

# CRIMINOLOGY

**Fourth Edition**

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# Chapter I

## The Problem of Crime

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### 1.1 Images of Crime

- Crime as a Social Problem
- Crime and the Culture of Fear
- Crime in the Mass Media

### 1.2 Crime, Criminal Law, and Criminalization

- Crime as a Legal Category
- Law and State
- Law and Criminalization

### 1.3 Crime as a Sociological Problem

- Crime as a Violation of Conduct Norms
- Crime as Social Harm and Analogous Social Injury
- Crime as a Violation of Rights
- Crime and Deviance
- Crime, Globalization, and Global Conduct Norms

## Preview

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Chapter I introduces:

- The distorted images of crime projected by the mass media.
- How crime as a sociological problem differs from crime as a social problem.
- Three of the key concepts of criminology: “crime,” “criminal law,” and “criminalization.”
- Various sociological definitions of crime, including crime as a violation of conduct norms, crime as social harm, crime as a violation of human rights, crime as a form of deviance, and crime as a violation of global conduct norms.

## Key Terms

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analogous social injury  
conduct norms  
crime  
criminalization  
criminal justice system  
criminal law  
deviance  
fear of crime

globalization  
global conduct norms  
human rights  
social control  
social harm  
social problem  
sociological problem  
the state

### 1.1 Images of Crime

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Our focus in this book is crime. What is crime? How much crime is there? How can we explain it? Even before reading this book, you probably have strong opinions about the causes of crime, its harmful effects, and how best to tackle it.

Let's start our journey into the study of crime with a brief discussion of how and why crime is viewed as a social problem.

#### Crime as a Social Problem

Some of us have been directly affected by crime. Many others, because we are fearful of it, have been indirectly victimized by crime. Each of us already has a great store of knowledge about crime. We know, for example, that some areas of cities are not safe to walk in at night. We therefore avoid them. We go elsewhere, or we stay at home. We know that it is dangerous to leave infants unattended, front doors unbolted, cars unlocked, and bicycles unchained. We routinely process such knowledge, and we take defensive action accordingly. We know, or at least we think we know, what sorts of people are likely to commit crime. Each of us has an image of the typical criminal—perhaps a sick, degenerate, violent person who preys on the innocent and the vulnerable.

Crime exacts a high price on federal, state, and household budgets. According to the economist David Anderson (1999), the annual cost of crime in the United States is an astounding \$1.7 trillion. This estimate includes crime-induced production, the opportunity costs of crime, the value of risks to life and health, and economic transfers (see Box 1.1). To put this figure in perspective, it is more than four times higher than the 2003 annual budget of the U.S. Defense Department. It represents a cost of \$4,118 per person per year.

Partly because of its huge expense, and partly because of the fear that it produces, crime is regarded by the public as one of the leading social problems today. But what is a social problem? How is some social condition constructed as a social problem, by whom, and for what reasons? How and why is crime widely seen as a **social problem**?

We must stress that there is no objective set of social conditions whose harmful effects necessarily make them social problems. Something is a social problem only if it is perceived as such. What is regarded as a social problem thus varies over time. Child

abuse, for example, has been seen as a full-blown problem only since the early 1960s (see Chapter 5.2). In some places and times marijuana use, prostitution, and gambling have been seen as social problems, even ones worthy of criminalization, yet in others the same social practices have been seen as private vices best regulated by individual morality rather than criminal law.

The perception of something as a social problem also varies from person to person and from one social group to another. For example, some people regard social inequality as a social problem; others see it as a virtue that encourages competition and economic responsibility. Some people regard the use of animals in laboratory experiments as a necessary step in the elimination of human diseases; others see it as unjustified abuse of our fellow creatures. And so on. Some social problems quickly capture public attention and remain as objects of national concern for a long time.

Several factors determine how a social problem is constructed and whether it is defined as a social problem in a particular society (Best, 2001). These factors include (1) the arguments, rhetoric, and power of claims makers and moral entrepreneurs, who may be as diverse as the U.S. Department of Justice, the pope, Pearl Jam, and the Reverend Jerry Falwell; (2) the pressure tactics of powerful private interest groups, such as the American Medical Association, the National Rifle Association, and Mothers Against Drunk Driving; and (3) the professional utterances of public officials such as politicians, judges, police and correctional officers, and, on occasion, those engaged in teaching, writing, and research in the social sciences, including criminology.

At least two additional factors are decisive in determining the meaning and seriousness of any given social problem. The first is the mass media. Successful claims makers are those who are able to use the mass media to broadcast their message that a certain

### Box 1.1 The Costs of Crime

- |   |                        |
|---|------------------------|
| 1. <b>Crime-induced production.</b> The cost of goods and services that will not have to be produced in the absence of crime. It includes drug trafficking, police protection, corrections, judicial and legal services, DUI costs, etc.  | \$397 billion          |
| 2. <b>Opportunity cost.</b> The income that, in the absence of crime, criminals would be able to earn if employed in legitimate jobs. It also includes victims' lost workdays.  | \$130 billion          |
| 3. <b>The value of risks to life and health.</b> Refers to the value of lost life and the value of personal injuries.   | \$574 billion          |
| 4. <b>Transfers.</b> Criminals' costs, estimated as the value of the assets they receive through crime. Transfers include occupational fraud, unpaid taxes, health insurance fraud, business fraud, motor vehicle theft, shoplifting, household burglaries and larcenies, personal thefts, and robbery. | \$603 billion          |
| <b>Total annual gross cost of crime</b>   | <b>\$1,705 billion</b> |

Source: Adapted from Anderson, 1999:611–642.

problem needs attention and amelioration. We will have much more to say about the images of crime in the mass media in the next few pages. The second factor is fear. Many of us fear crime. In our conversations with family and friends, on TV, and in our worst nightmares, our images of crime as a serious social problem are constantly fueled by our **fear of crime**. Given that our fear of it is seldom based on careful reflection, crime is a difficult phenomenon to explain. Let us therefore delve into the origins of the culture of fear that surrounds crime.

### **Crime and the Culture of Fear**

Nearly four decades ago, the National Commission on the Causes and Prevention of Violence made the following bleak predictions about the quality of life in large cities in the near future (1970:38–39):

High-rise apartment buildings and residential compounds protected by private guards and security devices will be fortified cells for upper-middle and high-income populations living at prime locations in the city.

Suburban neighborhoods, geographically far removed from the central city, will be protected mainly by economic homogeneity and by distance from population groups with the highest propensities to commit crimes.

Lacking a sharp change in federal and state policies, ownership of guns will be almost universal in the suburbs, homes will be fortified by an array of devices from window grills to electronic surveillance equipment, armed citizen volunteers in cars will supplement inadequate police patrols in neighborhoods closer to the central city, and extreme left-wing and right-wing groups will have tremendous armories of weapons that could be brought into play without any provocation.

High-speed, patrolled expressways will be sanitized corridors connecting safe areas, and private automobiles, taxicabs, and commercial vehicles will be equipped routinely with unbreakable glass, light armor, and other security features. Inside garages or valet parking will be available at safe buildings in or near the central city. Armed guards will ride shotgun on all forms of public transportation.

Streets and residential neighborhoods in the central city will be unsafe in differing degrees, and the ghetto slum neighborhoods will be places of terror with widespread crime, perhaps entirely out of police control during nighttime hours. Armed guards will protect all public facilities such as schools, libraries, and playgrounds in these areas.

Between the unsafe, deteriorating central city on the one hand and the network of safe, prosperous areas and sanitized corridors on the other, there will be, not unnaturally, intensifying hatred and deepening division. Violence will increase further, and the defensive response of the affluent will become still more elaborate.

Because of our great fear of crime, the Commission warned, we are in danger of closeting ourselves in anticrime fortresses. To a certain extent the Commission's terrifying images of life in large cities have not been contradicted, at least not in the minds of a fearful public. Both before and after September 11, 2001, the United States seems to have become a society whose increasing fears about crime, including its cost, reach into almost every corner of public and private life. Candidates for political office routinely

campaign on the promise of restoring law and order to the nation's streets and of waging war against terrorism worldwide. Woe betide the politician who is perceived as "soft" on crime! Get-tough-on-crime rhetoric on the campaign trail and in Congress has led to a mass of new federal and state anticrime legislation, prominent examples of which include "three strikes" laws and minimum-sentence legislation. Nowadays, too, the government fights "wars" on crime—the war on drugs, for example, and wars on gangs, pornography, and terrorism. The prison population therefore expands year after year. In 2004, there were more than 2 million prisoners in the United States—more prisoners and at a higher rate than ever before in this country, and more than anywhere else on earth.

Despite the punitiveness of criminal justice in the United States or, as we will see later (Chapter 15.4), perhaps in part because of it, there is a widespread feeling that crime and violence are rapidly spinning out of control and that they are mostly unaffected by new anticrime legislation. Community crime watch programs, police-citizen action committees, and groups like the Guardian Angels have prospered across the country. Private video surveillance systems (CCTV), which were created in the 1970s to assist in road traffic management, have been rapidly extended to the workplace, city streets, stores, and sports stadiums. Whether these systems deter crime or, instead, increase fear of crime, is a matter of some debate (e.g., Ditton, 2000). The new "homeland security" legislation enacted after September 11, such as the U.S.A. Patriot Act and the Port and Maritime Security Act, have extended government surveillance to public transport and the approaches to many public buildings, including government offices and courts, airports, bus and train stations, ports and ferry terminals. Whether these policies will make the citizenry feel more secure, or simply more anxious, has not yet been determined (e.g., Simon, 2002).

According to opinion polls and victimization surveys, after September 11 members of the public transferred their highest level of fear from the violence of street crime to

the violence of terrorism (e.g., Gallup, 2004). Thereafter, these two fears have been closely followed by concerns about unemployment, war, and health care. The list of crimes and criminals that the public fears is a lengthy one indeed. To this list must be added another—namely, our deep-seated, daily anxieties about environmental risks and hazards, about the dangers posed by technology's destructive effects on planet Earth, on humans, and on animals (Hollway and Jefferson, 1997; Hier, 2003).



*Caution! Big Brother may be watching you. Protection of civil rights versus the need for national security is an intense debate in the post-September 11 world.*

Public fear of violent criminal acts is quite wide ranging and conjures up numerous images. Among these are terrorism, gang violence, carjackings, random muggings, road rage, “going postal,” razor blades in Halloween cookies, drive-by shootings, child kidnappings, police brutality, plane crashes, and mutant microbes (Glassner, 1999). These acts are committed by killer kids, black males, Internet predators, pedophile priests, child pornographers, gun-toting madmen, crazed druggies, and serial murderers. Moreover, opinion polls today regularly show that about half of the public believes that crime rates continue to rise in the United States. (Ironically, as we will see in this book, they have been falling for more than a decade.)

What is the source of fear of crime? This is a complicated question, not the least because research has not devoted enough attention to exactly what “fear” of crime is and how often and how intensely it is felt (Lee, 2001; Farrall and Gadd, 2004). Fear of crime has numerous sources. Although criminologists may debate whether fear of crime accurately reflects the likelihood of victimization, it must be said that fear of crime stems partly from “American exceptionalism.” This exceptionalism is the simple fact that crimes of violence, especially homicide, occur at a much higher rate in the United States than they do in other technologically developed societies (see Chapter 2.3 and Chapter 15).

Besides its problematic relationship with crime itself, including the cost of crime, fear of crime also derives from several other factors, both sociological and psychological. Research consistently shows that the relatively powerless sections of the community experience the greatest fear of crime and suffer the greatest psychological trauma from its effects (e.g., Stanko, 2000; and see Chapter 5.2). These relatively powerless groups are those with the least economic, political, and cultural assets. They include the elderly, females, and racial minorities. The elderly and youth are generally more fearful of crime than the middle-aged. Minorities are generally more fearful of crime than whites. Both males and females are most fearful of physical violence (Lane and Meeker, 2003b).

Fear of crime is therefore associated with one’s position in society—with one’s gender, for example, and with one’s age, race, social class, and education. It also derives from people’s lived experiences gained from where they reside and where they work, from their conversations with their family and their friends, and from the mass media.

Above all, it is through the self-interested and often distorted lenses of the mass media that most of us, most of the time, acquire our dominant images of crime. Mass media include TV and newspapers, in particular, but also the Internet, radio, advertising, movies, and videos. The mass media provide us with a certain knowledge of crime and, simultaneously, they generate fear of crime.

Media researchers have tended to assume that media images of crime are rather flat in their effects, affecting most people in the same way and with the same degree of intensity. This assumption is in the process of being undermined by new research on the relationship between audience characteristics and the content of the media’s images of crime. Clearly, different social groups are affected differently by the everyday images of crime that they view in the mass media. Individuals differ in the specific crimes they fear. Three studies that have examined the link between audience characteristics and fear of crime are:

- Eschholz's (2002) study of TV content and TV audiences in a Southern state found that, overall, individuals who watched more TV were more fearful of crime. But when the audience was analyzed by race, this relationship was found to apply mostly to minorities, including African Americans, Hispanics, and Asians. Whites' levels of fear of crime rose, moreover, in proportion to the presence of minority offenders depicted on TV.
- Eschholz, Chiricos, and Gertz's (2003) research on TV viewers in Leon County, Florida, found that the strongest relationships between local news programs and tabloid TV programs, on the one hand, and fear of crime on the other, is found among those who perceive themselves to be living in a neighborhood with 25 percent or more black residents in it.
- In a study of residents in Orange County, California, Lane and Meeker (2003a) have found that whites, who rely more on newspapers for their crime news, have less fear of crime than Latinos, who rely more on TV for their crime news. They suggest that people probably fear crime more if the news story is about crime in their neighborhood, because their perceived risk of crime increases.

There is a triangular relationship among fear of crime, crime itself, and the images of crime constructed by the media. One of criminology's most important tasks is to examine the relationships in this triangle. If we experience heightened fear of crime, the quality of our lives is significantly reduced. If much of our fear of crime comes from the mass media's images of crime, we need to explore those images and try to determine whether they reflect or distort the nature and seriousness of crime in our lives. In short, fear of crime may be as costly as crime itself. Understanding the dimensions of a problem is of course a key first step in trying to solve it in an informed way.

## Crime in the Mass Media

Let us now provide a little more focus on the stereotypical images of crime routinely conveyed by the mass media. How much crime is portrayed in the media? How accurately do media portrayals of crime reflect the incidence of crime in real life?

We should not be too surprised to learn that the mass media's images of crime are almost never objective. After all, the mass media depend for their financial existence on reporting—or creating—the apparently unusual. When social life is routine and orderly, there is little news. Media executives know full well that nothing sells to advertisers quite so well as violence. To maximize their audience, the media feature unusual events rather than representative events. They emphasize the sensational rather than the mundane. The media's portrayal of violence feeds directly into viewers' fear of crime.

Reflect for a moment on how much crime is represented in the mass media, especially in print media and on TV. Though in the next chapter we directly examine how much crime there is in the United States, we should stress right away that neither the amount of crime nor the distribution of different types of crime depicted in newspapers and on TV bears much resemblance to what is reported in official crime data such as the FBI's Uniform Crime Reports (see Chapter 2.1). Yet it is chiefly from these two media that we acquire knowledge of what is newsworthy.

First, the mass media create the false image of a society with an enormous amount of violent crime, especially of murder, but also of assault and armed robbery. Indeed, from the 1940s to the present, the percentage of total TV program time devoted to crime-related shows has persistently increased; however, according to official crime data, the violent crime rate fell sharply in the 1980s and 1990s (see Chapter 2.1). Crime and justice topics occupy as much as 25 percent of all newspaper news space (Surette, 1998). Although in real life murders are only a tiny fraction of all serious crimes, the media researcher Doris Graber (1980; Heath and Gilbert, 1996) has found that it consumes 26.2 percent of all crime news reported in the *Chicago Tribune*. Moreover, whereas nonviolent crimes such as theft compose 47 percent of all crimes reported to the police, such crimes constitute only 4 percent of all crime items in newspapers (Graber, 1980; and see Chapter 2.1).

When media researchers have examined bias in what the media considers newsworthy, most of their attention has been directed to TV. It is well documented that a high percentage of stories in the evening and late-night local news programs concerns crime, as do their lead stories. Moreover, crime and justice topics occupy 10–13 percent of all national TV news and 20 percent of local TV news (Surette, 1998).

It has also been documented that 33 percent of total TV program time in the United States is devoted to crime or law-enforcement shows, with a concentration at prime time (Graber, 1980; Reiner, 2002). Among the numerous popular prime-time crime TV shows are *The Shield*, *CSI*, *Cold Case*, *Third Watch*, *The Sopranos*, *NYPD Blue*, *Law & Order*, and *Without a Trace*. Many topical TV shows also regularly concern crime, as do such documentary shows as *Unsolved Mysteries*, *48 Hours*, *60 Minutes*, and *Dateline*. New “reality-based” shows—some featuring talk-show interaction among police officers or even audience participation—include *Cops*, *World’s Scariest Police Videos*, and *America’s Most Wanted*.

Nearly all such prime-time crime shows have violent crime as their chief subject matter. According to a violence index used by researcher George Gerbner from 1967 to 1987, approximately 80 percent of all TV programs contain violence (Liebert and Sprafkin, 1988). In addition, at least 90 percent of children’s cartoon shows contain violence. Although Gerbner’s definition of violence may seem overly broad (it includes violence in humorous situations, for example), the fact remains that violence, however defined, is the staple of the crime-related TV diet. It has even been calculated that by the time they are 18 years old, children will have seen 200,000 acts of violence on TV, including 40,000 murders (Huston, Fairchild, and Donnerstein, 1992). In the news, as well, there is a strong bias toward coverage of murder, sexual crimes, and other forms of violence, often coupled with drug abuse (Surette, 1998; Welch, Fenwick, and Roberts, 1998).

Second, some types of violence are more likely to be reported in the mass media than others, often depending on the identity of offenders or victims. For example, in Chicago’s two daily newspapers the homicides most likely to be reported are those occurring in middle-class neighborhoods; the least likely to be reported are those with African-American victims (Johnstone, Hawkins, and Michener, 1994; and see Beckett and Sasson, 2004). Another study examined the newspaper coverage of homicide between 1986 and 1994 in Houston, Texas, and found that black and Hispanic victims were the least likely to be mentioned (Paulsen, 2003). Similarly, of the homicides that were re-

ported in national newspapers in England and Wales from 1993 to 1996, newspapers were quite selective about which murders they choose to cover (Peelo, Francis, Soothill, Pearson, and Ackerley, 2004). Those most likely to be reported were sexual homicides, homicides involving a clear motive for monetary gain or revenge, motiveless homicides, and those involving young children, though not infanticides. The homicides least likely to be reported were those involving marginalized groups, such as those of persons of color.

Besides bias in the actual content of media coverage of newsworthy events, bias is also seen in important news events that are not reported by the media. In general, white-collar crimes are the crimes least likely to be reported on TV (Ericson, Baranek, and Chan, 1991; Chermak, 1994). In a study of 878 chemical spills reported to the Environmental Protection Agency in Hillsborough County, Florida, between 1987 and 1997, Lynch, Stretesky, and Hammond (2000) found that only 9 (or 1.5 percent) were newsworthy enough to gain coverage in the county's largest newspaper, the *Tampa Tribune*. It was also found that this low frequency reflected the public's own low concern with environmental and corporate crimes such as environmental pollution and the dumping of hazardous waste (which can, of course, be every bit as deadly as street crime).

Sometimes, when the media accurately depict the volume of violent crime, they distort its seriousness. For example, one study has found that 84 percent of prime-time TV shows contain at least one episode of sexual harassment, which perhaps accurately reflects the commonplace nature of this violent crime (Grauerholz and King, 1997). But the depiction of sexual harassment in the media tends to reflect several myths, including the view that it is not a serious offense and that its victims can often remedy the situation themselves (pp. 142–143). Another study shows that *Time* and *Newsweek* cover stories misrepresent the problem of crime as primarily a problem of urban African Americans (Barlow, 1998).

Occasionally, the mass media will channel viewer attention toward particular sorts of immoral or criminal behavior. These episodic processes are known by criminologists as “moral panics” (Cohen, 1972 [1980]; Chapter 13.2). Well-documented examples of moral panics that are fueled and fanned by the media include the white slavers of the Progressive Era (c. 1890–1910), sex fiends in the 1940s, communists in the 1950s, serial murderers during the 1980s, youth crime and juvenile gangs in the 1990s, pedophile priests and illegal immigrants in the new millennium, and the ever-present druggie. It is unclear why moral panics arise when and as they do. But it is nevertheless true that every so often a society becomes engrossed in a process of public frenzy directed to certain forms of crime and deviance.

The media's distorted images of crime do not, of course, teach us much about the true nature of crime. To learn about this we must obtain a clearer idea of what crime actually is. In other words, we need a working definition of “crime.”

## 1.2 Crime, Criminal Law, and Criminalization

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The question “What is crime?” is a surprisingly difficult one to answer. Consider, for example, the events discussed in the book *Captain Kidd and the War Against the Pirates* (Ritchie, 1986).

During the early 1690s the soon-to-be-infamous Captain William Kidd was an obscure naval pirate who was based in New York and who operated in the Caribbean. In 1695 he obtained a commission as a privateer, which allowed him to engage essentially in the same piratical activities, but this time with the economic support and moral blessings of the king and of some of the most powerful families in England. Kidd's commission directed him to sail to the Indian Ocean and to end the practices of pirates from the North American colonies who were plundering British East India Company ships. For attacking and capturing one or more pirate ships and bringing some pirates to trial, Kidd, as well as the king and all the backers of the scheme, would earn a handsome profit.

But for doing roughly what he had been commissioned to do, Kidd did not earn the fame and fortune to which he believed he was legally entitled. In 1701, in London, Kidd was tried on charges of murder and multiple conspiracies, convicted after a farcical trial, sentenced to death by hanging, and—after a false start when the hangman's rope broke and the unfortunate Kidd lay stunned on the ground—he was duly executed. During his trial and execution—a dramatic time when convicts were expected to repent their sins, beg the indulgence of the Lord, and warn the many onlookers not to tread in their sinful footsteps—Kidd protested his innocence.

Kidd had been caught in the complicated and rapidly changing web of maritime trade and British imperialism of the late seventeenth century. Although there was little evidence that he had engaged in (illegal) piracy rather than (legal) privateering—and therefore British authorities had no proper reason to prosecute him—Kidd's activities in the Red Sea against the French and against the Dutch East India Company ensnared him in a larger movement that would find him a convenient symbol for a much broader problem, even though Kidd was never very successful either as a pirate or as a privateer.

Kidd was squeezed by the coincidence of two forces. On the one hand were thriving British companies such as the East India Company that needed order and regularity on the high seas for the profitable expansion of their commerce. On the other hand were the administrative and military apparatuses of the British state that, after tremendous expansion as a result of various European wars, could not tolerate maverick and unpredictable challenges to their power. Privateering, or legalized piracy, was therefore doomed. Kidd's activities as a privateer commissioned by royalty and by the rich were suddenly renamed piracy.

This story is a good example of how difficult it is to pinpoint the precise nature of crime. Clearly, Kidd's actions were defined as piracy rather than national heroics largely because of the changing fortunes of British imperialism. It is also clear that nothing in the nature of Kidd's actions was inherently criminal.

What, then, is crime? As a historical phenomenon, the concept of crime is of fairly recent origin. Prior to the eighteenth century, both in western Europe and in colonial North America, most offenses—when not handled privately—were typically the domain of either canon law (religious law) or civil law (especially the law of torts). Criminal law did not yet exist. Moreover, what constitutes crime varies from one culture to another. Thus, anthropologists have been unable to find any behavior that is universally defined as crime (see Chapter 15.3). For example, although all known societies have a concept of murder, societies differ in how they define the act of murder. Given such variation, it is nearly impossible for criminologists to agree either on a precise definition of crime or

even on the definition of an act as seemingly simple to define as murder. Many sociologists and historians suggest that there is nothing in the nature of any behavior that makes it inherently criminal, because even what counts as crime changes over time within the same culture (see Chapter 7.3).

How, then, should crime be defined? Serious debate among criminologists about the proper definition of crime can be traced to the publication of a report initiated in 1933 by New York's oddly named Bureau of Social Hygiene (Michael and Adler, 1971). Written by lawyer Jerome Michael and philosopher Mortimer Adler, this report stressed that great confusion will arise unless criminologists can agree on a precise definition of crime. Only if crime is defined clearly and precisely can we distinguish criminal behavior from noncriminal behavior:

The most precise and least ambiguous definition of crime is that which defines it as behavior which is prohibited by the criminal code. It follows that a criminal is a person who has behaved in some way prohibited by the criminal law. (pp. 2–3)

Agreeing with Michael and Adler's argument, Paul Tappan claimed that **crime** is an intentional act in violation of the criminal law (statutory and case law), committed without defense or excuse, and penalized by the state as a felony or misdemeanor (Tappan, 1947:100). In this view, therefore, crime is a legalistic category of behavior. Let us examine some of the major aspects of the legalistic definition of crime.

### Crime as a Legal Category

The preceding legalistic definition of crime contains several elements whose formal origins can be traced to the English common law (customary law) of the twelfth century. First and foremost, a crime must be forbidden by criminal law. So, too, criminal law must provide punishment for a crime—a basic principle expressed in the English common law doctrine *nullum crimen sine lege, nulla poena sine lege* (no crime without law, no punishment without law). The formal purpose of **criminal law** is to protect members of the public from the wrongdoing of others. Rules of criminal law can be found either in statutory law (enacted by legislatures) or in common law (judge-made decisions and opinions based on the principle known as *stare decisis*). Criminal law is distinguished from civil law—such as tort law and contract law—which deals with private wrongs. Whereas a violation of civil law leaves a defendant open to civil suit, a violation of criminal law potentially places a defendant at the point of entry into the **criminal justice system**.

The criminal law categorizes crime in two ways. First, crimes are either *mala in se* or *mala prohibita*. This old and somewhat artificial distinction refers to the apparent differences between “acts that are evil in themselves” (*mala in se*) and “acts that are merely prohibited” (*mala prohibita*). Lawyers take this distinction to mean that crimes *mala in se* are acts so inherently wrong that they are universally considered evil, whereas crimes *mala prohibita*, the list of which changes over time, are acts prohibited by statute. Second, the criminal law distinguishes between felonies and misdemeanors. Although these two categories of crime are often separated by procedural differences, the most important difference is that felonies are punishable either by death or by

imprisonment in a state penitentiary for a term of not less than one year, whereas misdemeanors are punishable either by fine or by a term in a local jail of less than one year.

A second element of a crime is that it must be a voluntary illegal act or omission (an *actus reus*, some examples of which are given in Chapter 2 [Figure 2.1]). This means that no one can be prosecuted for bad or evil thoughts—although words (such as incitement to riot) can sometimes constitute a criminal act—and that failure to act (omission) can be criminal in situations where there is a legal duty to act. Leaving the scene of a traffic accident and failing to file an annual tax return with the Internal Revenue Service are examples of crimes by omission.

Culpability for a crime depends on a defendant's mental state, variously known as criminal intent or *mens rea*. According to the American Law Institute's Model Penal Code (§2.02), someone is not guilty of an offense unless he or she acted with purpose to do the forbidden act, or with knowledge of the nature of the act, or with recklessness or negligence. In some cases intent can be transferred, as, for example, when A intends to shoot B but misses and kills C.

To legal scholars, the precise meaning of the term "intent" is often quite elusive. For example, certain categories of individuals are judged legally incapable of forming intent: juveniles under the age of 14 and those certified as insane or severely retarded. Moreover, in cases of strict liability, intent is not a necessary requirement of guilt. Examples of strict liability offenses include felony murder (a murder committed during a serious felony such as rape or arson) and statutory rape (sexual intercourse with a juvenile, which usually means under age 16).

An act or omission is not a crime if a defendant has a socially legitimate justification for doing it or if the person lacks the criminal responsibility required by the element of *mens rea*. The defense of justification can be raised in three instances: duress, necessity, and duty. The defense of *duress* is typically limited to homicides. Thus, a killing may be justified if an individual reasonably believes that he or she is about to be killed or seriously harmed by another. The defense of *necessity* is available to defendants who are somehow threatened by natural circumstances over which they have no control, but this defense can be used only when there was no other reasonable course of action available. For example, one would not be guilty of vandalism if, trapped inside a burning department store, one smashed a window in order to escape. The defense of *duty* is typically raised by public authorities such as police officers. Many killings by police officers in the line of duty are therefore termed "justifiable homicides."

Finally, an act or omission may not be a crime if one lacks the necessary criminal responsibility, a condition that negates *mens rea* in several ways and that includes the controversial pleas of entrapment and insanity. The defense of *entrapment* is intended to discourage the state from creating a crime where none would otherwise have existed. According to the Model Penal Code (§2.13), entrapment occurs when police methods entice an average law-abiding citizen to commit a crime. The defense of *insanity* differs from all other defenses in that, if the plea is successful, in most jurisdictions the defendant is neither acquitted nor released but found "not guilty by reason of insanity." In some states defendants may be found "guilty but mentally ill," in which case they are confined to mental institutions until "cured," at which point they must finish their sentences in prison. This verdict almost always results in the commitment of defendants to mental institutions, often for a longer period than if they had been found guilty of the

crime and sentenced to prison. In the United States the majority of states base the legal criteria of insanity on the definition contained in the Model Penal Code (§4.01):

1. A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to appreciate the criminality (wrongfulness) of his conduct, or to conform his conduct to the requirements of law.
2. The terms “mental disease” or “defect” do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

A key element of the legalistic definition of crime—*mens rea*—is based on the assumption that crime is behavior engaged in by individuals who are capable of exercising free will. As you progress through Part Two (Types of Crime) and Part Three (Criminological Theory) of this book, you will learn that such an assumption cannot be used to explain crime. Rather, we will suggest that the actions of individuals are, in varying degrees, influenced by their position in society.

At this point we would do well to ask, Why it is that for most nonsociological purposes crime is usually defined as behavior that violates criminal law? To put this question another way: Why is it that criminal law usually defines criminal behavior? As soon as we ask (dangerously circular) questions such as these, we should realize that criminology cannot be confined to the study of criminal behavior because the concept of criminal behavior depends for its meaning on the concept of criminal law.

A few introductory words about the role of criminal law in the process of criminalization are now appropriate.

## Law and State

Sociologically, the ideas and institutions of law vary greatly from one culture to another. Negatively, this means that law is not necessarily what some lawmakers or zealots claim it to be. Law is not an earthly expression of the will of God. It may not represent the interests of “the people.” It has no necessary connection with justice. Law is above all else a social phenomenon created by members of society under specific historical conditions. Law has not always existed in the past. It might not exist in the future.

The great bulk of research in sociology and anthropology reveals that law originated with the emergence of social inequality and, specifically, that it accompanies the transition from stateless societies to state societies. Law has not always existed, because not all human societies have been characterized by social inequality. Indeed, until approximately 10,000 years ago, hunting and gathering societies were the dominant form of social organization, and these societies had egalitarian social, economic, and political relations. In these small-scale societies (about 50 members), property was communally owned, there were no social classes, and there was no organized state or societal ruler. Even in horticultural societies, which emerged after hunting and gathering societies, social relations were highly egalitarian, significant differences in wealth and power did not occur, and leaders typically had no coercive powers over others. Neither in hunting and gathering societies nor in horticultural societies did states exist, and a common morality was maintained by the authority of custom rather than by the rule of law (Diamond, 1973). Within these stateless societies, offenses and conflicts were managed

informally in a variety of nonlegal ways such as self-help, avoidance, negotiation, settlement by a third party, and tolerance (Black, 1989; and see Durkheim's analysis in Chapter 10.2).

Not until the development of agricultural societies—in which economic productivity was expanded by new techniques such as the plow, fertilization, and irrigation—did class inequalities become prevalent. Increased productivity permitted new lifestyles that were not devoted solely to economic survival and subsistence. In some agricultural societies—such as in classical Greece—class relations developed in which slaves did most of the productive labor and slave owners dominated and appropriated the economic surplus. In other agricultural societies—such as those of medieval Europe—peasants made up most of the population, but the monarch, the nobles, and the church owned most of the land, which they obtained through military might and conquest. In both slave and feudal agricultural societies, a particular class controlled and appropriated the economic surplus, creating significant social inequalities.

An important feature of agricultural societies was the rise of states and legal systems. The **state** may be defined as the central political institution of a given society. Its major apparatuses are the government (legislative and executive), the legal system, the military, and a variety of public bureaucracies for the collection of taxes, the management of public health, the maintenance of law and order, and so on. The legal system is both a state apparatus and, through its constitutional and administrative branches, the chief mechanism for defining the sphere of state activities.

Rules of law have a variety of sources, such as superstition, divine oracles, religion, prophecy, charismatic leadership, court cases, and legislatures. Law differs from other rules of behavior—habit, convention, tradition, and custom—by its coercive nature and by the professional enforcement of its codes. Law's coercive nature can be expressed in shame, ridicule, censure, ostracism, imprisonment, torture, terror, and death. Law's professional interpreters and enforcers can comprise witches and wizards, kings and queens, popes and rabbis, village elders, chiefs, prophets, military warlords, federal judges, and state legislators, among others.

As a social phenomenon, law is a state form of **social control**. As such, its object is to manufacture conformity and to suppress what the state defines as deviance. In his classic book *The Behavior of Law*, Donald Black (1976:2) defined law as governmental social control and suggested that there are four basic styles of law, each corresponding to a broader style of social control: penal, compensatory, therapeutic, and conciliatory (p. 46). Each style defines deviant behavior in its own way, with its own logic, methods, and language.

In the penal style of social control, for example, the problem is to establish guilt when an offender has violated a prohibition, and the solution is punishment. Black argues that both the quantity and the style of law in a given society vary inversely with certain factors, such as the power of other forms of social control and the levels of social inequality. When other forms of social control—family ties, religion, and so on—are weak, for example, the power and the extent of law will be relatively strong (Black, 1976). Moreover, following the lengthy conflict tradition in the sociology and anthropology of law (see Chapter 13.3), Black argues that law varies directly with social inequality. That is, the societies with the most law are those with the most social inequality.

Many criminologists argue that the relationship between social inequality and crime is especially evident in the process of criminalization. We turn now to this important concept.

## Law and Criminalization

The term **criminalization** refers to the process whereby criminal law is selectively applied to social behavior. This threefold process involves (1) the enactment of legislation that outlaws certain types of behavior; (2) the surveillance and policing of that behavior; and (3) if detected, the punishment of that behavior. The study of criminalization is therefore an indispensable part of the study of crime, and in this book we offer frequent examples of this process.

The nature and contours of the criminalization process in Western industrialized societies is heatedly debated by criminologists. Argument rages over three wide-ranging questions. First, how did the criminalization process contribute to the rise of Western industrialized societies when they first emerged during the seventeenth century? Second, is criminalization today a neutral process, or does it generally serve the interests of the powerful? Third, does criminalization contribute to the maintenance of specific forms of contemporary social inequality?

The answers to these questions fall at or in between two extremes. One extreme claims that since its inception on a large scale (during the eighteenth century), the criminalization process has on the whole contributed to the rise of modern society in rational and humane ways. The other extreme suggests that criminalization has operated, in more or less subtle ways, as an instrument to defend the interests of powerful new social classes (for example, the capitalist class) and to undermine the interests of the powerless.

Our general view of criminalization, and thus also of criminal law itself, is that it tends to reflect the interests of the powerful. We will therefore often look at the ways in which the criminalization process tends to maintain unequal social relationships between the powerful and the powerless—especially in the areas of gender, class, race, and age. Sometimes, criminalization is a direct product of power struggles and inevitably reflects the political strengths of specific power groups. At other times, however, it is connected to power struggles only marginally. At still other times, it appears to transcend power struggles altogether.

## 1.3 Crime as a Sociological Problem

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Neither the misleading images of crime manufactured by the mass media nor the definition of crime as a legal category can depict the complex social realities of crime. The purpose of criminology is to chip away at stereotypical or value-laden images of crime and then to try to explain what remains.

The academic discipline of criminology has a lengthy intellectual history. As we outline in Chapter 9, the origins of criminology can be traced to the rise of the classical (1760–1820) and the positivist (1820–1890) schools of thought, both of which, in certain key respects, flourish today. The term “criminology” derives from the Latin word *crimen*, meaning “judgment,” “accusation,” or “offense.” Though the word “criminologist”

appeared in Britain in the 1850s, “criminology” itself was first used to define the academic study of crime by the Italian sociologist Raffaele Garofalo in 1885. Establishing itself as a respectable academic discipline in the United States around 1900, criminology has since become an interdisciplinary field. Although most criminologists today are drawn from sociology, other academic disciplines are also well represented, including political science, law, economics, history, anthropology, psychology, biology, and geography.

We now explore five definitions of crime that are favored by sociological perspectives on crime:

1. Crime as a violation of conduct norms.
2. Crime as a social harm and analogous social injury.
3. Crime as a violation of rights.
4. Crime as a form of deviance.
5. Crime as a violation of global conduct norms.

### **Crime as a Violation of Conduct Norms**

In his influential book *Culture Conflict and Crime* (1938), Thorsten Sellin complained that “criminology as traditionally conceived is a bastard science grown out of public preoccupation with a plague” (p. 3). Sellin believed that it is unscientific for criminologists to study simply what the public happens to regard as a plague or as a social problem. Scientists should study objective facts as they occur in their natural states rather than as they are seen by the subjective concerns of the public, the government, powerful social groups, and the criminal law. As Sellin stated:

The unqualified acceptance of the legal definitions of the basic units or elements of criminological inquiry violates a fundamental criterion of science. The scientist must have freedom to define his own terms, based on the intrinsic character of his material and designating properties in that material which are assumed to be universal. (p. 23)

Sellin urged that the basic units of criminological research be **conduct norms**. For every person there are normal (right) and abnormal (wrong) forms of conduct—and the norm depends on the social values of the group that formulates it. Such norms are the rules that govern appropriate behavior. Sellin insisted that there are different types of conduct norms, including custom, tradition, ethics, religion, and rules of criminal law. Conduct norms are found wherever social groups are found. They are not created by any one normative group, they are not confined within political boundaries, and they are not necessarily embodied in law. Sellin concluded therefore that a scientific criminology should focus on the violation of all forms of conduct norms and on the study of abnormal conduct in general. Crime is but one form of conduct norm, distinguished from others in that it violates the conduct norms specifically defined by the criminal law.

Sellin’s rejection of the legalistic definition of crime and his advice about the proper subject matter of criminology are quite attractive. Clearly, criminologists would be fool-

ish to limit their studies simply to what the criminal law happens to forbid. Imagine, for example, how hard it would be to study trends in the crime of marijuana use in a state where marijuana was constantly criminalized and decriminalized according to the changing whims of legislative and public opinion.

Sellin's advice has yet to exert much influence among criminologists, partly because they would be overwhelmed if they studied violations of all forms of conduct norms. However, Sellin's recommendation moves us to ask a question of much relevance to criminological research: Why are violations of one particular form of conduct regarded as crime and not others?

### Crime as Social Harm and Analogous Social Injury

A direct outgrowth of this debate about an appropriate definition of crime is Edwin Sutherland's position, voiced in his book *White Collar Crime* (1949). Sutherland was angry that many white-collar offenses were processed as civil violations rather than as crimes. He argued:

The essential characteristic of crime is that it is behavior which is prohibited by the State as an injury to the State and against which the State may react, at least as a last resort, by punishment. The two abstract criteria generally regarded by legal scholars as necessary elements in a definition of crime are legal description of an act as socially harmful and legal provision of a penalty for the act. (1983:46)

To Sutherland it is unfair that white-collar offenders—for example, those found in civil suits to have violated regulatory laws such as the Sherman Antitrust Act or to have engaged in deceptive advertising—are not stigmatized as criminals. The behavior of white-collar offenders meets the two characteristics of his definition of crime: Their behavior is socially harmful, and they are punished for it (by fines). Because white-collar “offenses” are in fact crimes (however such behavior is defined by the state), they should be studied by criminologists. Although Sutherland's perspective on white-collar offenses has had great influence in criminology (see Chapters 11.4 and 7), his perspective is not opposed to the legalistic definition of crime. Rather, he suggests the use of an expanded definition of crime based on behavior prohibited by either criminal law or regulatory law.

Whereas Sutherland argues that any illegalities that cause **social harm** should be criminalized, others urge that any behavior should be criminalized if it causes social harm or analogous social injury. For Raymond Michalowski, for example, the concept of **analogous social injury** refers to “legally permissible acts or sets of conditions whose consequences are similar to those of illegal acts” (1985:317; and see Tifft and Sullivan, 2001). This extension of Sutherland's position has far-reaching implications. Under this view, crimes might include any violent or untimely death; illness or disease; deprivation of adequate food, clothing, shelter, or medical care; and the reduction or elimination of the opportunity for individuals to participate effectively in the political decision-making processes that affect their lives.

Consider some examples of injurious events that are not generally regarded as crimes by any legal system but that would be crimes if analogous social injury were the criterion of wrongful behavior:

- It is estimated that 4.83 million premature deaths in the world were attributable to smoking in the year 2000 (Ezzati and Lopez, 2003).
- Each year in the United States more than 200,000 citizens are injured or killed because of negligence by doctors (Jesilow, Pontell, and Geis, 1993).
- Each year approximately 6,000 workers are killed in job-related accidents in the United States, as many as 100,000 die because of exposure to dangerous substances, at least 10 million suffered injuries at work (at least 3 million of which are serious), and 390,000 workers contract new cases of job-related diseases (U.S. Department of Labor, 2004b; and see Chapter 7.2).

Expanded definitions of crime that include both social harm and analogous social injury are therefore fitting correctives to the biased values underlying the legalistic definition of crime. Of course, these expanded definitions leave themselves open to the objection that what counts as social harm or as analogous social injury is as value-laden a category as criminal law.

### Crime as a Violation of Rights

To some criminologists, crime is any behavior that violates **human rights**. In this view, simply because we are human beings we all have certain natural and inalienable rights. These include the rights to life, liberty, happiness, and so on. Violations of these rights, the argument continues, provide criminology with a more objective unit of analysis than does the legalistic definition of crime.

On this page are two depictions taken from the hundreds of photos and videos taken at the Abu Ghraib prison in late 2003. They depict American troops abusing Iraqis held at what was once a notorious center of torture and executions under toppled President Saddam Hussein. They show U.S. troops smiling, posing, laughing, or giving the thumbs-up sign as naked male Iraqi prisoners are stacked in a pyramid or positioned to simulate sex acts with one another. Calling for an independent inquiry, the human rights group Amnesty International said “there is a real crisis of leadership in Iraq with double standards and double speak on human rights” (Majendie, 2004).

A U.S. Army summary of deaths and mistreatment involving prisoners in American custody in Iraq and Afghanistan showed a widespread pattern of abuse from 2002 to 2004 (Jehl, Myers, and Schmitt, 2004).



*Images of U.S. justice in Tehran, Iran.*

The case that crime be defined in terms of human rights was first made by Herman and Julia Schwendinger (1975). For the Schwendingers there are two sorts of human rights: those personal rights that are absolutely essential to life (such as the right to good health) and those rights essential to a dignified human existence (freedom of movement, free speech, a good education, employment, the right to unionize, a certain standard of housing, and so on). The Schwendingers also argue that anything that causes a social injury should be considered a crime. Examples of social injury include imperialism, sexism, racism, and poverty. They suggest, too, that a government should be considered criminal if it does nothing to alleviate poverty.

To the importance of human rights in the definition of crime must be added the fact that humans frequently violate the rights of nonhuman animals to a natural and peaceable existence (Singer, 1990; Beirne, 1999). Since the middle of the nineteenth century, some animal rights have been recognized and secured both in state anticruelty laws and in federal legislation. Quite apart from the legal or illegal abuses routinely committed against them in factory farms, rodeos, circuses, zoos, and laboratories, animals are sometimes abused by humans in domestic households or in their wild or natural habitats. Violations of animal rights, we believe, are also harms that merit attention from criminologists (Chapter 4).

The suggestion that violations of rights should be the basis of criminology seems to offer criminology a less subjective definition of crime than the legalistic concept of crime. Moreover, the concept of rights opens up for analysis the obvious fact that legal categories themselves might sometimes be criminal—laws that detain people unjustly, that forbid freedom of speech, that limit opposition to political parties, and so on.

Let us point out, too, that a major difficulty for the human rights approach in criminology is that, as with the content of criminal law, the content of rights is culturally quite variable. In some societies human rights tend to be defined in individualistic terms—i.e., the rights of individuals to do certain things. In other societies human rights are defined in more social terms: the right to employment and to minimum standards of housing, health, and education. Given these differences of definition, it is hard to agree on which violations of what rights should constitute crime.

Moreover, though the last 50 years has seen a tremendous growth in human rights legislation (associated with the United Nations and the European Union, for example), many societies in the world reject the idea that human rights can or should be universal. In parts of Africa, the Middle East, Southeast Asia, and elsewhere, the attempt by outsiders to impose human rights is sometimes branded as just another form of imperialism. “Human rights imperialism!” is thus the angry chant of many members of Islamic countries against aid workers and foreign armies of occupation bent on implanting Western notions of democracy, governance, and the like.

## Crime and Deviance

Sociological theories of deviance have greatly influenced criminology. **Deviance** is any social behavior or social characteristic that departs from a society’s conventional norms and standards and for which the deviant is sanctioned. Examples of deviant social behavior include witchcraft, bank robbery, picking one’s nose in public, mental

illness, and stuttering. Examples of deviant social characteristics are extremes of height and weight, aggressiveness, laziness, and beauty.

Several aspects of deviance shed light on the study of crime. Even from the few examples above, it is clear, first, that enormous variation exists in the practices and social characteristics regarded as deviant. What constitutes deviance varies from era to era and from society to society. What we call homosexuality, for example, was often regarded in classical Greece not as deviance but as a conforming social practice. Moreover, within the same society perceptions of deviance often vary by class, gender, race, and age. Second, deviance is commonplace. Each of us has committed a deviant act at one time or another. Some of us commit many deviant acts in the course of a single day! Third, all deviance is potentially subject to sanction. Deviant behavior can be subject to positive sanctions (such as winning a Nobel prize for promoting peace) or to negative sanctions (imprisonment for theft). Fourth, the norms and standards violated by deviant acts are quite diverse. They can originate in religion, custom, political belief, etiquette, fashion, and criminal law. Of course, not all deviant acts are criminal acts (and vice versa).

The deviance perspective implies that there is nothing in the nature of any act to identify it as deviant. Rather, deviance is in the eye of the beholder. This implication raises several important sociological questions for the study of crime. Although we explore these questions in greater depth later (Chapter 13.2), some should be mentioned now:

1. Who defines behavior as deviant? How? Why?
2. Why are some deviant practices defined as criminal but not others?
3. What are the consequences for an individual whose deviant behavior is subject to sanction?

## **Crime, Globalization, and Global Conduct Norms**

In several of the chapters that follow, we will discuss the extraordinary influence of globalization on crime, whose general importance to criminology has only recently begun to be understood (e.g., Findlay, 1999; Barak, 2001; Loader and Sparks, 2002). **Globalization** refers to the worldwide process whereby individuals, peoples, economies, and nation-states are becoming increasingly interconnected and interdependent. The driving engine of globalization is the movement of capital, credit, and cash that occurs as multinational corporations search for profit in the ever-expanding and seemingly infinite global economic market.

The rise of globalization has been facilitated by numerous factors—some large, some small, some arising from above, some from below. Perhaps the most important geopolitical factor in the rise of globalization is the end of the Cold War, which was marked around 1990 by both the collapse of communism in Eastern Europe and the political, economic, and military dominance of the United States and its allies.

An essential part of globalization's redrafting of political and geographical space is that the world seems much smaller. The sense that a global village is in the making has been greatly encouraged by new methods of communication, including CNN and other

live-TV coverage of international events and crises, the Internet, and e-mail. Because of the growth of these mass media, it is much easier to see that what goes on in one part of the world often has ripple effects around the globe.

One obvious consequence of the globalizing process is crime. Crime is an integral part of the new global network because globalization promotes a host of new opportunities for crime. We will discuss the influence of globalization on crime, and vice versa, later in the book in our discussions of the commerce in illicit drugs; the traffic in women, children, and endangered species; the exploitation of cheap labor; the destruction of the environment; syndicated crime; white-collar crimes, including crimes involving electronic transfers of capital and credit; and political crimes, such as corruption and terrorism.

Consider September 11, 2001, as an example of how globalization affects crime. People of numerous nationalities were killed by the planes that were deliberately crashed into the World Trade Center, the Pentagon, and a field in Pennsylvania. They were killed on U.S. soil by terrorists of several nationalities, who were praised by their supporters as “Jihadists” or “liberation fighters” and who believed that this sort of action was their only effective recourse to U.S. foreign policies toward the Arab world, especially its interventions in the Israeli-Palestinian conflict. Thus, the catastrophic events of September 11th can only be fully understood by understanding events halfway around the world from the United States. So, too, the War on Terror is a global phenomenon fraught with difficulties of international cooperation, blurring of national boundaries, and ambiguities in the detection, detention, and prosecution of terrorists. Its battlefields are in the United States, Western Europe, the Middle East, Africa, and Southeast Asia.

Globalization has also been accompanied by the emergence of **global conduct norms** about certain sorts of serious crime. These are rules of conduct, agreed on by the international community, that allow for prosecution of certain coercive relationships between a state and its citizenry and between one state and another (Greer and Hagan, 2001; Passas, 2003). While these conduct norms are not yet truly global in their acceptance, with the growth of international criminal law since the end of World War II, they are certainly moving in that direction. This movement began in 1945–46 with the trial of leading Nazis in the Nuremberg war trials and the creation of the United Nations, and it was consolidated when nearly 100 nations ratified the powers of the International Criminal Court (ICC) as enacted in the Treaty of Rome of 2002. The ICC has jurisdiction over very serious international crimes, such as genocide, crimes against humanity, and war crimes. Those who are responsible for such crimes are now more likely to be held accountable for them.

Violations of global conduct norms will undoubtedly be embraced by criminology, and they will be written into its agenda. Perhaps the development of global conduct norms will provide a counterweight to the rise of ethnic politics and to atrocities committed in the name of racial, ethnic, and religious purity. But in a world where political borders and territorial integrity become ever more blurred, and where international organizations are still in such a rudimentary stage, it is unclear how global and normal global conduct norms will become. Will they be stamped “Made in the U.S.A.”? Will they be genuinely democratic?

## Assessment

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This book views crime as a **sociological problem**, and it surveys the various sociological approaches to crime that we term criminology. To focus on crime as a sociological problem is to explain how patterns of crime arise from the interplay of political, economic, social, and ideological forces. We do not therefore look at those explanations of crime that reduce its causes to the level of the individual. In pure form, examples of such reductionism are found, for example, in biological explanations of crime that emphasize the links between criminality and the physical constitution of the individual, as well as in psychological explanations that focus on the links between crime and such factors as defective character, loose morals, and so on.

Our chief task here is to understand crime as a sociological problem. Yet, we have already seen that criminologists disagree about the most suitable sociological definition of crime. This disagreement stems partly, we believe, from a mistaken search for a universal definition of crime that can be applied to all cultures, places, and times.

We hold to no fixed or dogmatic position concerning the definition of crime. Sometimes we agree with the way in which criminal law defines crime; at other times we simply question its adequacy. Occasionally we prefer and use other definitions of crime. For example, because we believe that nonhuman animals have the right to be considered “beings” or “persons,” we consider animal abuse to be among the crimes of interpersonal violence (Chapter 5). In Chapter 5.1–5.2 we also point out that many women are victimized every year by the act of forcible rape, as it is defined by criminal law; but we also acknowledge that the traditional criminal law definition of rape—sexual intercourse obtained through the threat or actual use of physical violence—ignores acts that could be defined as rape, such as forms of nonphysical sexual coercion (for example, the male who informs his economically dependent mate: “If you don’t put out, I’ll leave you!”).

In Chapter 7.2 we go considerably beyond the legalistic definition of crime (including both criminal and regulatory law), arguing that *corporate crime* is any illegal or socially injurious act of intent or indifference that occurs for the purpose of furthering corporate goals and that physically or economically abuses individuals in the United States or abroad. Finally, our definition of *political crime* (see Chapter 8) is somewhat broader than the legalistic definition, in that it includes not only crimes committed against the state but also crimes committed by the state. In the latter we include both domestic political crimes (unlawful or unethical acts committed by state officials and state agencies inside the United States) and international political crimes (violations of domestic and international law by state officials and agencies outside the United States).

## Review

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This chapter introduced the different images of crime found in the discourses of social-problem movements, the culture of fear, the mass media, and sociology. The major task of the chapter was to introduce key sociological concepts of criminology.

## Images of Crime

1. Crime has become one of the leading social problems in the United States. But there is no objective set of social conditions whose perceived harmful effects necessarily make them social problems. What is regarded as a social problem varies over time and across cultures. What is defined as a social problem depends on numerous factors, including the activities of moral entrepreneurs.
2. There is a widespread culture of fear in the United States, and mass media undoubtedly contribute to fear of crime.
3. Mass media have become the most influential mechanisms for organizing public sentiment so that a certain social condition is perceived as a social problem.
4. Mass media routinely provide distorted information about the amount of crime, the most common types of crime, and who typically commits crimes.

## Crime, Criminal Law, and Criminalization

1. The term *criminalization* refers to the process whereby criminal law is selectively applied to social behavior. The sociological study of criminal law is therefore an integral part of criminology. Specifically, the criminalization process involves the enactment of legislation that outlaws certain types of behavior. It also provides for the surveillance, policing, and, if detected, punishment of that behavior.
2. Criminal law distinguishes between crimes *mala in se* and *mala prohibita* and between felonies and misdemeanors. To constitute a crime, behavior must be prohibited by law, must be voluntary, and must coincide with a defendant's mental state. An act or omission is not a crime if a defendant is justified in doing (or not doing) it, or if the person lacks the criminal responsibility required by *mens rea*.
3. Not all societies have had law. Law originated with the emergence of social inequality and accompanied the transition from stateless to state societies. The distinguishing features of law are its coercive nature, its reliance on a professional staff, and its use as a state form of social control.
4. In this book, the general view of the criminalization process, and thus also of criminal law, is that it tends to reflect the interests of the powerful (in terms of class, gender, race, and age).

## Crime as a Sociological Problem

1. This book views crime as a sociological problem. It surveys the various sociological approaches to crime found in the discipline of criminology. To focus on crime as a sociological problem is to explain how patterns of crime arise from the interplay of political, economic, social, and ideological forces in society.
2. The question "What is crime?" is difficult to answer because there is little agreement about the defining sociological characteristics of crime. Criminologists use a variety of sociological definitions of crime, including crime as a violation of

conduct norms, crime as a social harm, crime as a violation of human rights, crime as a form of deviance, and crime as a violation of global conduct norms.

## Questions for Class Discussion

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1. Consider the facts in the following short story about cannibalism among a group of cave (speluncean) explorers caught in a life-threatening situation in the Commonwealth of “Newgarth.” The story is adapted from a fictitious law case created by legal philosopher Lon Fuller (1949, excerpted in Schur, 1968:19–20). Although “The Case of the Speluncean Explorers” is fictitious, it is probably based on an actual case of cannibalism at sea in 1884 and on the bizarre trial that resulted from it in England.

### The Case of the Speluncean Explorers

Five members of an amateur cave-exploring society were trapped inside a deep and isolated cave following a landslide. After some time, through the efforts of relatives and the cave-exploring society, rescuers located the cave only to encounter repeated obstacles to removing the trapped men. At great monetary expense and the cost of ten rescuers’ lives (in a subsequent landslide), the rescue operation finally succeeded thirty-two days after the men entered the cave. On the twentieth day, communication between the rescuers and the trapped explorers had been established, when it was discovered that the latter had with them in the cave a radio transmitter-receiver. At that time, the trapped men asked for medical advice as to whether they could live without food (there was none in the cave) for the time engineers had determined would be required to rescue them. A physicians’ committee at the rescue site stated that they could not. When the trapped men later inquired if they could survive by consuming the flesh of one of their number, the reply (reluctant) was in the affirmative. But the explorers could get no guidance at all (from the physicians or from any clergyman or judge) when they went on to ask about the advisability of casting lots to determine who should be killed and eaten.

When the men were finally released, the rescuers learned that on the twenty-third day one of them, Whetmore, had been killed and eaten by the other four. Although originally it had been Whetmore’s idea (at first resisted by his companions) that such an act might be necessary for survival, and also that a casting of lots would be the fairest means of selection, just before the dice were cast, Whetmore changed his mind. His companions disallowed this sudden switch, however, and cast the dice for him, after obtaining his agreement that this procedure was fair; he lost and was put to death and eaten by the others.

After they had recuperated, the four survivors were charged with Whetmore’s murder.

Having read the facts in “The Case of the Speluncean Explorers,” you should also know that Newgarth law commands, “Whoever shall willfully take the life of

another shall be punished by death.” In this case the defendants were charged with the crime of murder, convicted, and sentenced to death.

Assume that the defendants appealed the verdict and the sentence in “The Case of the Speluncean Explorers,” and that you are a member of the appeals court. How would you decide the appeal? Are the defendants guilty of murder? What defense is available to them, if any? If their conviction in the lower court is upheld, would you recommend executive clemency (a pardon)?

2. It is estimated that each year nearly 5 million premature deaths in the world are attributable to smoking (Ezzati and Lopez, 2003). Do you think tobacco manufacturers and distributors should be held legally liable for these deaths? Should relatives of the deceased be allowed to sue them for damages? Should cigarette producers be prosecuted for murder?
3. According to criminologist Ray Surette (1998:68), “Criminals tend to be of two types in the news media: violent predators or professional businessmen and bureaucrats. Furthermore . . . they tend to be slightly older (20 to 30 years old) than reflected in official arrest statistics.” How would you interpret such evidence?

## For Further Study

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### Readings

Henry, Stuart, and Mark M. Lanier. 2001. *What Is Crime?* Lanham, MD: Rowman and Littlefield.

Jewkes, Yvonne. 2004. *Media and Crime*. London: Sage.

Vold, George B., Thomas J. Bernard, and Jeffrey B. Snipes. 2002. *Theoretical Criminology*. New York: Oxford University Press.

### Websites

1. <<http://www.journalism.org>>. This site is sponsored by the Project for Excellence in Journalism and the Committee of Concerned Journalists and is affiliated with the Columbia University Graduate School of Journalism. It reports results from a national study on local TV news programs and identifies the “bad habits” (or “six ways stations undercut their stories”) of TV news broadcasting.
2. <[http://www.law.cornell.edu/topics/state\\_statutes.html](http://www.law.cornell.edu/topics/state_statutes.html)>. This useful site provides links to each state’s laws, including criminal codes and procedures, and rules of evidence.
3. <<http://www.amnesty.org>>. This site for Amnesty International includes a general statement about the organization: its history, mission, and current activities. You may want to click on some of Amnesty’s campaigns, including:
  - Stop violence against women.
  - Control arms.

- Death penalty.
  - Stop torture.
  - Refugees have rights.
  - International justice.
  - Economic globalization and human rights.
  - Human rights defenders in Latin America and the Caribbean.
  - Child soldiers.
  - Treaty bodies.
  - Human rights education.
  - Health Professional Network.
4. <<http://www.iccnw.org>>. This is the website of the Coalition for the International Criminal Court, a network of over 2,000 nongovernmental organizations advocating for a fair, effective, and independent International Criminal Court (ICC). ♦