTING SCHOOL AND COLLEGE AGE SUBSTANCE ABUSE 154, 161 (H. Wesley Perkins,

defined as the intake of five or more drinks in a single sitting, over forty percent of students report that they have binged within the past two weeks.¹⁶ Nearly an eighth of those bingers—or roughly one out of every twenty students—report more than five binge episodes in the previous two weeks, which means that *at least* one weekday day contained an episode of binge drinking for them.¹⁷ Such behaviors vary with a school’s particular situation—smaller schools support higher rates of binge drinking, and schools in the Northeast evince higher rates of consumption, as well as higher rates of binge drinking.¹⁸ Moreover, a college’s alcohol policy—whether it is a “dry” campus—does not substantially affect drinking. Even dry campuses have significant numbers of drinkers, who either sneak alcohol into dorms and onto campus or “outsource” and drink in bars or off-campus.¹⁹

The data outlined above indicates a substantial extant culture of drinking in college, but it suffers from a flaw. It does not fully show what drinking is actually criminal, underage consumption. In order to draw a picture of college crime, then, an examination of how underage drinkers compare with their peers is due.

ii. Underage Drinking in College

As mentioned above, many students have their first drinks once at college. Certainly, many of that number have not yet reached majority. Moreover, the students who drink before reaching college—or even have had a single drink—tend to continue their behavior. As noted earlier, few are likely to curtail their drinking upon reaching college.²⁰ Nearly eighty-five percent of students under twenty-one have used alcohol before, with 40.1% using—and therefore

ed., 2003) (showing that there is, however, a problem of defining what “binge drinking” is). Although studies alternately define a “binge” as four or five drinks in a sitting, “four or five drinks ‘in a row’ over a period of several hours does not conform to the popular notion of a binge, or even to the clinical definition.” *Id.*

¹⁶ PRESLEY ET AL., *supra* note 5, at 45.

¹⁷ *Id.*

¹⁸ *Id.* at 56-57; Eigen, *supra* note 3, at 274.

¹⁹ Eigen, *supra* note 3, at 277.

²⁰ See *supra* note 8 and accompanying text.

violating drinking age limits—on a weekly basis.²¹ On average, underage college drinkers consume nearly a full drink per week more than their legal peers—5.0 drinks for the underage, but only 4.1 drinks for those over twenty-one.²² Binge drinking, however, shows a marked difference: where thirty-five percent of legal drinkers have binged in the previous two weeks, 44.6% of underage drinkers have.²³ Not only do they drink greater quantities than their legal peers, but underage drinkers also drink more sporadically; rather than splitting their consumption over the week by regularly having a single drink with dinner, underage students tend to consume all their drinks at once. As an unsurprising result, underage drinkers report a higher incidence of adverse consequences from their drinking at the same time that they call for more alcohol at social events in and around campus.²⁴

In considering underage drinking as a crime, one interesting statistic appears. With the institution of a nationalized age limit of twenty-one, one might expect that risk-averse students at the margin would cease drinking as much and that a related decrease would be seen in the amount of underage drinking, based on fear of sanctions. Instead, the rate of underage drinking has remained unchanged by the no-longer-new standard of majority.²⁵ Both of-age students and under-twenty-one students continue to drink at the same rate since the change of the legal drinking age. Increased criminalization of alcohol use has not impacted drinking in the eighteen-to-twenty-one year-olds. In fact, the only behavioral change reported regarding actual drinking is

²¹ PRESLEY ET AL., *supra* note 5, at 79.

²² *Id.*

²³ *Id.* at 81.

²⁴ *Id.* at 8.

²⁵ Eigen, *supra* note 3, at 278.

location; underage students drink in more private places, like dorm rooms or cars, rather than in taverns, bars, or restaurants.²⁶

The college environment can be connected to alcohol use. Those students who live with their parents, rather than on or around campus, are half as likely to binge.²⁷ Similarly, more college students drink than their non-college age peers, and college drinkers binge more often than their non-college peers. 74.5% of college students drink in a given month and forty-one percent will binge at least once in a two-week period, compared to non-college rates of seventy-one percent and thirty-four percent respectively.²⁸ The large part of that difference may be ascribed to the amount of bingeing by female college students—thirty-six percent binge relative to twenty-eight percent of their non-college female peers.²⁹ Female college students also drink heavily at a rate more than twice that of non-college women.³⁰ Daily drinking among this group is the reverse—the non-college group drinks on a daily basis at a rate exceeding that of college students.³¹ That said, college students binge and make up the *amount* consumed by bingeing at that higher rate on the weekends. In other words, non-college individuals drink far more moderately. In general, one can take the typical college and score it against the factors that decrease abstinence:

[H]eavy alcohol use among college students is more predominant (1) in the Northeastern region of the United States where the abstinence rate among students is far below the national norm; (2) at undergraduate colleges and smaller schools (with fewer graduate students to moderate the social atmosphere on campus), and especially if these undergraduate students are predominantly single and mostly of a traditional, young age; (3) at a residential college (where family or outside employment are less of a constraining factor); (4) in a student population with low religious

²⁶ *Id.* It should be noted that the change in age has had other, positive effects, including the reduction of incidence of alcohol-related car crashes; this fact, while positive, does not show much, if any, connection to college drinking or the age of the drivers.

²⁷ *Id.* at 275.

²⁸ *Id.* at 268.

²⁹ 2 LLOYD D. JOHNSTON, ET AL., MONITORING THE FUTURE: NATIONAL SURVEY RESULTS ON DRUG USE, 1975-2001 22 (2002).

³⁰ Eigen, *supra* note 3 at 269 (seventeen percent of college females binge versus eight percent of non-college females).

³¹ JOHNSTON, *supra* note 29.

interest and participation; (5) at a school where Greek social organizations exist; (6) at a school where athletic participation is prevalent among students; and (7) at a school with a mostly Caucasian student body.³²

All of this, taken together, suggests that there is a substantial connection between college attendance and drinking and that there is likewise a significant connection between being of college age and drinking illegally. This appears particularly so among college women, who drink and binge far more than their non-college age peers, which raises other questions which cannot be addressed here. So far, the story of hedonistic college life seems to hold up.

B. Drug Use in the College Years

Drug use has much of the same cultural cachet for college students that alcohol does. It comports with the image of cutting loose and being reckless, breaking rules and snubbing authority, and a host of other desirable and undesirable qualities. For today's students, there is also a nod to history in that many of their parents are trapped in the catch-22 of having done drugs while *they* were in college. If mom and dad did it and turned out well enough to turn out today's student, then surely drug use cannot as bad as is claimed. From a criminological standpoint, however, drug use may be preferable to studying underage alcohol use, simply because there is no legality/illegality breakpoint. Medical marijuana notwithstanding, there is no point at which these drugs are legal, so evaluating drug use among college students versus their peers is a rather more straightforward endeavor.

In contrast with alcohol usage, most college students' first use of drugs is not prior to, but in, college. College students' first use of cocaine, hallucinogens, opiates, designer drugs, steroids and other illegal drugs occurs during the college years more often than at other ages.³³ Yet this is

³² H. Wesley Perkins & David W. Craig, *A Synergistic Social Norms Approach Using Print, Electronic Media, and Curriculum Infusion to Reduce Collegiate Problem Drinking*, in *THE SOCIAL NORMS APPROACH TO PREVENTING SCHOOL AND COLLEGE AGE SUBSTANCE ABUSE* 35, 37 (H. Wesley Perkins, ed., 2003).

³³ PRESLEY ET AL., *supra* note 5 at 22.

true only for college students, who tend not to have used drugs before college as much as their age peers.³⁴ Avoiding any judgments as to whether there is a significant connection between high school drug use and college attendance, the authors of the *Monitoring the Future* study indicate that regardless of this initial discrepancy, college students tend to “catch up” to their age peers in drug use.³⁵ By catching up, college students end up showing “annual usage rates for several categories of drugs that are about average for all high school graduates their age.”³⁶

It is this statement about “several categories of drugs” that is noticeable. It would appear that, despite some of the claims made above, drug use is not higher in college than outside of it. In fact, it is *less* prevalent in college than out of college—the numbers are similar in terms of use of most drugs, but *less* in others.³⁷ The “other drugs” that are used less seem to be those that are viewed as worse, more addictive, or more dangerous. College students use less LSD, less hallucinogens, less cocaine, less crack, less heroin, less crystal methamphetamine, and generally use amphetamines, barbiturates, and tranquilizers less than their non-college compatriots.³⁸ The drugs they do use regularly have a reputation for being less dangerous, having less long-term impact, and less fatal—marijuana, inhalants, and ecstasy. Much of the literature on alcohol abuse groups it with these drugs, because of its addictive properties.

Regardless, drug use historically remains fairly stable among college students—although the percentage of college students reporting any illicit drug use dropped to 45.5% in the early-to-mid 1990s, it has since rebounded to a rate a little above fifty-three percent.³⁹ More representatively, use in the past thirty days reveals a large proportion of students who have not

³⁴ JOHNSTON ET AL., *supra* note 29 at 19.

³⁵ *Id.* The authors do note, however, that some of this lost restraint may have to do with the fact that college students leave their parents’ homes and do not get married, unlike their non-college age peers.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 34.

merely tried drugs once. Roughly a fifth of all college students report recent drug use.⁴⁰ Fully a third report drug use in the past year.⁴¹

There are several consequences of the above data. The first is that the college environment may not actually increase illicit drug use. However, the fact that certain drugs are less prevalent than others indicates that something about college or the people that attend college may alter how illicit drugs are chosen and used. Moreover, the fact that there is a high rate of drug use on campus, despite strong oversight—most people would not voluntarily go to a place with extra security guards in order to take drugs—suggests that there may be additional phenomena at work. That people who would not use drugs before suddenly take to it like ducks to water is a significant finding. It shows that some untold restraint—parents, community, ambition, or something else—keeps these students from partaking of controlled substances before college. Once they reach college, however, that restraint is plainly lifted.

C. Peer-to-Peer File-Trading; Napster and its Kin

To hear the Recording Industry Association of America (RIAA) tell the story, college students only use their computers to infringe the valid copyrights of its members.⁴² The tremendous flap over the college-aged creators and users of Napster, Gnutella and Kazaa illustrates the popular vision of college as a breeding ground for copyright infringement. The peer-to-peer story also illustrates the resilient and constant pursuit of illegal, free music that appears within many modern college students.⁴³ For instance, at the beginning of April 2003, nearly three years after shutting down Napster, the RIAA filed a suit for copyright infringement

⁴⁰ *Id.* at 40.

⁴¹ *Id.*

⁴² *Education, Innovation and Enforcement*, RIAA.ORG, <http://www.riaa.org/Protect-Online-3.cfm> (last visited, Apr. 25, 2003) (on file with author) (RIAA focuses on educational institutions to stop piracy).

⁴³ LIOR JACOB STRAHILEVITZ, CHARISMATIC CODE, SOCIAL NORMS, AND THE EMERGENCE OF COOPERATION ON THE FILE-SWAPPING NETWORKS (John M. Olin Law & Econ. Working Paper No. 162, 2003) (“[T]he networks have survived and thrived largely because of their users’ dogged willingness to engage in unlawful activities”).

against four students at Princeton, Rennselaer, and Michigan Tech who operated their own file-trading system.⁴⁴

Like drug use, the use of Napster and its descendants (which, for clarity's sake, hereinafter will be collectively called "file-trading") can be a bit clearer than that of alcohol use, in that it is somewhat of a strict liability crime.⁴⁵ Although file-trading has some legitimate and exempt uses—uncopyrighted or promotional MP3s, research papers, or pictures meant to be transferred for publicity purposes—the majority of file-trading exists using illegally-copied music, film, and software.⁴⁶ However, there is a problem with this particular crime. A good deal of the available research reflects only general levels of use but not a college/non-college distinction. Moreover, there is an inherent bias in that computer ownership, while certainly increasing, is still weighted towards wealthier individuals.⁴⁷ A computer is a valuable tool, but it remains a luxury item for many. Moreover, high-speed internet access, which is nearly a prerequisite for file-trading, is expensive and is likely to further limit the number of college-age file-traders who have access to fast networks.⁴⁸

i. The General Picture

⁴⁴ Katharine A. Kaplan, *Lewis Threatens to Unplug Illicit File Traders*, The Harvard Crimson, Apr. 11, 2003, at 1, available at <http://www.thecrimson.com/article.aspx?ref=347534> (last visited, Apr. 12, 2003) (on file with author); see also, *RIAA Moves Against Operators Of Pirate P2P Systems Housed On Internal College Networks*, RIAA.ORG, http://www.riaa.org/News_Story.cfm?id=629 (last visited Apr. 25, 2003) (on file with author).

⁴⁵ STRAHILEVITZ, *supra* note 43 at 33 ("Virtually everyone who participates in one of the file-swapping networks is breaking the law in the process").

⁴⁶ *Id.* at 36 ("Quite simply, only people looking for copyrighted content will go through the trouble of running a MusicCity host"). The *Napster* court also failed to find the kind of acceptable use that was found in the Betamax case, *Universal City Studios v. Sony Corp. of Am.*, 659 F.2d 963 (1981). *But see*, *Metro-Goldwyn Mayer Studios et al. v. Grokster, Ltd. et al.*, (C.D.Cal., filed Apr. 25, 2003) (No. CV 01-08541-SVW (PJWx)), available at [http://www.cacd.uscourts.gov/CACD/RecentPubOp.nsf/bb61c530eab0911c882567cf005ac6f9/b0f0403ea8d6075e88256d13005c0fdd/\\$FILE/CV01-08541SVW.pdf](http://www.cacd.uscourts.gov/CACD/RecentPubOp.nsf/bb61c530eab0911c882567cf005ac6f9/b0f0403ea8d6075e88256d13005c0fdd/$FILE/CV01-08541SVW.pdf) (on file with author) (summary judgment granted to peer-to-peer software distributor because significant lawful uses could be made of software).

⁴⁷ U.S. CENSUS BUREAU, *THE PC GENERATION: COMPUTER USE 2000* (2001), <http://www.census.gov/population/pop-profile/2000/chap10.pdf> (last visited Apr. 25, 2003) (on file with author).

⁴⁸ Downloading a single MP3 takes anywhere from three to twenty-five times as long when using "slow" modem connections. SERMONCAST.NET, <http://www.sermoncast.net/helpmain.asp#How%20long%20does%20it%20normally%20take%20to%20download%20an%20MP3%20File?>

Napster's users numbered 40 million.⁴⁹ As with alcohol use, there is a problem of parsing the data, as mentioned above. While people between the ages of eighteen and twenty-four with internet access sufficient to engage in file-trading are most likely to be in college (due to the costs mentioned above), it is by no means a certainty that they will be in college. That said, the college-age group accounts for a gigantic amount of the file-trading that takes place—forty-four percent of the age group have downloaded music for playback at another time.⁵⁰ Yet still more, in the age cohort below the college-aged individuals, download music. Fifty-one percent of respondents of the ages between twelve and seventeen engaged in file-trading.⁵¹ Although perhaps an overgeneralization, the story for this set of circumstances is likely that the young people surveyed are more likely to have “cut their teeth in the era of free music.”⁵² More to the point, though, they may have had high-speed access at home and (at least in some households) greater knowledge of how to use that access to get music than their parents. What remains to be seen is what will happen when the group between the ages of twelve and seventeen goes to college—if that will affect their downloading habits either positively or negatively. Along with these rates of downloading, there comes a correlative belief that downloading the music is not morally wrong.⁵³ Further, as noted above, some not insubstantial proportion of the “seventeen year olds” will be college freshmen.

ii. The College Story

⁴⁹ Warren Cohen, *All the Rave: The Rise and Fall of Shawn Fanning's Napster*, ROLLING STONE, May 1, 2003, at 60 (book review).

⁵⁰ Jayne Charneski, *The National Record Buyers Survey II*, Edison Media Research, at <http://edisonresearch.com/R&RRecordBuyersII.htm> (last visited Apr. 25, 2003) (on file with author). Note that this statistic does not mean 44% of college students, but college-aged individuals.

⁵¹ *Id.*

⁵² STRAHILEVITZ, *supra* note 43 at 57.

⁵³ Charneski, *supra* note 50.

By mid-May 2000, nearly three-quarters of college students admitted to using Napster once a month or more.⁵⁴ Such behavior has repercussions for the colleges they attend. Besides the criminal provisions of the Digital Millennium Copyright Act—which provides colleges with a safe harbor for instituting a policy of sanctioning copyright-infringing network users—there are also technical consequences.⁵⁵ File-trading has been shown to take up nearly half of a university’s bandwidth, which suggests that there are economic and convenience consequences for the university, along with those previously-mentioned legal consequences.⁵⁶ The key ramification is that despite the gigantic “pipelines” of bandwidth that most universities have, the fact that nearly a majority of university traffic is illicit file-trading suggests it to be a rampant, pervasive problem on college campuses.

Moreover, although it remains a crime, there might be some excuse for “sampling via file-trading.” Perhaps if college students are just taking a bite and then going back to buy more, it might be somewhat less ethically questionable. No such luck: according to the *Napster* court, half of college students admitted that they owned less than ten percent of the songs they had downloaded prior to the download, which would have provided a fair use defense as to those songs.⁵⁷ Even more damning, Napster admitted that the college demographic was a large portion of its users.⁵⁸ Finally, the *Napster* court demonstrated a strong decrease in music sales at stores

⁵⁴ *Napster Users Majority on Campus*, WIRED.COM, (May 15, 2000), at <http://www.wired.com/news/culture/0,1284,36354,00.html> (last visited Apr. 25, 2003) (on file with author) (74% of college students had used Napster at least once a month).

⁵⁵ Kaplan, *supra* note 44 (“‘If Harvard complies with certain terms of the DMCA, it will not be held responsible when a user downloads, distributes or displays...copyrighted material,’ [Dean of Harvard College Harry] Lewis wrote in the message. ‘To obtain protection under the DMCA, Harvard must, in appropriate circumstances, terminate the network access of any user who repeatedly infringes the copyrights of others’”).

⁵⁶ Complaint for Direct and Contributory Copyright Infringement at 8, Atlantic Recording Corp. et al. v. Daniel Peng, (D. N.J., filed Apr. 3, 2003) (No. 03-1441 (SRC)).

⁵⁷ *A&M Records v. Napster, Inc.*, 114 F.Supp.2d 896, 905 (N.D. Cal. 2000).

⁵⁸ *Id.* at 909.

near campuses where file-trading was allowed.⁵⁹ This suggests that the file-traders used the peer-to-peer networks not solely to sample or to space-shift previously owned music, but instead to actively take music without remuneration. There are, of course, semantic arguments about whether the decrease in music sales was directly connected to Napster or to the quality of music being offered at the time, coupled with a problematic economy.⁶⁰ Regardless, the court's opinion reveals that a substantial amount of file-trading was taking place on college campuses.

Doubtless, one could argue about the connection of file-trading with the decline of the recording industry over the past couple of years, but the lesson to be taken here is that file-trading is widespread on campus. Since file-trading is almost by definition an illegal behavior, it is virtually axiomatic that file-trading related crime is identically widespread on campus.

Although evidence suggests that colleges are greater havens for file-trading than other places (like homes and businesses), little evidence is available directly contrasting college with other networks. Again, however, as with drug use, even were there to be negligible differences between college file-trading and non-college file-trading, there is still—at least until recently—an environment that supports, if not encourages, file-trading despite its illegality.

III. College Crime and Traditional Criminological Theories

Given the fact that crime is not reduced, and in some regards is increased—or at least qualitatively different—by attendance in college, it is now a valuable exercise to consider traditional criminological theories. By checking how college crime fits with the various theories, a model of prevention or punishment may be fashioned for combating the behavior. At the same time, by highlighting the places where traditional theories go awry, an analysis of college crime

⁵⁹ *Id.* at 910.

⁶⁰ See *Music Industry Unveils New Business Strategies And Combats Piracy During 2002*, RIAA.ORG, http://www.riaa.com/PR_Story.cfm?id=618 (last visited Apr. 25, 2003) (on file with author) (the industry shipped 11% less music, reflecting an equal decrease in revenue).

may be able to enhance the current understanding of crime and create more accurate general theories of crime. This Section will examine in turn the biology, heredity, psychology, and personality theories (the “individual approaches”); the rational choice model; social organization theories; and social psychology theories.

A. The Individual Approaches

The “individual approaches” have been thus named because they describe tendencies within particular individuals that seem to have little input from outside factors, but rather describe inherent and innate characteristics. Depending on the theory selected, the criminal is said to have low self-control, a psychology that has evolved according to natural selection to propagate that individual’s genes, psychopathic tendencies, or a tendency to criminal behavior that only changes with the age of the individual. Each of these theories suggests that, for whatever reason, the offending individual is incapable of defeating this internal spur to crime. Such theories suggest also that although we could predict which college students would commit crime based on certain biological or psychological characteristics, there would be little way to change these tendencies. They would finally suggest that college itself has no effect on the likelihood that these individuals would offend.

One major problem with these theories is that they posit a “normal” behavior that forbids crime and an aberrant behavior that aims to contravene such rules, that finds itself inexorably drawn to the violation of group norms. This might well be true for the sorts of violent crime that normally capture criminologists’ imagination, like murder, sexual assault, robbery, and the like. However, for college crime, the analogy breaks down rather quickly. As seen above, the college crimes that are focused on here involve or have the tacit support of the vast majority of students. It defies belief that college could be a haven for the biologically deviant, that the seventy-four

percent of college students that are copyright infringers, the fifty percent who have used drugs, or even the eighty-five percent who have used alcohol before twenty-one are beyond the pale. For one thing, use of the term “norm” suggests that a majority of those in the community do not approve of the proscribed behavior. By contrast, with regard to college crime, the behavior is supported and conducted by the overwhelming majority of the population. Moreover, the same individuals generally become part of society in short order, without their “criminal tendencies.”

Self-control theory is, however, fairly tempting when trying to describe college behavior. One of self-control theory’s central concepts is the irresistibility of criminal behavior. Moreover, criminal activity tends to bear costs. “What do robbery, theft, burglary, cheating, truancy, and drug use...have in common? They are all quick and easy ways of getting what one wants. They are all, also, in the long run, dangerous to one’s health, safety, reputation, and economic well-being.”⁶¹ Such also describes a lot of college behaviors. College students are popularly considered to have very little restraint, to just do as they desire and not consider the long-term consequences.⁶² The prevalence of drug use and bingeing also echoes the discussion of short-term gains with the long-term potential for harm. On the other hand, one can see that this theory is a bit lacking, particularly when one considers the types of drugs that college students use and the relative anonymity of the copyright infringer. As noted above, the drugs that college students partake of tend to have a reputation—earned or not—of being relatively safe. On college campuses, it is not difficult to find people advocating the safety of marijuana and ecstasy to others, and the belief is common that being caught using Napster is slim; after all, the record

⁶¹ Travis Hirschi & Michael R Gottfredson, *Self-Control Theory*, in *EXPLAINING CRIME: ESSAYS IN CONTEMPORARY CRIMINOLOGICAL THEORY* 81, 82 (Raymond Paternoster & Ronet Bachman, eds., 2000).

⁶² See Baer, *supra* note 4 and accompanying text; consider also the mythic popularity of the “Girls Gone Wild” videos, the regular behavior at popular Spring Break locations, and films like *THE REAL CANCUN* (New Line Cinema 2003).

industry, up until April 2003, had not actively pursued individual file-traders.⁶³ This partially negates the self-control theory, in that it suggests students would seek out whatever thrilling behavior they could, rather than tempering the drugs they could use and engaging in low-risk copyright infringement. There is low risk because most file-traders maintain only a small library of songs.⁶⁴

Evolutionary approaches that suggest “natural selection has acted on human populations to open up reproductive niches for individuals and groups that victimize others”⁶⁵ also have their limitations. Although it might well describe the behaviors of vandalism, sexual assault, “regular” assault, theft, and the like, which are no doubt quite common on campus,⁶⁶ evolutionary theory does not explain very well the behaviors we have been investigating herein. There is no biological imperative to download music, central to the enjoyment of life though it might be. Seeking intoxication may be an elemental biological drive, but drugs and alcohol tend to impair the individual’s ability to procreate. That said, certain biological drives might be involved, as music, alcohol and drugs often function as social lubricants. Certain—if not all—college students may be predisposed to try and fit into a particular lifestyle so as to be accepted by the opposite sex. There are bound to be social benefits from engaging in all three behaviors, but such a social drive is not as idiosyncratic or individually-based as the evolutionary theory would suggest. Fitting into social situations by engaging in socially approved behaviors is not a true “reproductive niche.” It is a common reproductive strategy with its own dynamics. The sorts of

⁶³ Not college traders; the RIAA continues to fight with Verizon regarding a subpoena provision of the DMCA, as it seeks the identity of an alleged file-trader using Verizon’s DSL service. *See* Recording Indus. Ass’n of Am. v. Verizon Internet Servs. 240 F.Supp.2d 24 (D. D.C. 2003).

⁶⁴ Amanda Lenhart & Susannah Fox, *Downloading Free Music: Internet Music Lovers Don’t Think It’s Stealing*, Pew Internet & American Life Project’s Online Music Report, at 2-3 (Sep. 28, 2000).

⁶⁵ Lee Ellis & Anthony Walsh, *Gene-Based Evolutionary Theories in Criminology*, 35 *CRIMINOLOGY* 229, 229 (1997).

⁶⁶ *See, e.g.,* PRESLEY ET AL., *supra* note 5 at 25-27.

behaviors the theory suggests are the crueler behaviors that allow the criminal to force his will upon another in order to reproduce, unlike the social nature of these crimes.

Nor can an approach suggesting that criminals exist somewhere on the spectrum of psychopathy really explain college-level crime. Undoubtedly, there will be some college students who fit the characteristics of the psychopath,⁶⁷ those who engage in the behaviors that evidence that personality disorder. However, the characteristically violent behavior of psychopaths is notably absent from the behaviors we have here examined.⁶⁸ The particularly high rate of drug and alcohol use and file-trading among college students far outstrips the “small minority of those who engage in criminal conduct [that] are psychopaths.”⁶⁹ Although some of the individuals who trade files, drink, or do drugs may also turn out to be grandiose or arrogant, they are not likely to be psychopathic at rates greater than the rest of society. Moreover, while it may be dangerous to overgeneralize, it seems commonsense that psychopaths would not fit in particularly well in college, that a whole community of vaguely psychopathic individuals could not hold together, and certainly not in an environment as socially-centric as college is. Similarly, since theories concerning mental disorder in general suggest individuals who are out of step with community norms, they tend to fail to describe the college environment, where the norm is the crime. Although the percentage of “non-complying” students is far higher than those in the general population with mental disorders or anti-social behaviors, one might be able to argue that in college, *they* are the anti-social minority in college.

⁶⁷ See Stephen D. Hart & Robert D. Hare, *Psychopathy: Assessment and Association with Criminal Conduct*, in HANDBOOK OF ANTISOCIAL BEHAVIOR 22, 22 (David M. Stoff, *et al.*, eds., 1997).

⁶⁸ *Id.* at 28 (“[P]sychopaths have relatively high rates of violent offending in the community and in institutions”).

⁶⁹ *Id.* at 22.

In fact, the one individual approach that might effectively explain college crime is the theory of age-based crime.⁷⁰ Since between college students and their age peers, drug and alcohol violations are similar except for some qualitative differences and because, by assumption, file-trading would be more common among the non-college age peers provided they had identical computer and internet access, an age-based theory seems to work. Students, as they enter college, tend to be at the peak age (seventeen to eighteen) for the prevalence and incidence of crime.⁷¹ If one were to postulate an adolescence extended by college attendance, there would be a clear explanation for why drinking rates, file-trading, and drug use do not fall off until graduation, graduate school, or later. Nevertheless, although this individual-level approach seems to describe the relevant population, it does not fully account for the prevalence of crime among college students. Data indicates that more arrests occur at those ages, not that all people at those ages are more prone to crime, and the fact remains that the rates of college offending are far higher than the age-based theory can account for.⁷²

On the whole, individual level explanations fall short and cannot account for the widespread incidence of college crime. It is simply too common and practiced by far too many students to conclusively describe the sorts of behavior that college students engage in. Individual theories can explain why certain people might be predisposed to committing crime of some variety, but they cannot explain how or why so many “criminally-predisposed” individuals attend college. There is a possibility that crime in the end is an individual decision, though it is questionable whether that is a theory of crime rather than a theory of human nature.⁷³

⁷⁰ See generally, Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCH. REV. 674 (1993).

⁷¹ *Id.* at 675.

⁷² *Id.* Even at its peak, the FBI index for arrests per 100,000 population only reaches five percent, a number that cannot explain the numbers seen in this Essay.

⁷³ See, e.g., Raymond Paternoster & Sally Simpson, *Sanction Threats and Appeals to Morality: Testing a Rational Choice Model of Corporate Crime*, 30 LAW & SOC'Y REV. 549, 553 (1996).

B. Rational Choice Theory

As an alternative, rational choice theory seems to clearly explain the sorts of behavior we have already seen. The theory is rather compelling for explaining crime generally, because it suggests that, like most people, criminals engage in conscious or subconscious cost-benefit analysis of their options. It accounts for individuals whose decisions seem societally out of whack by indicating that their personal analysis, although based on skewed inputs, is still rational.

The behaviors that college students engage in plainly indicate an element of strong benefits and small costs, hence the sort of common behaviors seen. There is little doubt that students attempt “to achieve maximum satisfaction according to their individual preferences.”⁷⁴ The benefits that college students perceive to be associated with drinking are commonsense and not at all unexpected. Drinking allows students to relax, to bond with friends, and to enjoy the feelings that alcohol provides.⁷⁵ Students often choose to engage in alcohol use because it “represents one of the few ‘adult’ activities that college students can participate in.”⁷⁶ It also allows for the opportunity to meet, date, and do more with the opposite sex. Many students are “only social drinkers,” which in college gives an excuse for the vast majority of the time—Greek events, athletic events, and weekends.⁷⁷ Female social drinkers will only drink on (or with) a date; men often see it as a prerequisite for social success. Inherent in these descriptions is the fact that they are *perceptions*. Such perceptions may be widespread because the drunken people students see at parties tend to stand out as the popular individuals on campus or at least as the

⁷⁴ Kenneth G. Dau-Schmidt, *An Economic Analysis of the Criminal Law as a Preference-Shaping Policy*, 1990 DUKE L.J. 1, 1 (1990).

⁷⁵ Eigen, *supra* note 3 at 271 (87% of campus athletes who already “seem to have great social status” drink socially or recreationally; 10% because it feels good; 3% use it to deal with stress of college life and academics).

⁷⁶ Baer, *supra* note 4 at 102.

⁷⁷ *Id.*

center of attention.⁷⁸ There may even be a cost in *not* participating in these activities: “If it appears that most of the popular and successful people on campus drink or smoke marijuana, then it is not irrational to believe that abstinence might not lead to popularity.”⁷⁹ Although personal reasons why people choose drugs over alcohol may vary, the fact is that many of the same benefits accrue, though perhaps at a slightly lower rate.

File-trading has similar benefits. Getting Britney Spears’ newest hit single for free, releases of Eminem’s album before it reaches stores,⁸⁰ and being able to brag about the size of one’s collection are all socially aggrandizing behaviors. One can converse about popular culture with classmates, introduce new bands to friends and be seen as cutting-edge or cool, or simply be able to provide the freshest tracks and most happening music for a party. On a romantic level, the mix tape is now no longer the painstaking, difficult process it was a few short years ago; a CD can be burned for a significant other in minutes to create an instant gift that ostensibly shows some personal thought.⁸¹

The costs of engaging in these behaviors are limited. The primary reason for this is that enforcement is particularly low. One of the major order-enforcing entities in the college dormitory is the Resident Assistant. Often, the RA can be found at the same parties where a charge is drinking. Even when they are not, the RA is not authorized to do much more than submit a report, which has social costs for the RA; they are not policemen, and they might be

⁷⁸ H. Wesley Perkins, *The Emergence and Evolution of the Social Norms Approach to Substance Abuse Prevention*, in *THE SOCIAL NORMS APPROACH TO PREVENTING SCHOOL AND COLLEGE AGE SUBSTANCE ABUSE* 3, 7-8 (H. Wesley Perkins, ed., 2003) (“[T]he extravagant behavior of an individual or a few people under the influence of alcohol or other drugs is easily noticed and remembered.... Youths go home from parties and social gatherings remembering and talking about these incidents and focusing on how drunk or ‘wasted’ some peers were, rather than talking about the less interesting majority who remained abstinent or sober.”)

⁷⁹ Eigen, *supra* note 3 at 275.

⁸⁰ Eminem’s 2002 album, *The Eminem Show*, was released nine days early because of widespread trading online. Simon Avery, *Eminem CD Fuels Piracy Debate*, CHI. TRIBUNE, June 3, 2002, at 3, available at <http://web.lexis.com/lawschoolreg/researchlogin.asp?key=cbae3edc785aa5f849b65000948c8ef6> (on file with author).

⁸¹ For a humorous example, see Bex Schwartz, *Mix Tape Versus Mix CD*, ZEEK (Nov. 2002) at http://www.zee.net/music_0211.htm.

seen as backstabbers or sellouts, labels that are undesirable at best.⁸² Moreover, college administrators tend to view drug and alcohol use as just a stage rather than a discipline problem, harking back to the biological explanation.⁸³ Additionally, colleges simply do not wish to be responsible for the bad behavior of their students.⁸⁴ They worry that they cannot possibly crack down on every student who engages in illicit behavior. As a result, “when a law on the books is not enforced...it gives students a tacit message that the world outside is not serious about the law, and that leads to a climate where underage drinking [and other crime] takes place.”⁸⁵ If colleges do construct an alcohol policy, it is more ordinarily aimed not at underage use, which they take to be a common feature of college, but rather at alcohol *abuse*. This makes sense to some degree, since the college regularly acts *in loco parentis*, but from a criminal perspective, rarely acts to discourage or punish alcohol and drug use. The strategy is one of treatment and counseling rather than prosecution.

Additionally, the costs from other sources are plainly extremely low. Although there are some dissenters and some who would prefer to have drug and alcohol-free campus events,⁸⁶ the high participation in this Essay’s college crime activities suggests that informal sanctions by fellow students are extremely infrequent. Even formal sanctions like arrest, prosecution, and conviction are particularly low.⁸⁷ For example, nearly a third of all drinkers and drug users then drive subsequent to such use, and of those, a mere four percent are arrested for DWI—let alone

⁸² Jean Kinney, *A Model Comprehensive Alcohol Program for Universities*, in *ALCOHOL USE AND MISUSE BY YOUNG ADULTS* 135, 138 (George S. Howard & Peter E. Nathan, eds., 1994).

⁸³ *Id.*

⁸⁴ Bruce E. Donovan, *College Programming: The Full Sweep*, in *ALCOHOL USE AND MISUSE BY YOUNG ADULTS* 165, 165 (George S. Howard & Peter E. Nathan, eds., 1994).

⁸⁵ *Id.* at 172 (citation omitted). Donovan also notes that faculty members can set the tone on campus and breed permissiveness. *Id.* at 174.

⁸⁶ PRESLEY ET AL. *supra* note 5 at 71 (31.7% of students prefer an alcohol-free environment; 87.3% prefer a drug-free environment *in and around campus*) (emphasis added).

⁸⁷ Eigen, *supra* note 3 at 297 (That typical students will get the message that they “don’t have to worry too much about providing alcoholic beverages to underage students. If you get caught, the fine is very small, and the school hasn’t added any administrative or disciplinary sanctions”).

convicted.⁸⁸ With file-trading, such results are even more attenuated. Let us assume for the moment that, in addition to the four students who the RIAA sued in 2003, each of the forty-six Napster employees at its height in 2000 is considered to be sanctioned by way of the *Napster* litigation.⁸⁹ Assuming Napster's 40 million users (a number that is likely lower than the actual number of file-traders), the percentage of people formally sanctioned specifically for file-trading is spectacularly low.⁹⁰

Not that such crime is utterly without consequence; there are some personal costs involved with drug and alcohol use. Over a third of college students report doing things that they later regretted while under the influence, including vomiting; physical trouble with others, either students or authorities; sexual relations with or sexual assault upon others; failing a test or exam; skipping class; and a host of other concerns.⁹¹ Yet just as these personal costs may be embarrassing, they may also be turned into benefits—war stories to prove one's cool, and how much drinking or drugs they did the other day.⁹² File-trading also has low personal social costs, as over half of respondents indicate they see nothing wrong with it.⁹³ At least some of those who do think of it as morally inappropriate are still apparently willing to engage in file-trading—it is this group that may feel some personal cost, but they remain in the minority. Most who engage in file-trading will bear no such personal costs.

C. Social Organization

⁸⁸ PRESLEY ET AL *supra* note 5 at 25. This is a mere 1.3% of the total population.

⁸⁹ Spencer E. Ante, *Inside Napster*, BUSINESS WEEK (Aug. 14, 2000) at http://www.businessweek.com/2000/00_33/b3694001.htm.

⁹⁰ Cohen, *supra* note (40 million Napster users); *but see* Mike Graziano & Lee Rainie, *The Music Downloading Deluge: 37 Million American Adults and Youth have Retrieved Music Files on the Internet*, Pew Internet & American Life Project's Online Music Report (Apr. 24, 2001), http://www.pewinternet.org/reports/pdfs/PIP_More_Music_Report.pdf (on file with author).

⁹¹ PRESLEY ET AL *supra* note 5 at 24.

⁹² For a collection of such "war stories," see COLLEGESTORIES.COM, <http://www.collegestories.com> (last visited Apr. 25, 2003).

⁹³ Charneski, *supra* note 50.

Social organization theories, as exemplified by the “Broken Windows” article, articulate the belief that communities are plagued by crime based on the presence and visibility of disorder. Just as the broken windows call out to the potential criminal that a neighborhood will be an easy target and one where the sound of shattering glass will not cause alarm, so too could the visibility of underage drinking, drug use, or file-trading on college campuses call out to the potential criminal, looking to take advantage of lax enforcement. Such a description is attractive when trying to describe the college environment. After all, underage drinking and drug use are barely hidden in colleges. Admittedly, file-trading is not an obvious consequence of other law-breaking, since it must be engaged in indoors.⁹⁴ That said, were the “broken window” of underage drinking to signal plainly enough to students on campus, it might lead to increased file-trading. File-trading certainly appeared after an era of increased underage drinking—after the increase in the age of majority automatically caused some drinkers to break the law—and increased drug use. Still, it is hard to point to the one as the signal that facilitated the other. One might point to the pro-alcohol messages that are seemingly everywhere in college, that newspapers, radio, sponsorships, and the like are the one glaring broken window—a window that says the norms of this particular community allow for and encourage drinking and other substance use.⁹⁵

However, it is hard to point to a community on college campuses that can be cast as a “decent” group victimized by the broken windows that surround it. There may well be students who do not tipple, get high, or download MP3s, but given the prevalence of these crimes on campus, it would seem that the community that is organized yet tolerates the “other” is the population of drinkers, smokers, and downloaders. One might even be able to argue that, by emphasis on Greek life and student events that promote drinking, the social organization works

⁹⁴ This may change with the recent introduction on many campuses of wireless 802.11b networks, which would allow for open air file-trading.

⁹⁵ Eigen, *supra* note 3 at 282-283, 290-291.

in reverse, encouraging the non-drinkers to pick up a glass and suppressing much of the non-drinking dissent that might otherwise be present.

Social organization theory might explain the absence of teetotaling non-downloaders rising up and shamelessly not-drinking in public, but it fails to describe the college experience accurately. There may be situations where underage drinking might encourage other behaviors since there is no enforcement—notably, drug use may well come under this description—but these behaviors do not seem to come from or elicit the sorts of subtle, disorganized cues that would attract greater criminal activity.⁹⁶ Moreover, the close-knit, communitarian nature of college, which if part of the “real world” would signal to criminals that they faced strong opposition, begs for an explanation for why these college crimes are so prevalent.

D. Social Psychology and Social Norms

A great deal of research suggests that the central, defining characteristic of college drinking is its social dynamic. H. Wesley Perkins has made an extensive survey of college-age drinking that is particularly applicable for this Essay.⁹⁷ In a number of studies, collegiate drinking was substantially diminished by print, broadcast and other media campaigns that showed students that they would not be ostracized or even lonely if they chose not to engage in high-risk binging. Studies at Northern Illinois University, Hobart and William Smith Colleges, the University of Arizona, Western Washington University, and Rowan University showed that, by creating an environment where the norm of moderated drinking was shown to be predominant, rates of overdrinking fell off substantially.⁹⁸ The studies indicate, therefore, that drinking as a phenomenon has the social component that was suggested above in the discussion

⁹⁶ It is admitted here that the freewheeling image of college may be what leads college campuses to be focal points for bicycle theft, but that is a causal chain I decline to examine in this Essay.

⁹⁷ See generally THE SOCIAL NORMS APPROACH TO PREVENTING SCHOOL AND COLLEGE AGE SUBSTANCE ABUSE (H. Wesley Perkins, ed., 2003).

⁹⁸ *Id.*

of the perceived benefits of college drinking. The misperception that Perkins and his colleagues discovered leads students to increase their own drinking to “match” those around them. “Much of the problem behavior may come from students following ‘imaginary peers’ as they wish to, or feel pressured to, conform to erroneously perceived group patterns. [P]erceived social norms are significantly correlated with students’ personal drinking behavior.”⁹⁹ They learn from the outreaches in these studies that they do not need to drink to be popular, and that despite appearances, plenty of their schoolmates drink moderately. While this does not address the legality or illegality of underage drinking, the social norms approach suggests that drinking—underage or not—is not purely an individual decision. There is no doubt a component of direct peer pressure, but there is a substantial amount of simple peer following. That is, the influence of peers, while perhaps created by direct conversations, is an indirect pattern. Greek life may prove to be somewhat of the exception to this generalization, in that students who live in fraternity houses drink a lot more than other students, both in terms of quantity and bingeing, possibly because fraternities have traditionally initiated their members through drinking games, stunts and rituals.¹⁰⁰

Independently of special situations like Greek life or sports teams, there is a general consensus among college students that people drink and that they should as well, in order to be part of the group, to be cool, and to be accepted. Such misperception is bound to affect their opinions regarding drug use as well. Students not only tend to misperceive the numbers of others who partake in illicit drugs, but are also more likely to try to match their perceptions of their peers, for precisely the same reasons they drink.¹⁰¹ They see that other people do drugs—often

⁹⁹ Perkins, *supra* note 78 at 8.

¹⁰⁰ Eigen, *supra* note 3 at 278; *see also*, Eigen, *supra* note 3 at 270 (“Many students die as a result of fraternity or sorority hazing. Nine out of every 10 deaths are related to alcohol use”) (citation omitted).

¹⁰¹ Perkins, *supra* note 78 at 7.

the ones who stand out in their minds for having been particularly intoxicated—and ascribe many (often favorable) characteristics to those individuals. They then try to follow suit in order to fit in, to socialize with their friends, and make new ones.

Similarly, file-traders as a group demonstrate a fair amount of the same norm enforcement. Lior Strahilevitz's research on file-trading indicates that even without face-to-face contact and norm enforcement, file-traders upload their files at a rate exceeding normal expectations, and quality control remains fairly high, despite a lack of any sort of policing authority.¹⁰² Strahilevitz's work indicates that despite a lack of direct interaction, file-trading programs rely on "charismatic code" to influence users as to the proper use of the networks and software. Free riding (in the form of downloading only) is discouraged, and users are told that everyone who uses peer-to-peer software uploads to their fellow users.¹⁰³ What this teaches the college student at his or her first use of the Gnutella network is that "just" downloading and participating at a low level is not acceptable. From the outside world, then, the college student is encouraged not to simply dabble in file trading but to go whole hog and distribute to others. Once they have a taste, it becomes difficult to back out. Not only do they infringe copyrights by downloading, but they are also exhorted to facilitate the identical crime by others, the majority of which will be college students like themselves.

Added to this loose knit norm enforcement is the college environment where outside pressures are enhanced by social interaction. Students will compete for the best song collection, the newest, rarest cut by their favorite artists, and to find movies online before they appear in theaters. File trading is not simply considered common; it is nearly *de rigueur*. Students openly file-trade on college campuses, bringing friends to dorms to show them their newest video clips

¹⁰² STRAHILEVITZ, *supra* note 43 at 40-41.

¹⁰³ *Id.* at 39

or arguing over the new single at dinner. In other words, the loose-knit norms that Strahilevitz describes that are enforced by strangers are instigated, and more than likely reinforced, by the college environment with its regular focus—during leisure times at the very least—on popular culture. On the whole, then, social norms approaches explain a great deal of the college experience.

IV. Toward an Integrative Model

Each of the models described above has a fair amount of attraction. Our college crimes are well described by various parts of the traditional criminological theories. There is no doubt that some cost-benefit balancing occurs with students, choosing between staying in and going out and the impact the choice it will have on their social lives and social statuses. They evaluate having the coolest music against the cost it would incur to go out and buy a compact disc, the non-famous tracks of which remain wild cards. They want to impress the guy or girl of interest that day, the cool group that is in vogue that month, or the fraternal entity that contains their sworn siblings. Against all of this is thrust the extremely low cost that rules exist but which are underenforced by the campus police. All of this behavior seems thoroughly and accurately described by the social norms work of Wesley Perkins, Lior Strahilevitz and their colleagues. These two theories stand apart from their established counterparts as the best descriptors of the college environment.

That said, college crime seems to incorporate other models fairly thoroughly—creating, among other things, an individual level decision to comply with the group's psychology and engage in socially-mandated and condoned behaviors in order to satisfy one's own psychic needs. Individual level theories also seem to fill gaps where socializing group dynamics might not. In addition to these similarities, college crime also evidences some relation to other crimes

found among other particularized in-groups. In fact, college students reveal some of the traits common among police officers and their blue wall of silence. They tend to avoid turning each other over to the authorities, further enforcing the perception of the low costs of participating in college crime. It might even be argued that the behaviors described herein are akin to the grass-eating of the New York police officers described in the Knapp Commission's report.¹⁰⁴ College students also reveal some of the characteristics of the white collar criminal, including neutralization—finding reasons that their behavior is not wrong—and not necessarily incorrectly, the perception that they exist as a group of elites within society.

A. Elements of Police Behaviors Among College Students

In a culture that perpetuates fraternities, sororities, and other groups based on similar interests, it is unremarkable that a code of norms develops. Close-knit communities sprout up on a daily basis on college campuses, and many of these echo norms in a separate culture—that of police officers. The first direct comparison that appears is that police officers have a code of socially prescribed behaviors.¹⁰⁵ Naturally, college students—fraternity hazing aside—do not generally engage in the kind of “acceptable” violence police do, but the point is a salient one. Regardless of the kind of activity, college students and police personnel regularly engage in behavior that is not “kosher” to outside observers from the community due to the degree to which it is practiced.¹⁰⁶ Thus, for the police community, there is “a deep-rooted perception among many officers of all ranks...that nothing is really wrong with” changing facts in reports in

¹⁰⁴ COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION IN NEW YORK CITY, *reprinted in* _____ at 263 [hereinafter KNAPP COMMISSION].

¹⁰⁵ Ellwyn R. Stoddard, *Blue Coat Crime*, in _____ (“The guiding of this study is that illegal practices of police personnel are socially prescribed and patterned through the informal ‘code’ rather than being a function of individual aberration or personal inadequacies of the policeman himself”).

¹⁰⁶ One takes the traditional clash of “town” and “gown” in communities that surround college campuses as an example of this sort of conflict, much the same way that the Rampart investigation or Rodney King incident inflamed Los Angelinos.

order to effectuate their job of enforcing the law.¹⁰⁷ Among college students, there is a parallel perception that drinking, doing drugs, trading files and the other activities of the average college student are what one must do to effectuate a normal college experience.

The similarities between police personnel and college students are not isolated to the mutual compulsion to act a certain, expected way. The behaviors that concern academics and others who worry about college-aged drug and alcohol abuse are the very visible and potentially dangerous antics of those who binge outrageously or are visibly and/or vocally intoxicated.¹⁰⁸ They appear to be like the “meat-eaters” New York’s Knapp Commission found. Even with Perkins’ social norms experiments showing that very few (three out of ten) students, colleges and communities understandably worry greatly about those behaviors. What the social norms approaches fail to fully examine is the chicken-and-egg problem of whether the bingeing or the social drinking comes first. The social norms scholars suggest indirectly that the causal chain goes from bingeing to social drinking. By cutting out and targeting bingeing, they say, you also cut out some social drinkers. By motivating students to drink more moderately, the research not only cut out bingeing, but also some of those low-level drinkers at the margins who undoubtedly drank because they understood it to be acceptable.¹⁰⁹

However, the chain need not run in that direction at all. In fact, the directional chain looks quite a bit like the grass-eater/meat-eater distinction found by the Knapp Commission. Whereas the grass-eaters were found to engage in only small amounts of corruption, it was their foundation of corruption that led to the behaviors of the meat-eaters, whose activities were the

¹⁰⁷ COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT 41 (1994) [hereinafter MOLLEN COMMISSION].

¹⁰⁸ See Perkins, *supra* note 78.

¹⁰⁹ Perkins & Craig, *supra* note 32 at 59 (abstention increased by 100%, while the number of days drinking, drinks consumed, and bingeing in the last two weeks decreased).

most flagrant and most corrupt.¹¹⁰ It may be argued that on college campuses, the grass-eaters are the “moderate” underage drinkers, users, and file-traders, and that the meat-eaters are the bingers and individuals after whom the RIAA chases directly. Although social norms experiments depressed the number of bingers, and to some extent, the amount of drinking overall, it is not clear that they had a commensurate effect on underage drinking. This suggests that the grass-eating, baseline drinking may be the foundation of underage drinking; the baseline may be the source of drinking on campus. This most directly suggests that the sorts of measures that the New York Police Department focused on after the Knapp Commission’s report might be successful against college students.

The analogy also points up the fact that college students may report their classmates at reduced rates. Not only will students offend based on their social norms, but those norms will likely also exert downward pressure on those students who might fight the norms. College students are notorious for their pranks, and the students who defect from the norm may well reap the punishment that their peers can dish out. Such punishment and norm enforcement may take the form of simple pranks like moving personal items, but it could very well escalate into less innocent behavior, like taunting, hate messages, shunning and other activities intended to make an informer feel unwelcome.¹¹¹

B. White-Collar or “Elite” Characteristics of College Students

It would be a mistake, however, to characterize college students simply as a close-knit in-group like police officers. They also exhibit some of the qualities of the white-collar criminal, or to use David Simon’s phrase, the “elite deviant.” The theory points out that much of white-collar crime stems from external pressures but remains inherently based in the individual. In fact,

¹¹⁰ KNAPP COMMISSION, *supra* note 104, at 263.

¹¹¹ *See, e.g.*, MOLLEN COMMISSION, *supra* note 107, at 54.

Simon's proposed characteristics for the elite deviant echo strongly the characteristics of the "average" college criminal. College students still tend to be from the upper strata of society, their deviance can be both criminal and non-criminal (legal file-trading and over-twenty-one drinking), they offend in order to gain personally or to add luster to their social institutions, there is low risk of apprehension and/or punishment for these offenses, and although they are not visible, the actual offenses are often concealed.¹¹² Such behaviors fit directly into the model that Simon proposes for the white collar or elite criminal, which is perhaps unsurprising, given his emphasis on the interrelations between elite deviance, street crime, and organized crime.¹¹³

One particular characteristic that Simon and others emphasize is that elites erect rationalizations and ideologies to counteract the guilt that they feel over engaging in morally questionable activities.¹¹⁴ Other authors have described this behavior as one of "neutralization" and it is just as common among college students as it is among unethical accountants.¹¹⁵ Students tend to cloak their crime in rationalizations as well. File-trading is not considered morally wrong.¹¹⁶ The legal age limit is viewed as suspect—why can they carry guns but not have a beer, college students often ask. It is hardly uncommon to run across vociferous students who challenge the entire concept of drug criminalization. Thus the behaviors in which they engage are defused by their personal justifications. Simon's argument is also buttressed by more traditional concepts of neutralization. Donald R. Cressey's work on embezzlers indicates that white-collar criminals are likely to employ neutralization after their crime, but that that crime and rationalization only took place in an environment where the opportunity to offend was

¹¹² See DAVID R. SIMON, 6 ELITE DEVIANCE 12 (1999).

¹¹³ *Id.* At 13.

¹¹⁴ *Id.* at 298; *see also*, Paternoster & Simpson, *supra* note 73, at 577.

¹¹⁵ TONY G. POVEDA, RETHINKING WHITE-COLLAR CRIME 89 (1994).

¹¹⁶ Charneski, *supra* note 50.

present.¹¹⁷ Of course, this is somewhat of a truism; without the opportunity, there could be no crime. What that truism obscures, however, is the increased opportunity and the necessary neutralization that infuses white-collar crime and college campuses alike. Low enforcement like that on campus increases the opportunity to offend, and the fact that much of this behavior—particularly file-trading and drug use, but also underage drinking to a significant extent—is behind closed doors makes the opportunity that much more vivid and present.

Further, there may well be the sense of elite entitlement that infuses white-collar crime in college crime. Although the number of college students in America has grown substantially over the past twenty years, to the point where it is questionable to say that simply being in college makes one an elite individual, there is still a prevailing sense among Americans that going to college confers or signifies elite status. To some extent, increased enrollment and increased tuition fees notwithstanding, there is an element of elite-making in college. Recent college graduates make between 1.6 and 1.7 times as much money as their high-school educated peers.¹¹⁸ In America, since success is regularly defined in terms of wealth, it is not surprising that such “guaranteed” results lead to a sense of pre-fabricated entitlement among college students. Moreover, Steven Box’s integrative theory of white-collar crime indicates that selective recruitment—not unlike college’s recruiting policy—may “favor certain personality characteristics,” which speaks to the college situation.¹¹⁹ These characteristics may mean that college students already share similar predispositions towards committing these sorts of crimes and become more likely to offend on the basis of being given an opportunity that can be rationalized away.

¹¹⁷ POVEDA, *supra* note 115, at 89 (1994).

¹¹⁸ BOGGESS & RYAN, *supra* note 7 at 1.

¹¹⁹ POVEDA, *supra* note 115 at 99.

C. A New Theory of College Crime

These variegated characteristics of college crime suggest that an integrative theory accounting for each of them is necessary. This Essay proposes that college crime is the confluence of several factors. While this confluence likely cannot predict the likelihood of a particular student's offending, it does explain *post facto* how a particular crime takes place.

1. Opportunity

The threshold condition is opportunity. This is, as mentioned above, a prerequisite for all crime, but in college, it is a particularly salient feature. High-speed internet access, the easy availability of drugs, and the pervasive presence of and access to alcohol—at many campus events—are prevalent. In college, the opportunity is not just available if sought; the opportunity to offend is omnipresent. Ethernet jacks are in most dormitory rooms now, so the opportunity to file-trade is tremendous. Similarly, the need to “bless” all social functions with alcohol means that the opportunity to drink under the age of majority is also tremendously plain.¹²⁰ While drugs are used just as regularly as in other environments, there is a good chance that they are more easily obtained on college campuses.¹²¹

2. Motivations

Provided with opportunity, criminals will need motivation. So too with college criminals. As has been seen above, a major motivation for underage alcohol use and drug use is popularity. The strong social norms structure of alcohol and drug use is an extremely strong motivator. File-trading comes with a similar set of norms, as elaborated above; being knowledgeable about music provides needed social interaction and integration tools. Even at a “dry” school, file-trading allows students to get in with the “cool crowd” or talk with other students in whom they

¹²⁰ Eigen, *supra* note 3 at 271.

¹²¹ JOHNSTON ET AL, *supra* note 29 at 180-182.

are romantically interested. Not only is there a strong influence towards these college crimes, but the norms reinforce an individual's decision to engage in these behaviors. Moreover, even where the normal state of affairs might be loose-knit norms, as with file-trading, the ever-connected student is likely to be bombarded by schoolmates bearing offers to drink, to get high, or to test the latest album through face-to-face conversation, cell phone, instant messenger, and email. The college experience is a profoundly social time, and these social activities merely reinforce the drive towards these college crimes.

These motivations may also be exacerbated by a student's personal characteristics. Besides personality traits that might facilitate the decision to offend, one shared reason that many college students pursue free, on-line music is that it is precisely that—free. There is no doubt a financial aspect to college crime. This is not to say that college crime is economically motivated, but the lack of available resources may channel personal goals in a particular direction. Paying for college leaves many students substantially poorer.¹²² A lack of disposable income may lead a student to lash out at supposedly rich rock stars; it may also lead to seeking out inexpensive entertainment. When alcohol is easily found on and around campus, underage students rarely have to pay for it, or at least find it is heavily subsidized. Another motivation may be biologically or at least psychologically induced. Ronald Siegel has written about the enduring pursuit of intoxication.¹²³ There may even be a psychological need for music that inspires cash-poor students to access file-trading networks and take the music that they want. These personal needs further reduce inhibitions against offending.

3. The Low Cost of Offending

¹²² BOGGESS & RYAN, *supra* note 7 at 1.

¹²³ SIEGEL, *supra* note 2.

Added to the strong drive towards making a personal decision to offend is the extremely low cost of being caught. College administrations tend not to view the above activities as crimes. More often than not, substance use prompts not criminal charges but calls for treatment. Thus, even being caught does not cost much to a student. The loss of internet access—as contemplated by Harvard¹²⁴—really does not affect the average student either. It might curtail actual file-trading by the suspended trader, but one can imagine that as far as checking e-mail or visiting websites goes, a “restricted” student will still find plenty of ways to get online. It might even be carried as a badge of honor, since it means the student had a really great collection that was (possibly) undone by the administration.¹²⁵ Again, a cost becomes a potential benefit. Moreover, from a calculation standpoint, there is a low risk of actually being caught—as seen before, even though DWI is a serious crime, it is successfully enforced at only a low level; intoxicated minors-in-possession who are forced to pour out their drink and then go on their way do not really bear any costs either. Traders with small collections are small fish to the RIAA—the percentages are against being caught. Since many carry a small library, the odds of being pursued are very low. When the penalty is low and the odds of getting caught are similarly low, the cost begins to approach zero.

4. Neutralization

Finally, on top of this behavior, the college criminal does not view him or herself that way at all. Even with full knowledge of drug laws, the legal drinking age, and the copyright ramifications of file-trading, they continue to offend at similar rates. As seen above, a large percentage of those who file-trade see nothing morally wrong with what they do. Even if they believe it to be ethically questionable, it is not uncommon for file-traders to argue that they are

¹²⁴ Kaplan, *supra* note 44.

¹²⁵ I say “possibly” because the suspension of trading does not mean the collection has been removed from the suspended trader’s computer. This is particularly so if they have burned or backed up their MP3s to compact disc.

striking a blow in favor of affordable music for all, that the record companies are corrupt and make too much money from consumers who pay inflated prices for compact discs.¹²⁶ Drinkers of all ages can be heard questioning a society that allows people to carry arms for their country but not have a drink. Marijuana activists on and off campus will insist that its criminalization makes no sense in the context of the legality of nicotine and alcohol and that it is not addictive.¹²⁷ In the end, most are convinced by local norms that, regardless of the technical criminality of a behavior, it is not actually wrong. College is the time to be reckless, after all, and that includes a disregard for the law.

V. Conclusion

In sum, this Essay argues that college crime contains components of a number of different criminological theories. There is a close-knit, no-report norm that mimics the “blue wall of silence.” This is affirmed by the sense of privilege and a pattern of behavior that draws on the language of the white-collar criminal. In the end, though, it is the social norms that pervade the college campus that have the most influence on the students’ decision to offend. Though there is bound to be a chicken/egg question of whether the norms grow out of the rational calculus or vice-versa, college sustains a spiraling reinforcement of norms, costs, and benefits. The norm enhances the benefits and is reinforced by the reduced costs, so in the end, the individual is left with a virtual “no-brainer” decision. Increased opportunity and low punishment costs, further reduced by neutralization, lead the student who is confronted with a series of norms that encourage particular motivations and particular crimes to offend.

¹²⁶ See, e.g., *The Cost of a CD*, RIAA.org at <http://www.riaa.org/MD-US-7.cfm> (last visited Apr. 25, 2003) (on file with author).

¹²⁷ See, e.g., *NORML Home / Frequently Asked Questions*, NORML.ORG at http://www.norml.org/index.cfm?Group_ID=3418#question8 (last visited Apr. 25, 2003) (on file with author).

I hesitate to recommend any punishment or prevention strategies here. Disrupting college's social norms could adversely affect the collegial, community atmosphere that most colleges try to perpetuate for education's sake. Likewise, targeting neutralization may not solve problems, since the benefits continue to be so high without many costs, suggesting to students that the behavior is not really a crime. It is possible that such an effect might reach the marginal offenders, but the increased personal cost to offenders will vary by individual, rather than having a group effect. Increasing enforcement may have some effects, again at the margins, but it has been argued that increased deterrence does not necessarily lead to lower rates of offending.¹²⁸ Attempted deterrence may even have less effectiveness on college students if they have the elite-deviant belief that they are elites, as argued above.¹²⁹ An argument might be made, based on the limited list of motivations listed above, that striking at those motivations could reduce college crime, and this is certainly a possibility, particularly if the grass-eating, moderate drinkers are cut out, removing the foundation of offending. However, as hinted at above, motivations may be an intensely individual characteristic, and as a result, what works for one student may not work for another.

In the end, then, this Essay has aimed to explain how crime occurs on college campuses and to illuminate some of the causes and characteristics of college crime. There are characteristics of college that influence these sorts of crimes, most notably the attitudes towards, around, and within college campuses about the sort of behavior that is acceptable. Although, in the end, offending is up to the individual, the college experience provides a hearty apparatus that drives a decision towards making that decision in the affirmative.

¹²⁸ See Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, 23 CRIME & JUST. 1, 36 (1998) (“[W]hile I am confident in asserting that our legal enforcement apparatus exerts a substantial deterrent effect, four major knowledge gaps limit our capacity to make confident predictions about what works in specific circumstances.”).

¹²⁹ Paternoster & Simpson, *supra* note 73.