

CRIMINOLOGY, CRIME, AND CRIMINAL LAW

The joint 1996 wedding ceremony in Lincoln, Nebraska, of Majed Al-Timimy, 28, and Latif Al-Husani, 34, both Iraqi refugees who arrived after the first Gulf War, was to be a strictly traditional affair with a Muslim cleric specially flown in from Ohio to perform the ceremony. A fellow Iraqi refugee had arranged for the two men to marry two of his daughters, aged 13 and 14. The marriage took place and everything seemed to be going according to plan until one of the girls ran away, and the concerned father and her husband reported it to the police. It was at this point that American and Iraqi norms of legality and morality clashed head-on. Under Nebraska law, people under 17 years old cannot marry, so both grooms and the father and mother of the girls were arrested and charged with a variety of crimes from child endangerment to rape.

According to an Iraqi woman interviewed by the police (herself married at 12 in Iraq), both girls were excited and happy about the wedding. The Iraqi community was shocked that these men faced up to 50 years in prison for their actions, especially since earlier generations of Americans had been legally permitted to marry girls of this age. The men were sentenced to 4 to 6 years in prison and paroled in 2000 with conditions that they have no contact with their “wives.” Thus, something that is legally and morally permissible in one culture can be severely punished in another. Were the actions of these men child sex abuse or simply normal, unremarkable marital sex? Which culture is right? Can we really ask such a question? Is Iraqi culture “more right” than American culture, given that marrying girls of that age was permissible here too at one time? Most important, how can criminologists hope to study crime scientifically if what constitutes a crime is relative to time and place?

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What Is Criminology?

If the content of the news and popular television shows is any indication, most of us are wildly interested in the subject matter of criminology. In the past few years, we have sat transfixed as Kobe Bryant, Martha Stewart, and the BTK killer flashed across our television screens, and shows such as *Law & Order*, *NYPD*, *Cops*, and *CSI: Miami* have sent many a student on a search for a course in criminology. There is something about the dark side of human nature that fascinates us all, and crime and criminal behavior are certainly on the dark side. **Criminology** is an interdisciplinary science that gathers and analyzes data on crime and criminal behavior. As with all scientific disciplines, its goal is to understand the phenomena that it studies and to use that understanding for the benefit of humankind. In pursuit of this understanding, criminology asks questions such as the following:

- ◆ Why do crime rates vary from time to time and from culture to culture?
- ◆ Why are some individuals more prone to committing crime than others?
- ◆ Why do crime rates vary across different ages, genders, and racial/ethnic groups?
- ◆ Why are some harmful acts criminalized and not others?
- ◆ What can we do to prevent crime?

When we say that criminology is the *scientific* study of crime and criminal behavior, we mean that criminologists use the scientific method to try to answer the questions they ask rather than simply speculate about them from their armchairs. The scientific method is a tool for winning truth from error by demanding evidence for one's conclusions. Evidence is obtained by formulating hypotheses derived from theory that are rigorously tested with the data at hand.

Although most contemporary criminologists have been trained primarily in sociology and criminal justice, there is a growing realization (perhaps even a consensus) that criminology is an inherently *interdisciplinary* field.^{1,2} Scientists from many disciplines other than sociology, such as anthropology, biology, economics, and psychology/psychiatry, have contributed greatly to criminology, but there has been reluctance among some criminologists to accept and integrate findings from them into their understanding of crime.

According to a growing number of prominent criminologists, there is something of a crisis in criminology.^{3,4} A subset of them considers the crisis to be a function of the failure to recognize the contributions of the more fundamental sciences such as genetics, physiology, neurophysiology, endocrinology, and evolutionary biology. Some have even called for such recognition in the context of their presidential addresses to the American Criminological Society⁵⁻⁸ and the Academy of Criminal Justice Sciences.⁹

The failure to incorporate these sciences is unfortunate because philosophers of science have long maintained that the only route to progress in any science is to integrate insights from the more advanced adjacent sciences.^{10,11} Chemistry advanced when it dropped its opposition to the intrusion of physics and its “newfangled” ideas about something called atoms in the late 19th century. Biology took enormous strides when it dropped its opposition to the intrusion of chemistry in the mid-20th century after the discovery of the structure of DNA, and psychology has come a long way since more fully embracing biology. In fact, the core concepts of these disciplines (ions in chemistry and genes in biology) came from disciplines previously discounted as irrelevant. A very interesting history surrounds the initial opposition of these sciences to their “antidisciplines” and their eventual acceptance of them,¹² but we can't get into that here.

A prominent inscription on a prominent wall at the Massachusetts Institute of Technology (MIT) reads, in part, as follows: “Many of the most important discoveries of the future will come from those wise enough to explore the unknown territories between different disciplines.”¹³ We believe that the time has come to present approaches that do this more fully in an introductory textbook. This text is still primarily sociological in orientation because sociologists have conducted the vast majority of theorizing and research in criminology. It is also primarily sociological in orientation because no matter what insights other sciences may provide criminologists, criminal behavior always takes place in a social context, and the perspective from which most criminologists work is sociological.

✉ What Is Crime?

What sort of person comes to mind when you hear the word *criminal*? The term can be applied to many types of behavior, some of which nearly all of us have been guilty of at some time in our lives. However, very few people ever commit murder, robbery, or major theft. Those who do, especially those who do so repeatedly, are what most people think of as “real criminals.” Even so, it is important to recognize that the dividing line between “real criminals” and most of the rest of us is fuzzy and difficult to specify with precision. Nearly all of us can think of acts that we feel *ought* to be criminal but are not, or acts that should not be criminal but are. As you can imagine, the roster of possible wrongs that someone or another considers crimes is enormous, with only a select few being defined as criminal by the law. Furthermore, ask yourself how many crimes would people have to commit before they are considered *real* criminals—three, four, or maybe five? Or would the answer depend on how serious each crime was? The main purpose of exploring topics such as these is to acquaint you with how criminologists conceptualize their discipline and what they include and exclude from study.

Despite the difficulties attending the definition of crime, we need one to proceed. Perhaps the most often quoted definition comes from Paul Tappan, who defined **crime** as “an intentional act in violation of the criminal law committed without defense or excuse, and penalized by the state.”¹⁴ Thus, a crime is an *act* in violation of a *criminal law* for which a *punishment* is prescribed; the person committing it must have *intended* to do so and must have done so without legally acceptable *defense* or *justification*.

A fundamental point on which all criminologists agree is that crime is a legal concept defined by the political state and its subdivisions. The fact that crime is a legal rather than a scientific concept has implications for the scientific study of crime. Hypothetically, a society could eradicate crime tomorrow simply by rescinding all of its criminal statutes. Of course, this would not eliminate the behavior specified by the laws; in fact, the behavior would doubtless increase since the behavior could no longer be officially punished. While it is absurd to think that any society would try to solve its crime problem by eliminating its criminal statutes, legislative bodies are continually revising, adding to, and deleting from their criminal statutes.

✉ Crime as a Moving Target

Every vice is somewhere and at sometimes a virtue. Numerous examples of acts defined as crimes in one country are tolerated and even expected behavior in another, such as the example given at the beginning of this chapter of adult males marrying and being sexually

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active with girls as young as 12. Female circumcision (*clitorrectomy*) involving the surgical removal of the clitoris is found in many parts of Africa and the Middle East. It is performed on prepubertal girls without anesthetic and has been known to cause death due to infection.¹⁵ Anyone performing such a procedure in the United States would be charged with child abuse and malicious wounding. Likewise, while many countries have historically regarded abortion as a crime, most democratic countries permit it today. Ironically, many of these same countries have laws making it a crime for mothers to drink excessively or take various drugs during pregnancy because they might harm their unborn infants.¹⁶ In several cultures, infanticide (the killing of infants by a parent) is not defined as a criminal act,¹⁷ while in other societies, parents can be held criminally liable for failing to take their children for proper medical treatment, even if doing so violates the parent's religious beliefs.¹⁸

Laws vary within the same culture from time to time as well as across different cultures. Until the Harrison Narcotics Act of 1914, there were few legal restrictions in the United States on the sale, possession, or use of most drugs such as heroin and cocaine. Following the Harrison Act, many drugs became controlled substances, their possession became a crime, and a brand new class of criminals was created overnight. Stalking is hardly novel behavior, but certain high-profile cases moved the state of California to recognize the dangers inherent in the practice and to pass the nation's first antistalking law as recently as 1990.¹⁹

Crimes pass out of existence also—even acts that had been considered crimes for centuries by some groups. The private hoarding of gold was a crime in the United States from 1934 to 1974, but today it is something of a virtue. Until the U.S. Supreme Court invalidated sodomy statutes in *Lawrence v. Texas* (2003),²⁰ sodomy was legally punishable in many states. Most states targeted only homosexual sodomy, but a few extended the reach to include heterosexual sodomy, even between consenting spouses. Likewise, burning the American flag had serious legal consequences until 1989, when the Supreme Court invalidated anti-flag burning statutes as unconstitutional in *Texas v. Johnson* (1989).²¹ What constitutes a crime, then, can be defined in and out of existence by the courts or by legislators. As long as human societies remain diverse and dynamic, there will always be a moving target of activities with the potential for nomination as crimes, as well as illegal activities nominated for decriminalization.

If what constitutes crime differs across time and place, how can criminologists hope to agree on a scientific explanation for crime and criminal behavior if the target keeps moving? Science is about making a universal statement about stable or homogeneous phenomena. Atoms, genes, the gas laws, the laws of thermodynamics, photosynthesis, and so on are not defined or evaluated differently by scientists around the globe according to local customs or ideological preferences. The phenomenon we call "crime," however, keeps moving around, and because it does, some criminologists have declared it impossible to generalize about what is and is not "real" crime. For example, Darnell Hawkins has written that "we cannot discover what *real* crime is, or who the *real* criminals are."²²

What criminologists such as Hawkins are saying is that crime is a socially constructed phenomenon that lacks any "real" objective essence because crimes are defined into existence rather than discovered, although they obviously do not deny the harm underlying the criminal act. At one level, of course, everything is socially constructed; nature does not reveal herself to us, sorted into ready-labeled packages; humans must do it for her. *Social construction* means nothing more than that humans have perceived a phenomenon, named it, and categorized it according to some classificatory rule (also socially constructed) that makes note of the similarities and differences among the things being classified. Most classification schemes are

not arbitrary; if they were, we would not be able to make sense of anything. Categories have empirically meaningful referents and are used to impose order on the diversity of phenomena that humans experience, although arguments exist about just how coherent that order is. But then, few concepts (or constructs) outside of mathematics are defined and understood in such a way as to make every application of them unproblematic.

Crime as a Subcategory of Social Harms

So, what *can* we say about crime? How *can* we conceive of it in ways that at least most people would agree are coherent and correspond with their view of reality? Criminologist John Hagan²³ has provided a useful way of looking at the definition problem by viewing crime as a continuous variable and as a subcategory of all harmful acts. Hagan's definition has three measures of harmful acts, ranging from low to high and weak to strong. His first measure is the degree of *consensus* or agreement existing in the population about right and wrong acts.

Research has consistently shown that there is substantial agreement among average citizens both within and across modern societies regarding the average seriousness ratings given to a variety of criminal offenses. Studies comparing average seriousness ratings of deviant acts in the United States beginning in the 1920s have concluded that rankings have changed only slightly. Among the trends that have been noted both in the United States and other industrial countries is an increase in seriousness ratings of white-collar crimes compared to ratings of nonviolent street crimes, as well as a decrease in seriousness ratings given to most offenses associated with "abnormal" sexual behavior.²⁴ A survey of 3,334 households found remarkably high consensus across age, gender, race, and socioeconomic status (SES) on the seriousness of 17 different offenses.²⁵ On average, this study found about a 96% agreement between citizens of diverse backgrounds about the wrongfulness and seriousness of different crimes. Thus, people everywhere seem to share at least a rough sense of what is acceptable behavior under most circumstances. In all societies, nearly everyone condemns behavior that intentionally victimizes others, especially if the victims are members of the social group to which those making the judgment belong.

The second dimension is the *severity* of the law's response to a given crime. The more serious the legal penalty, says Hagan, "the more serious the societal evaluation of the act."²⁶ The first two dimensions are highly correlated, as you would expect. There would be almost unanimous agreement that the bombing of the Murrah Federal Building in Oklahoma City in 1995, which took the lives of 169 people and injured more than 500 others, was wrong. The social response to the perpetrator, Timothy McVeigh, was extremely severe—the death penalty. On the other hand, there would be little consensus that smoking marijuana is all that wrong, and the legal penalties for doing so are weak.

The third dimension is the amount of *harm* caused, a dimension that obviously underlies both consensus about wrongfulness and severity of legal response—Timothy McVeigh caused a tremendous amount of harm; pot smokers perhaps harm only themselves. Thus, one thing about crime that is not disputed is that it is a subcategory of harmful acts, most of which are not regulated by the law.

Harmful acts, such as smoking tobacco and drinking to excess, are not considered anyone's business other than the actor's if they take place in private or even in public if the person creates no annoyance. *Socially harmful* acts are acts in a category that some political body has decided in nonarbitrary ways are in need of regulation (health standards, air pollution, etc.) but not by the criminal law, except under exceptional circumstance. Radical theorists aver that

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arbitrariness is more likely to enter the picture when authorities decide *not* to regulate socially harmful behavior, such as racism, sexism, colonialism, harmful business practices, and any number of other acts they feel are more harmful than acts that are criminalized. Private wrongs (such as someone reneging on a contract) are socially harmful but not sufficiently so to require the heavy hand of the criminal law. Such wrongs are regulated by the civil law in which the wronged party (the plaintiff), rather than the state, initiates legal action and the defendant does not risk deprivation of his or her liberty if the plaintiff prevails.

Finally, a small subcategory of harmful acts is considered so socially harmful that they come under the purview and coercive power of the criminal justice system. Even though we have narrowed down the concept of crime, we are still confronted with the problem of human judgment in determining what goes into this subcategory. But this is true all along the line; smoking was once actually considered rather healthy, and air pollution and unhealthy conditions were simply facts of life about which nothing could be done. Categorization always requires a series of human judgments, but that does not render the categorizations arbitrary.

Beyond Social Construction: The Stationary Core Crimes

We have defined crimes as serious socially harmful acts, but how can we rescue this from accusation that even “seriously harmful” is a judgment that moves around across time and space? We suggest that few people would argue that an act is not seriously harmful if it is universally condemned—that is, if a stationary core of offenses is defined as wrong at almost all times and in almost all cultures. Some of the strongest evidence in support of the stationary core perspective comes from the International Criminal Police Organization (Interpol),²⁷ headquartered in Lyon, France. Besides assisting member nations with investigations of international terrorism and organized crime, Interpol serves as a repository for crime statistics from each of its 125 member nations. Interpol’s data show that such acts as murder, assault, rape, and theft are considered serious crimes in every single country. While there are variations in exactly what constitutes each of these offenses, most of them are extremely minor.

Criminologists call these universally condemned crimes **mala in se** (“inherently bad”). Crimes that are time and culture bound are described as **mala prohibita** (“bad because they are prohibited”). But how can we be sure that an act is inherently bad? We would say that the litmus test for determining a mala in se crime is that no one, except under the most bizarre of circumstances (see Focus On . . .), would want to be victimized by one. While millions of people seek to be “victimized” by prostitutes, drug dealers, bookies, or any of a number of other providers of illegal goods and services, no one wants to be murdered, raped, robbed, or have their property stolen. Being victimized by such actions evokes physiological reactions (anger, helplessness, sadness, depression, a desire for revenge) in all cultures, and would do so even if the acts were not punishable by law or custom. Mala in se acts engage these emotions not because some legislative body has identified and defined them as wrong; they do so because they hammer at our deepest primordial instincts. Evolutionary psychologists propose that these built-in emotional mechanisms exist because mala in se crimes threatened the survival and reproductive success of our distant ancestors, and they function to strongly motivate people to try to prevent such acts from occurring and punish offenders if they do.^{28–30} In this sense, then, mala in se crimes are very real.

FOCUS ON . . .

Mala in Se or Mala Prohibita? The Cannibal and His Willing Victim

We have said that the litmus test for a mala in se crime is that no one would want to be a victim of such a crime. You would think that killing, butchering, and eating another human being would certainly pass such a test. But what if the cannibal's dinner was a willing victim and the country in which the cannibal and his victim lived had no law forbidding cannibalism? This strange state of affairs existed in Rotenburg in central Germany in 2001. Germany's own Hannibal Lecter, one Armin Meiwes, had advertised online seeking volunteers for "slaughter and consumption." Among the over 200 replies Meiwes received was an e-mail from Bernd-Jurgen Brandes stating, "I am your meat." Meiwes and Brandes (a successful software engineer) videotaped their agreement, and Meiwes taped the subsequent killing and butchering of Brandes. Brandes stated on the tape that being eaten would be the "fulfillment of my dream."

The prosecution in this case argued for a conviction of murder and "disturbing the peace of the dead," which would have gotten Meiwes a life sentence. The defense argued that what Meiwes had done was simply to assist Brandes in his suicide, which carried a 5-year sentence. The panel of judges hearing the case agreed that Meiwes could not be convicted of murder, split the difference, and handed Meiwes an 8½-year prison sentence in January 2004. Which argument would you have followed if you were one of the judges?

In common-law countries such as the United States, Meiwes would have been convicted of murder because one person cannot give another the consent to kill him or her—you can give your consent to many things, but not this. What Meiwes committed was clearly a mal in se crime, and Brandes's consent doesn't change that at all. The behavior of both men was obviously bizarre, and just because we find instances in which people do want to be victimized by acts that 99.9% of their fellow humans would find repugnant does not change the inherent badness of those acts.

SOURCE: Schofield, M. (2004, January 31). German sentenced to 8 and a half years for killing, eating man. *Idaho Statesman*, p. 3.

Victimful and Victimless Crimes

Crimes can also be viewed as arrayed along a victimization continuum and divided into three crime categories: (1) crimes for which there is an obvious intended victim (e.g., murder and rape), (2) crimes in which victimization is the result of carelessness (e.g., negligent manslaughter), and (3) crimes in which participation in the crime is voluntary (e.g., prostitution, drug offenses). The distinction between victimless and victimful crimes has to do with harm to an unwilling victim. (There is no standard antonym for *victimless* to succinctly describe a crime having a victim. The term *victimful*⁶¹ has been coined to show that it has the same relationship to *victimless* as the term *harmful* does to *harmless*.) A victimless crime is consensual and nonpredatory; a victimful crime is nonconsensual and predatory, and it is mala in se almost by definition.

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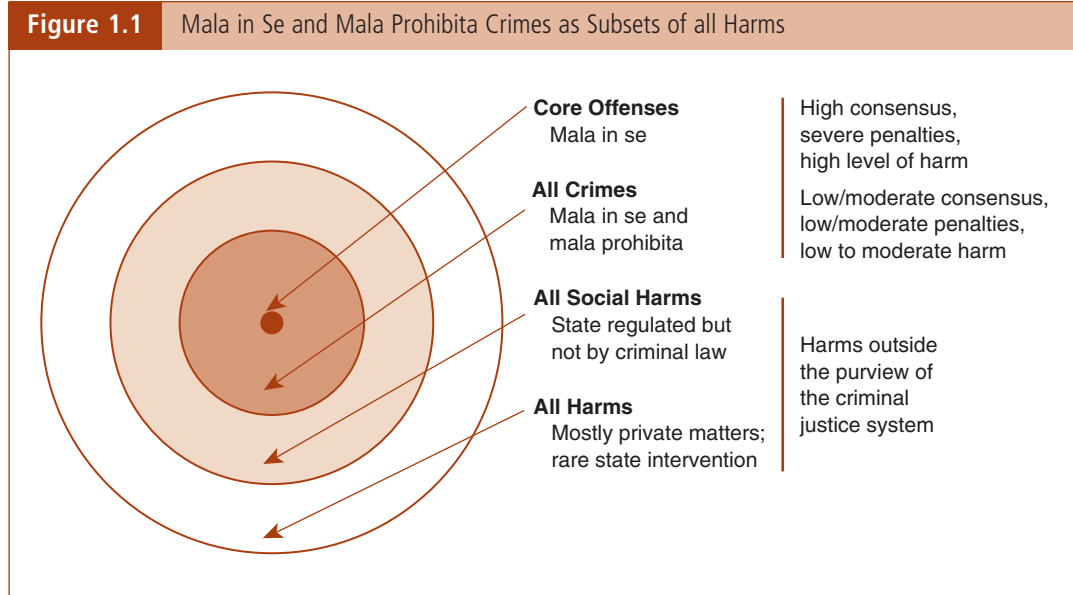


▲ **Photo 1.1** In some cities, efforts are made to zone “adult” establishments such as this Tampa strip club into a specific area. This club features a second floor designed to look like a UFO, where customers are enticed to “blast off” by lap dancing with the strippers. Critics argue that bunching such establishments in the same neighborhood adds to the crime problem in the immediately surrounding area.

✉ The Felony-Misdemeanor Distinction

The legal concepts of *felony* and *misdemeanor* are used in criminological research to separate the more serious from the less serious offenses. Historically, the term *felony* was used as a synonym for violent and property offense, while **misdemeanors** covered all other crimes. The word **felony** has the same roots as the word *treachery*, whereas *misdemeanor* comes from a French root meaning “bad motivation” or “bad intention.” The legal distinction between felonies and misdemeanors is that felonies carry a maximum penalty of greater than 1 year of imprisonment, and misdemeanors carry a maximum penalty of less than 1 year in jail. Most felonies are victimful crimes, although they can include some “victimless” crimes such as selling drugs. Some victimful crimes may be charged as misdemeanors depending on the seriousness of the act, such as a minor assault or the theft of property or money below a certain value.

Figure 1.1 illustrates the relationship of “real” core crimes to acts that have been arbitrarily defined as crimes and all harmful acts that may potentially be criminalized. The figure is inspired by John Hagan’s efforts to separate “real” crimes (*mala in se*) from those that are merely “socially constructed” (*mala prohibita*).



✎ Criminology

A long time ago, a famous criminologist suggested that one way to avoid the crime definition problem was to study individuals who committed *deviant* acts (violations of conduct norms), regardless of the legal status of those acts.³² We suggest, however, that deviant acts present us with a far greater definitional problem than criminal acts since what is and what is not deviant changes far more rapidly than what is and what is not a crime. Perhaps studying individuals who commit predatory *harmful* acts, regardless of the legal status of the acts, is a better strategy. Criminologists do this when they study criminality.

Criminality is a clinical or scientific term rather than a legal one, and it can be defined independently of legal definitions of criminal acts. Crime is an intentional act of commission or omission contrary to the law; **criminality** is a property of individuals that signals the willingness to commit those crimes and other harmful acts.³³ Criminality is a continuously distributed trait that is a combination of other continuously distributed traits that signals the willingness to use force, fraud, or guile to deprive others of their lives, limbs, or property for personal gain. People can use and abuse others for personal gain regardless of whether the means used have been defined as criminal; it is the propensity to do this that defines criminality independent of the labeling of an act as a crime or of the person being legally defined as a criminal.

Defining criminality as a continuous trait acknowledges that there is no sharp line separating individuals with respect to this trait—it is not a condition that one has or has not. Just about everyone at some point in life has committed an act or two in violation of the law. But that doesn't make us all criminals; if it did, the term would become virtually synonymous with the word *human!* The point is, we are all situated somewhere on the criminality continuum, which ranges from saint to sociopath, just as our heights range from the truly short to the truly

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tall. Some are so extreme in height that any reasonable person would call them “tall.” Likewise, a small number of individuals have violated so many criminal statutes over such a long period of time that few would question the appropriateness of calling them “criminals.” Thus, both height and criminality can be thought of as existing along a continuum, even though the words we use often imply that people’s heights and criminal tendencies come in more or less discrete categories (tall/short, criminal/noncriminal). In other words, just as height varies in fine gradations, so too does involvement in crime.

The Legal Making of a Criminal

There is a simple legal answer to the question “What is a criminal?” A criminal is someone who has committed a crime and has been judged guilty of having done so. Whatever factors criminologists might decide lead to criminal behavior, a person is not “officially” a criminal until he or she has been defined as such by the law. Before the law can properly call a person a criminal, it must go through a series of actions governed at all junctures by well-defined legal rules collectively called *criminal procedure*. These procedural rules vary greatly from culture to culture, but almost all modern cultures have a set of rational (i.e., logical and predictable) rules guiding the serious business of officially labeling a person a criminal. In this section, we introduce you to the U.S. criminal justice system by following the processing of felony cases from arrest to trial and beyond.

Basic Principles of U.S. Criminal Law

U.S. criminal law has its origins in English common law, which was brought to these shores by the early British colonists. No system is imported whole, however, and there have been many changes over the years, but both systems remain faithful to the general principles of common law as it existed in the 18th century. Any differences between the two systems are mainly differences in specifics rather than basic underlying legal philosophy. This section is thus applicable to both legal systems and to all other systems sharing the common-law tradition (e.g., Canada, Australia, New Zealand), although there may be slight differences of interpretation from country to country.

What Constitutes a Crime?

Corpus delicti is a Latin term meaning “body of the crime” and refers to the elements of a given act that must be present to legally define it as a crime. All crimes have their own specific *elements*, which are the essential constituent parts that define the act as criminal. In addition to their specific elements, all crimes share a set of general elements or principles underlying and supporting the specific elements. Five principles have to be satisfied before a person is “officially” labeled a criminal, but in actuality, it is only necessary for the state to prove two to satisfy *corpus delicti*: *actus reus* and *mens rea*. The other principles, while just as important to the legal definition of a criminal, are either abstract principles of no concern to the particular case at hand or are proven in the course of proving *actus reus* and *mens rea*. Taken together, each of the five elements forms the basis of the general principle of criminal liability.³⁴

Actus reus means *guilty act* and refers to the principle that a person must commit some forbidden act or neglect some mandatory act before he or she can be subjected to criminal

sanctions. In effect, this principle of law means that people cannot be criminally prosecuted for thinking something or being something, only for *doing* something. This prevents governments from passing laws criminalizing statuses and systems of thought they don't like. For instance, although drunken *behavior* may be punishable crime, *being* an alcoholic cannot be punished because "being" something is a status, not an act. Attempted criminal acts, although not accomplished for one reason or another, are crimes, as is conspiracy to commit a crime the moment the conspirators take some action to put their plan into motion.

Mens rea means *guilty mind* and refers to whether or not the act was intentional—that is, whether the suspect had a wrongful purpose in mind when carrying out the actus reus. For instance, although receiving stolen property is a criminal offense, if you were to buy a stolen television set from an acquaintance without knowing it had been stolen, you would have lacked mens rea and would not be subject to prosecution. If you were to be prosecuted, the state would have to prove that you knew the television was stolen. Negligence, recklessness, and carelessness that result in some harmful consequences, even though not intended, *do not* excuse such behavior from criminal prosecution under mens rea. Conditions that may preclude prosecution under this principle are self-defense, defense of others, youthfulness (a person younger than age 7 years cannot be held responsible), insanity (although being found insane does not preclude long-term confinement), and extreme duress or coercion.

Concurrence means that the act (actus reus) and the mental state (mens rea) concur in the sense that the criminal intention actuates the criminal act. For instance, if John sets out with his tools to burglarize Mary's apartment and takes her VCR, he has fused the guilty mind with the wrongful act and has therefore committed burglary. However, assume John and Mary are friends who habitually visit each other's apartment unannounced. One day, John decides to visit Mary, finds her not at home, but walks in and sits down as he has done with her blessing many times before. While sitting there, John suddenly decides that he could sell Mary's VCR for drug money and takes her VCR. Has John committed burglary in this scenario? Although the loss to Mary is the same in both scenarios, in the latter instance, John cannot be charged with burglary because he did not enter her apartment "by force or fraud," the crucial element needed to satisfy such a charge. In this case, the concurrence of guilty mind and wrongful act occurred after lawful entry, so he is only charged with theft, a less serious crime.

Causation refers to the necessity to establish a causal link between the criminal act and the harm suffered. This causal link must be proximate, not ultimate. For instance, suppose Tony wounds Frank in a knife fight. Because Frank has no medical insurance, rather than seeking professional medical treatment, he pours alcohol on his wound and bandages it himself. Three weeks later, Frank's self-treated wound has become severely infected and results in his death. What crime could the prosecutor charge Tony with? Certainly the wounding led to Frank's death (the ultimate cause), but Frank's disregard for the seriousness of his injury, not the fight, was the most proximate cause of his death. The question the law asks in cases like this is, "What would any reasonable person do?" We think most people would agree that the reasonable person would have sought medical treatment. This being the case, Tony cannot be charged with any form of homicide; the most he could be charged with is aggravated assault.

Harm refers to the negative impact a crime has either to the victim or to the general values of the community. Although the harm caused by the criminal act is often obvious, the harm caused by many so-called "victimless" crimes is often less obvious. Yet some victimless crimes can cause more social harm in the long run than many crimes with obvious victims.

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An Excursion Through the U.S. Criminal Justice System

Now that you are aware of the principles behind the process of officially labeling someone a criminal, we will discuss the process itself. The best way to explain the process within limited space is to follow the processing of felony cases from arrest to trial and beyond. There are many points at which the arrested person may be shunted off the criminal justice conveyor belt via the discretionary decisions of a variety of criminal justice officials. This process will vary in some specifics from state to state, but the principles underlying the specifics are uniform. Presented here are the stages and procedures that are most common among our 50 state court systems.

Arrest A felony suspect first enters the criminal justice system by **arrest**. When a person has been legally detained to answer criminal charges, he or she has been arrested. Some arrests are made on the basis of an *arrest warrant*, which is an official document signed by (usually) a judge on the basis of evidence presented by law enforcement officials indicating that the person named in the warrant has probably committed a crime. The warrant formally authorizes the police to execute the arrest, although most arrests are initiated by the police without a warrant. A police officer making a warrantless arrest is held to the same legal constraints involved in making application for a warrant. To make a legal felony arrest, the officer must have **probable cause**. Probable cause means that the officer must possess a set of facts that would lead a reasonable person to conclude that the arrested person had committed a specific felony crime. Although a person can be stopped on the basis of an officer's suspicion and frisked for a weapon, he or she cannot be arrested on the basis of suspicion alone, even if illegal items such as drug paraphernalia are discovered (the discovery of a weapon, however, would constitute probable cause for arrest). It is only after a formal arrest that the Fifth Amendment rights (Miranda Rule) against self-incrimination come into play.

Preliminary Arraignment After arrest and booking into the county jail, the felony suspect must be presented in court for the **preliminary arraignment** before a magistrate or municipal judge. The preliminary arraignment must take place at the earliest opportunity. The preliminary arraignment has two purposes: (1) to advise suspects of their constitutional rights (right to counsel and right to remain silent) and of the tentative charges against them and (2) to set bail. Bail can be either granted or denied at this point. The suspect may be released on monetary bail on "own recognizance." If bail is denied, it is usually because of the gravity of the crime, the risk the suspect poses to the community, or the risk that the suspect might flee the court's jurisdiction. There is no constitutional right to bail. The Eighth Amendment only states that "excessive bail shall not be required." The traditional assumption has been that bail is only designed to ensure the suspect's appearance at the next court hearing, and *excessive* means that the amount set should be within the suspect's means. Under these assumptions, many dangerous offenders were released on bail in the past. Although this still happens, it does so less than in the past. The 1984 Bail Reform Act, which has passed constitutional muster, established the principle that individuals deemed dangerous to the community could be detained pending disposition of the case.³⁵

Preliminary Hearing The **preliminary hearing**, which usually takes place about 10 days after the preliminary arraignment, is a proceeding before a magistrate or municipal judge in which three major matters must be decided: (1) whether or not a crime has actually been committed,

(2) whether or not there are reasonable grounds to believe that the person before the bench committed it, and (3) whether or not the crime was committed in the jurisdiction of the court. These matters determine if the suspect's arrest and detention is legal. The onus of proving the legality of the suspect's arrest and detention is on the prosecutor, who must establish probable cause and present the court with evidence pertinent to the suspect's probable guilt. This is usually a relatively easy matter for the prosecutor since defense attorneys rarely cross-examine witnesses or introduce their own evidence at this point—their primary use of the preliminary hearing is only to discover the strength of the prosecutor's case.

The Grand Jury If the prosecutor is successful, the suspect is *bound over* to a higher court for further processing. Prior to the suspect's next court appearance, prosecutors in some states must seek an indictment (a document formally charging the suspect with a specific crime or crimes) from a **grand jury**. The grand jury, so called to distinguish it from the "petit" or trial jury, is nominally an investigatory body and a buffer between the awesome power of the state and its citizens, but some see it as a historical anachronism that serves only prosecutorial purposes.³⁶ The grand jury is composed of citizens chosen from voter or automobile registration lists and numbers anywhere from 7 to 23 members.

Arraignment Armed with an indictment (or an *information* filed on the basis of the preliminary hearing outcome in states not requiring grand jury proceedings), the prosecutor files the case against the accused in felony court (variably called a district, supreme, superior, or common pleas court), which sets a date for **arraignment**. The arraignment proceeding is the first time defendants (their status has changed from suspect to defendant on the basis of the indictment or information) have the opportunity to respond to the charges against them. After the charges are read to the defendant, he or she must then enter a formal response to them, known as a plea.

The plea alternatives are guilty, not guilty, or no contest (*nolo contendere*). A guilty plea is usually the result of a plea bargain agreement concluded before the arraignment. About 90% of all felony cases in the United States are settled by plea bargains in which the state extends some benefit to the defendant (e.g., reduced charges, a lighter sentence) in exchange for his or her cooperation. By pleading guilty, defendants give up their right to be proven guilty "beyond a reasonable doubt," their right against self-incrimination, and their right to appeal.

A "no-contest" plea is the equivalent of a "guilty" plea in terms of criminal processing and is treated as such. Defendants usually plead no contest rather than guilty to protect themselves from civil litigation arising from the same set of circumstances involved in the criminal case. A guilty plea is a direct admission of guilt and can thus be used in civil proceedings. A no-contest plea, however, admits nothing, and thus the conviction based on it cannot be used in civil court. A "not guilty" plea results in a date being set for trial; a "guilty" or "no-contest" plea results in a date being set for sentencing.

The Trial A trial by a jury of one's peers is a right going back as far as the Magna Carta in 1215 and is enshrined in the Sixth Amendment to the Constitution. A trial is an examination of the law and the facts of a case by a judge or a jury for the purpose of reaching a judgment. If a defendant wishes, and state statutes allow for it, he or she can forgo the constitutional right to a jury trial and submit to a bench trial (trial by a judge). The trial is an adversarial process pitting the prosecutor against the defense attorney, with each side trying to "vanquish" the other. There is no sense that each side is interested in seeking truth or justice in this totally partisan

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process. It is the task of the judge to ensure that both sides play by the rules. The prosecution's job is a little more difficult than the defense's since it must "prove beyond a reasonable doubt" that the accused is indeed guilty. Except in states that allow for nonunanimous jury decisions, the defense need only plant the seed of reasonable doubt in the mind of one stubborn juror to upset the prosecution's case.

Having heard the facts of the case, and having been instructed by the judge on the principles of law pertaining to it, the jury is charged with reaching a verdict. The jury's verdict may be guilty or not guilty; if it cannot reach a verdict (a "hung" jury), the judge may declare a mistrial. A hung jury results in either dismissal of the charges by the prosecutor or in a retrial. If the verdict is guilty, in most cases, the judge will delay sentencing (usually for a period of about 30 days) to allow time for a presentence investigation report to be prepared. It is at the point of conviction that the person officially becomes a criminal.

Probation Presentence investigation reports (PSIs) are prepared by **probation** officers and contain a variety of information about the crime and the offender's background (criminal record, education and work history, marital status, substance abuse, and attitude). On the basis of this information, the probation officer offers a sentencing recommendation. The most important factors influencing these recommendations are crime seriousness and the defendant's criminal history. Other factors, such as the officer's assessment of the rehabilitative potential of the defendant, are important but less so. A variety of studies have found that these recommendations are followed by judges around 90% of the time.³⁷

One of the sentencing options open to the judge is to place the offender on probation, the most common sentence for felonies in the United States today. A probation sentence is actually a suspended commitment to prison that is conditional on the offender's good behavior. If at any time during their probationary period, offenders do not abide by the imposed probation conditions (consisting of a variety of general and offender-specific conditions), they may face revocation of probation and the imposition of the original prison sentence. Probation officers supervise and monitor offenders' behavior and ensure that all conditions of probation (e.g., substance abuse counseling, fines and restitution paid, restraining orders followed) are adhered to. Probation officers thus function as both social workers and law enforcement officers—sometimes conflicting roles that officers may find difficult to reconcile.

Incarceration If the sentence imposed for a felony conviction is some form of incarceration, the judge has the option of sentencing the offender to a state penitentiary, a county jail, or a county work release program. The latter two options are almost invariably imposed as supplements to probation orders.

Parole Parole is a conditional release from prison granted to inmates some time prior to the completion of their sentences. An inmate is granted **parole** by an administrative body called a parole board, which decides for or against parole based on such factors as inmate behavior while incarcerated and the urgency of the need for cell space. Once released on parole, parole officers, whose job is almost identical to that of probation officers, supervise parolees. In many states, probation and parole officers are one and the same. The primary difference between probation and parole is that probationers are under the supervision of the courts and parolees are under the supervision of the state Department of Corrections. Revocation of probation is a judicial function; revocation of parole is an executive administrative function.



▲ **Photo 1.2** This “new generation” jail is only one of half a dozen facilities located at Riker’s Island, NYC. There are traditional-looking jail buildings, a boot camp, a women’s facility, and even a floating hulk at Riker’s. New-generation jails feature pod-style architecture rather than cellblocks while corrections officers spend their entire shift in the day rooms with inmates (direct supervision).

📌 The Role of Theory in Criminology

When an FBI agent asked the notorious Depression-era bank robber Willie Sutton why he robbed banks, Sutton is reported to have replied, “Because that’s where the money is.” In his own simple way, Sutton was offering a theory explaining the behavior of bank robbers. Behind his witty answer is a model of a kind of person who has learned how to take advantage of opportunities provided by convenient targets flush with a valued commodity. Thus, if we put a certain kind of personality and learning together with opportunity and coveted resources, we get bank robbery. This is what theory making is all about: trying to grasp how all the known correlates of a phenomenon are linked together in noncoincidental ways to produce an effect.

Just as medical scientists want to find out what causes disease, criminologists are interested in finding out factors that cause crime and criminality. As is the case with disease, there are a variety of risk factors to be considered when searching for causes of criminal behavior. The very first step in detected causes is to discover **correlates**, which are factors that are linked or related to the phenomenon a scientist is interested in. To discover if two factors “go together”—are correlated—we must see if they vary together; that is, if one variable goes up or down, the other goes up or down as well.

Establishing causality requires much more sophisticated procedures than simply establishing a correlation. Take gender, the most thoroughly documented correlate of criminal behavior ever identified. Literally thousands of studies throughout the world, with some European studies going back five or six centuries, have consistently reported strong gender differences in all sorts of antisocial behavior, including crime—and the more serious the crime,

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the stronger that difference is. All studies are unanimous in indicating that males are more criminal and antisocial than females. Establishing *why* gender is such a strong correlate of crime is the real challenge, as it is with any other correlate. Trying to establish causes is the business of theory.

Theories are devised to explain how a number of different correlates may actually be *causally related* to crime and criminality rather than simply associated with them. We emphasize that when criminologists talk of causes, they do not mean that when *X* is present, *Y* will occur in a completely prescribed way. They mean that when *X* is present, *Y* has a certain *probability* of occurring, and perhaps only if *X* is present along with factors *A*, *B*, and *C*. In many ways, crime is like illness because there may be as many routes to becoming criminal as there are to becoming ill. In other words, criminologists have never uncovered a **necessary cause** (a factor that *must* be present for criminal behavior to occur and in the absence of which criminal behavior has never occurred) or a **sufficient cause** (a factor that is able to produce criminal behavior without being augmented by some other factor).

There is a lot of confusion about the term *theory* among laypersons. We often hear statements such as, “That’s just theory” or “They teach evolution as if it was a fact when it’s just a theory.” Theory is also often negatively contrasted with practice: “That’s all right in theory, but it won’t work in the real world.” Such statements imply that a theory is a poor relative of a fact, something impractical we grasp at in the absence of solid, practical evidence. Nothing could be further from the truth. Theories help us to make sense of a diversity of seemingly unrelated facts and propositions, and they even tell us where to look for more facts, which make theories very practical things indeed.

We all use theory every day to fit facts together. A detective, for instance, is confronted with a number of facts about a mysterious murder, but their meaning and relatedness to one another is ambiguous, and some may even appear contradictory. Using years of experience, training, and good common sense, the detective constructs a theory linking those facts together so that they begin to make some sense, to begin to tell their story. The vision of reality derived from the available facts then guides the detective in the search for additional facts in a series of “*if* this is true, *then* this should be true” statements. There may be many false starts as our detective misinterprets some facts, fails to uncover others, and considers some to be relevant when they are not. Good detectives, like good scientists, will adjust their theory as new facts warrant; poor detectives and poor scientists will stand by their favored theory by not looking for more facts or by ignoring, downplaying, or hiding contrary facts that come to their attention. When detectives do this, innocent people suffer and guilty people remain unknown; when scientists do this, the progress of science suffers.

What Is Theory?

We define a **theory** as a set of logically interconnected propositions explaining how phenomena are related and from which a number of hypotheses can be derived and tested. Theories should provide coherent explanations of the phenomena they address, correspond with the relevant empirical facts, and provide practical guidance for researchers looking for further facts. This guidance takes the form of a series of statements that can be logically deduced from the assertions of the theory. We call these statements **hypotheses**, which are statements about relationships between and among factors we expect to find based on the logic of our theories. Hypotheses and theories support one another in the sense that theories provide the

raw material (the ideas) for generating hypotheses, and hypotheses support or fail to support theories by exposing them to empirical testing.

The physical and natural sciences enjoy a great deal of agreement about what constitutes the core body of knowledge within their disciplines and thus have few competing theories, especially at the most general levels. Within criminology and the social/behavioral sciences in general, there is little agreement about the nature of the phenomena we study, and so we suffer an embarrassment of theoretical riches. Given the number of criminological theories, students may be forgiven for asking which one is true. Scientists never use the term *truth* in scientific discourse; rather, they tend to ask which theory is most useful. Criteria for judging the merits of a theory are summarized as follows:

1. *Predictive Accuracy*: A theory has merit and is useful to the extent that it accurately predicts what is observed. That is, the theory has generated a large number of research hypotheses that have supported it. This is the most important criterion.
2. *Predictive Scope*: Refers to the scope or range of the theory and thus the scope or range of the hypotheses that can be derived from it. That is, how much of the empirical world falls under the explanatory umbrella of Theory A compared to how much falls under Theory B.
3. *Simplicity*: If two competing theories are essentially equal in terms of the first two criteria, then the less complicated one is considered more “elegant.”
4. *Falsifiability*: A theory is never proven true, but it must have the quality of being falsifiable or disprovable. If a theory is formulated in such a way that no amount of evidence could possibly falsify it, then the theory is of little use.³⁸

How to Think About Theories

You will be a lot less confused and cynical about the numerous theories in criminology if you keep certain things in mind when thinking about them. First, there are theories that deal with different levels of analysis. A level of analysis is that segment of the phenomenon of interest that is measured and analyzed. For instance, we can ask about the causes of crime by concentrating our inquiries at levels of analysis such as whole societies, subcultures and neighborhoods, families, or individuals. Answers to the question of crime causation at one level do not generally answer the same question at another level. For instance, suppose that at the individual level, strong evidence supports the notion that crime is linked to impulsiveness and low IQ. Do you think that this evidence would help us to understand why the crime rate in Society A is 2.5 times that of Society B or why the crime rate in Society C last year was only 75% as high as it was 20 years ago? It would do so only in the extremely unlikely event that Society A has 2.5 times as many impulsive, low-IQ people as Society B or that Society C has lost 25% of its people with those characteristics in the past 20 years. If the question posed asks about crime rates in whole societies, the answers must address sociocultural differences among different societies or in the same society at different times.

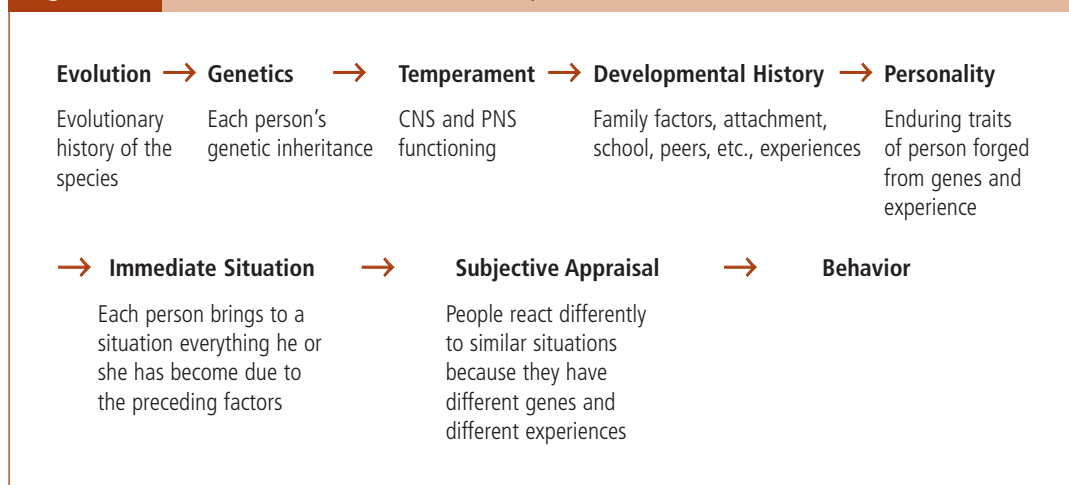
Conversely, if crime rates are found to be quite strongly related to the degree of industrialization or racial/ethnic diversity in societies, this tells us nothing about why some people in an industrialized, heterogeneous society commit crimes and others in the same society do not. To answer questions about individuals, we need theories about individuals. Generally speaking,

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questions of cause and effect must be answered at the same level of analysis at which they were posed, and thus different theories are required at different levels. However, a firm grasp of crime causation will eventually require theories that integrate propositions from every level of analysis. These propositions must be mutually consistent across levels of analysis in ways that theoretical propositions in the more advanced sciences are. No such theory exists in criminology at the present time.

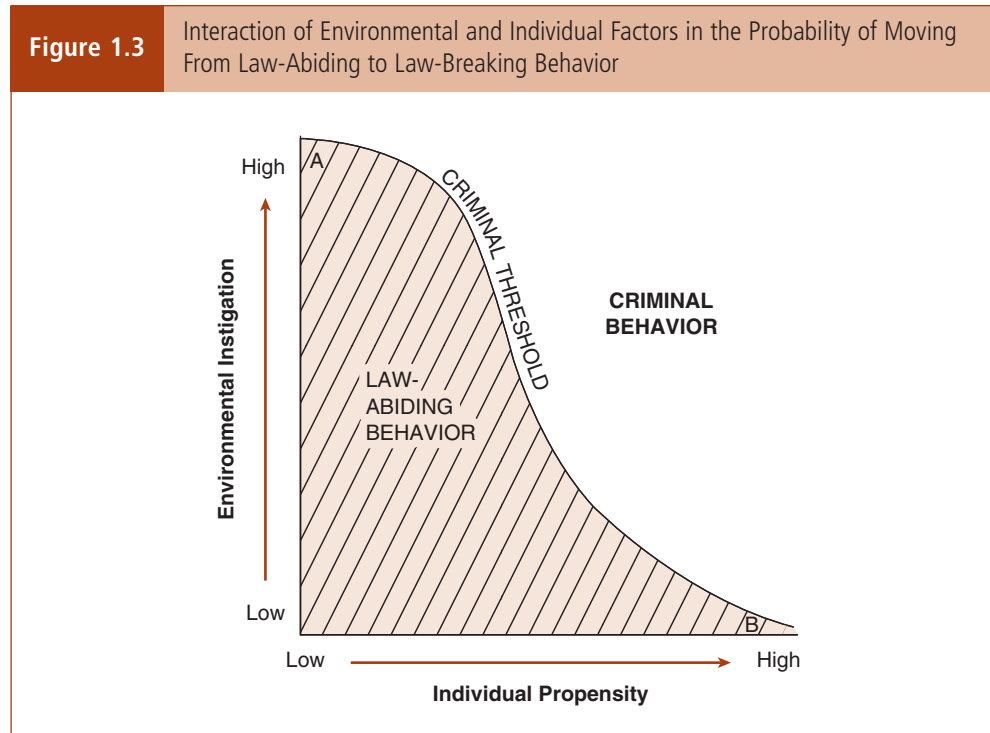
The second reason we have so many theories is that causal explanations are also offered at different temporal levels: *ultimate* (distant in time) and *proximate* (close in time) explanations. Figure 1.2 illustrates this continuum. We can offer different temporal explanations regardless of the level of analysis. If we define a criminal act as something that occurs when a person who is psychologically prepared to commit such an act is presented with a situation conducive to its commission (such as Willie Sutton and banks), the possible levels of explanation range from the ultimate (the evolutionary history of the species) to the most proximate level (the immediate precipitating situation). Between these extreme levels are explanations such as genetic, temperamental, developmental, personality, familial, experiential, and social environmental. We will be discussing theories and offering explanations for crime at all levels, but you should realize that in reality, these levels describe an integrated whole. This text views human behavior in a way described by Christopher Peterson: “Most contemporary psychologists prefer to regard people as biopsychosocial beings, believing that people and their behavior are best explained in terms of relevant biological mechanisms, psychological processes, and social influences.”³⁹

Figure 1.2 The Ultimate-Proximate Levels of Explanation



Note: Evolutionary forces lead to species-specific genomes. Each person has a unique genotype. These genotypes lead to differential central and peripheral nervous system (CNS and PNS) functioning. This functioning is modified by the person's developmental history. Working together, the person's temperament and developmental history form his or her personality. This personality may often lead the person to different situations and lead him or her to appraise those situations differently from other persons. The behavior elicited from that appraisal is thus the result of everything that preceded it, plus pure chance.

Let us look at a simple diagrammatic illustration of what is meant by the above statement. Crime rates in a population change, sometimes drastically, from time to time without any corresponding change in the gene pool or personalities of the people in the population. Because causes are sought only among factors that vary, changing sociocultural environments must be the only causes of changing crime rates. What environmental changes do, however, is raise or lower individual thresholds for engaging in crime, and some people have lower thresholds than others. People with weak criminal propensities (or high prosocial propensities) require high levels of environmental instigation to commit crimes, but some individuals would engage in criminal behavior in the most benign of environments. When or if individuals cross the threshold to commit criminal acts depends on the interaction between where their personal thresholds are set and where environmental thresholds are set. Figure 1.3 illustrates this point.



SOURCE: From Walsh, A. (2003). Introduction to the biosocial perspective. In A. Walsh & L. Ellis (Eds.), *Biosocial criminology: Challenging environmentalism's supremacy* (pp. 3–12). Huntington, NY: Nova Science Publishers. Reprinted with permission from Nova Science.

NOTE: Angled lines each represent a hypothetical individual. Person A has a low underlying criminal disposition and thus requires strong environmental instigation to cross the threshold from law-abiding to law-breaking behavior. Person B has a strong underlying criminal disposition and will cross the threshold even under extremely low environmental instigation.

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Before we discuss the various theories, you should be aware of a number of pitfalls to avoid when interpreting the overall meaning of a body of research literature. Interpreting the meaning of empirical tests of theory is not nearly so straightforward as interpreting studies concerned only with documenting correlates of crime. There is little room for error when contrasting rates of antisocial behavior between and among the various demographic variables such as age, gender, and race/ethnicity. Nor is there much difficulty (unless one wants to split fine hairs) in defining and classifying people into those categories. But theory testing looks for causal explanations rather than simple descriptions, and that's where our problems begin. For example, when we consistently find positive correlations between criminal behavior and some other factor, it is tempting to assume that something causal is going on, but as we have said previously, correlations merely *suggest* causes—they do not demonstrate them. Resisting the tendency to jump to causal conclusions from correlations is the first lesson of statistics.

Ideology in Criminological Theory

It is essential that we understand the role of ideology in criminology, although we rarely see a discussion of it in textbooks, leading students to believe that criminological arguments are settled with data in the same manner that natural science arguments are. Unfortunately, this is not always the case. **Ideology** is a way of looking at the world, a general emotional picture of “how things should be.” By definition, it implies a selective interpretation and understanding of evidence that come to our senses rather than an objective and rational evaluation of the evidence.⁴⁰ Ideology forms, shapes, and colors our concepts of crime and its causes in ways that lead to a tendency to accept or reject new evidence according to how well or poorly it fits our ideology.

According to Thomas Sowell,⁴¹ two contrasting visions have shaped thoughts about human nature throughout history, and these visions are in constant conflict with each other. The first of these visions is the **constrained vision**, so called because believers in this vision view human activities as constrained by an innate human nature that is self-centered and largely unalterable. The **unconstrained vision** denies an innate human nature, viewing it as formed anew in each different culture. The unconstrained vision also believes that human nature is perfectible, a view scoffed at by those who profess the constrained vision. A major difference between the two visions is that the constrained vision says, “this is how the world *is*”; the unconstrained vision says, “this is how the world *should be*.” These visions are what sociologists call *ideal types*, which are conceptual tools that accentuate differences between competing positions for purposes of guiding the exploration of them. Many “visions” are hybrids of the two extremes; Sowell lists Marxism, for instance, as a prominent hybrid of the two visions.

The two contrasting ways of approaching a social problem such as crime are aptly summed up by Sowell: “While believers in the unconstrained vision seek the special causes of war, poverty, and crime, believers in the constrained vision seek the special causes of peace, wealth, or a law-abiding society.”⁴² Note that this implies that unconstrained visionaries (mostly liberals) believe that war, poverty, and crime are aberrations to be explained, while constrained visionaries (mostly conservatives) see these things as historically normal and inevitable, although regrettable, and believe that what has to be understood are the conditions that prevent them. We will see the tension between visions constantly as we discuss the various theories in this book.

Given this, it should be no surprise to discover that criminological theories differ on how they approach the “crime problem.” A theory of criminal behavior is at least partly shaped by

the ideological vision of the person who formulated it, and that, in turn, is partly due to the ideological atmosphere prevailing in society. Sowell avers that a vision “is what we sense or feel *before* we have constructed any systematic reasoning that could be called a theory, much less deduced any specific consequences as hypotheses to be tested against evidence.”⁴³ Those who feel drawn to a particular theory likewise owe a great deal of their attraction to it since they share the same vision as its formulator. In other words, “visions,” more so than hard evidence, all too often lead criminologists to favor more strongly one theory over another than most of them care to acknowledge.⁴⁴

Orlando Patterson⁴⁵ views ideology as a major barrier to advancement in the human sciences. He states that conservatives believe that only “the proximate internal cultural and behavioral factors are important (‘So stop whining and pull up your socks, man!’),” and “liberals and mechanistic radicals” believe that “only the proximate and external factors are worth considering (‘Stop blaming the victim, racist!’).” Patterson’s observation reminds us of the ancient Indian parable of the nine blind men feeling different parts of an elephant. Each man described the elephant according to the part of its anatomy he had felt, but each failed to appreciate the descriptions of the others who felt different parts. The men fell into dispute and departed in anger, each convinced of the utter stupidity, and perhaps the malevolence, of the others. The point is that ideology often leads criminologists to “feel” only part of the criminological elephant and then to confuse the parts with the whole. As with the blind men, criminologists sometimes question the intelligence and motives (e.g., having some kind of political agenda) of other criminologists who have examined different parts of the criminological elephant. Needless to say, such criticisms have no place in scientific criminology.

There is abundant evidence that political ideology is linked to favored theories among contemporary criminologists. One study asked 137 criminologists which theory they considered to be “most viable with respect to explaining variations in serious and persistent criminal behavior.”⁴⁶ Twenty-three different theories were represented in their responses, but obviously they cannot all be the “most viable,” so something other than hard evidence was instrumental in making their choices. The researchers found that the best predictor of a favored theory was the criminologists’ stated ideology (divided into conservative, moderate, liberal, and radical categories), and the second best predictor was the discipline in which criminologists received the bulk of their training. Ideology and the lack of interdisciplinary training will no doubt continue to plague the development of a theory of crime and criminality that is acceptable to all criminologists. When reading this text, try to understand where the originators, supporters, and detractors of any particular theory being discussed are “coming from” ideologically as well as theoretically.

SUMMARY



Criminology is the scientific study of crime and criminals. It is an interdisciplinary/multidisciplinary study, although criminology has yet to integrate these disciplines in any comprehensive way.

The definition of crime is problematic, largely because acts defined as criminal vary across time and culture and even within cultures. Many criminologists feel that because crimes are social constructions, we cannot define what real crimes are and who the real criminals are. We tried to counter this argument by pointing out that there is a stationary core of crimes that are universally condemned and always have been. These crimes are victimful predatory crimes that

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cause serious harm. These crimes are defined as *mala in se*, or “inherently bad,” as opposed to *mala prohibita*—“bad because they are forbidden” crimes.

A person is not “officially” a criminal until he or she has been found guilty beyond a reasonable doubt of having committed a crime. To prove that he or she did, the state has to prove *corpus delicti* (“the body of the crime”), which essentially means that he or she committed a criminal act (*actus reus*) with full awareness that the act was wrong (*mens rea*—guilty mind). Other basic principles—concurrency, harm, and causation—are proven in the process of proving *corpus delicti*.

Theory is the “bread and butter” of any science, including the science of criminology. We will see that there are many contending theories seeking to explain crime and criminality. Although we do not observe such theoretical disagreement in the more established sciences, the social/behavioral sciences are very young, and human behavior is extremely difficult to study. When judging among the various theories, we have to keep certain things in mind, including the predictive accuracy, scope, simplicity, and falsifiability. We must also remember that crime and criminality can be discussed at many levels (society-wide, subcultural, family, or individual) and that one theory that may do a good job of predicting crime at one level may do a poor job at another level.

Theories can also be offered at different temporal levels. They may focus on the evolutionary history of the species (the most ultimate level), the individual’s subjective appraisal of a situation (the most proximate level), or any other temporal level in between. A full account of an individual’s behavior may have to take all these levels into consideration because any behavior, including criminal behavior, arises from an individual’s propensities interacting with the current environmental situation as that individual perceives it. This is why we approach the study of crime and criminality from social, psychosocial, and biosocial perspectives.

Criminologists have not traditionally done this, preferring instead to examine only aspects of criminal behavior that they find congenial to their ideology and, unfortunately, often maligning those who focus on other aspects. The main dividing line in criminology has separated conservatives (who tend to favor explanations of behavior that focus on the individual) and liberals (who tend to favor structural or cultural explanations). We noted that criminologists’ favored theories of crime were strongly correlated with their sociopolitical ideology.

On Your Own


Log on to the web-based student study site at <http://www.sagepub.com/criminologystudy> for more information about the vignettes and materials presented in this chapter, suggestions for activities, study aids such as review quizzes, and research recommendations including journal article links and questions related to this chapter.

EXERCISES AND DISCUSSION QUESTIONS

1. Describe a recent change, or proposed change, in some criminal statute that you have learned about in the mass media. Offer your views on why some people want to make these changes and why others might resist them. Also offer your opinion on how much impact such changes might make on the level of crime in your area.
2. Which of the following 10 acts do you consider *mala in se* crimes, *mala prohibita* crimes, or no crime at all? Defend your choices.

- A. Drug possession
 - B. Vandalism
 - C. Drunk driving
 - D. Collaborating with the enemy
 - E. Sale of alcohol to minors
 - F. Fraud
 - G. Spouse abuse
 - H. Adult male having consensual sex with underage person
 - I. Prostitution
 - J. Cannibalism in a culture in which it is normative (i.e., accepted as normal behavior)
3. Describe the difference between crime and criminality.
 4. Why is it important to consider ideology when evaluating criminologists' work? Is it possible for them to divorce their ideology from their work?
 5. What does the term *theory* mean to you?
 6. The table below presents in no particular order a list of 7 acts that are often considered criminal offenses. Add 3 more offenses that interest you to this list. Then, rate each of the 10 acts on a scale from 1 to 10 in terms of your perception of each one's seriousness (with 10 being the most serious). Without letting anyone see your ratings, give your list to a member of the opposite gender and ask him or her to rate the offenses on the same 10-point scale. After he or she is finished, compare the two ratings with the other person present and discuss each inconsistency of 2 or more ranking points. Write a one- to two-page double-spaced report on what you learned from this exercise about how you and the other person differ and resemble one another in your thoughts about the seriousness of crime. Is there a gender difference?

Offense	Ranking by Someone Else	Your Ranking
Alcohol consumption by a minor		
Assassinating an unpopular political leader		
Killing a repeatedly abusive spouse		
Raping a stranger with threats from a deadly weapon		
Committing rape on a date by threatening bodily harm		
Driving while extremely drunk		
Molesting a young child		
Total of all rankings		

7.  Go to <http://www.Isus.edu/la/journals/ideology/> for the online journal *Quarterly Journal of Ideology*. Click on *archive* and find and read "Ideology: Criminology's Achilles' Heel." What does this article say about the "conflict of visions" in criminology?

KEY WORDS

Actus reus	Felony	Parole
Arraignment	Grand jury	Preliminary arraignment
Arrest	Harm	Preliminary hearing
Causation	Hypotheses	Probable cause
Concurrence	Ideology	Probation
Constrained vision	Level of analysis	Sufficient cause
Corpus delicti	Mala in se	Theory
Correlates	Mala prohibita	Trial
Crime	Mens rea	Unconstrained vision
Criminality	Misdemeanor	
Criminology	Necessary cause	

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