CONCEPTS OF CRIME, LAW, AND CRIMINOLOGY

How is crime defined? How much crime is there, and what are the trends and patterns in the crime rate? How many people fall victim to crime, and who is likely to become a crime victim? How did our system of criminal law develop, and what are the basic elements of crimes? What is the science of criminology all about?

These are some of the core issues that will be addressed in the first three chapters of this text. Chapter 1 introduces students to the field of criminology: its nature, area of study, methodologies, and historical development. Concern about crime and justice has been an important part of the human condition for more than 5,000 years, since the first criminal codes were set down in the Middle East. Although criminology—the scientific study of crime—is considered a modern science, it has existed for more than 200 years. It introduces students to one of the key components of criminology—the development of criminal law. Chapter 1 also discusses the social history of law, the purpose of law, and how law defines crime. Chapter 2 focuses on criminological research methods and how they are used to measure the nature and extent of crime, and Chapter 3 is devoted to victims and victimization. Important, stable patterns in the rates of crime and victimization indicate that these are not random events. The way crime and victimization are organized and patterned profoundly influences how criminologists view the causes of crime.

CHAPTER 1  Crime, Criminology, and the Criminal Law
CHAPTER 2  The Nature and Extent of Crime
CHAPTER 3  Victims and Victimization
When basketball idol Kobe Bryant was arrested in Eagle, Colorado, on July 4, 2003, and charged with felony sexual assault on July 18, a strong ripple went through all levels of American society. Bryant was alleged to have assaulted a 19-year-old girl who worked at a luxury hotel in which he was staying when he was in Colorado for knee surgery in late June.

The case dominated the media for months. ESPN told viewers that a bellman saw the woman leaving Bryant’s room with marks on her face and neck. People magazine reported that Bryant bought his wife a $4 million diamond ring. Other reports said that Bryant’s accuser was sexually promiscuous. Bryant himself, a married man with an infant daughter, announced that he had committed adultery with the woman but insisted the sex was consensual. The Bryant case raises questions about the media’s role in high-profile criminal trials. How is it possible to select a fair and impartial jury if the case has already been tried in the press?

On July 23, 2004, before the trial began, a Colorado judge ruled that the defense had met the burden required under the state’s rape victim law of proving that evidence about the woman’s sex life was relevant for the jury to hear. How do details from her past contribute to deciding the truth of a criminal matter? If Kobe Bryant had been accused of robbing a store, would it be fair to focus on such questions as the owner’s financial background and sexual orientation?

While it should not have been a factor in the Bryant case, a criminal charge against a famous black athlete accused by a white woman causes many Americans to view the case through the lens of race. Are African American men routinely and falsely accused by the justice system?

On September 1, 2004, the case was abruptly dropped when prosecutors disclosed that the victim did not want to proceed with the criminal case. As part of the deal, Bryant made a public statement in which he said, “Although I truly believe this encounter between us was consensual, I recognize now that she did not and does not view this incident the same way I did.” What does the crime of rape entail? Is it possible for someone to commit rape without realizing that he has committed a crime?

View the CNN video clip of this story and answer related critical thinking questions on your Criminology 9e CD.
CHAPTER OBJECTIVES

1. Understand what is meant by the field of criminology
2. Know the historical context of criminology
3. Recognize the differences among the various schools of criminological thought
4. Be familiar with the various elements of the criminological enterprise
5. Be able to discuss how criminologists define crime
6. Recognize the concepts of criminal law
7. Know the difference between evil acts and evil intent
8. Describe the various defenses to crime
9. Show how criminal law is undergoing change
10. Be able to discuss ethical issues in criminology

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The types of questions about crime and its control raised by the Bryant case and other similar high-profile incidents have spurred public and scholarly interest in criminology, an academic discipline that makes use of scientific methods to study the nature, extent, cause, and control of criminal behavior. This discipline is devoted to the development of valid and reliable information that addresses the causes of crime as well as crime patterns and trends. Unlike media commentators—whose opinions about crime may be colored by personal experiences, biases, and values—criminologists remain objective as they study crime and its consequences. The field of criminology has gained prominence as an academic area of study due to the constant threat of crime and the social problems it represents.

This text analyzes criminology and its major subareas of inquiry. It focuses on the nature and extent of crime, the causes of crime, crime patterns, and crime control. This chapter introduces and defines criminology: What are its goals? What is its history? How do criminologists define crime? How do they conduct research? What ethical issues face those wishing to conduct criminological research?

**WHAT IS CRIMINOLOGY?**

Criminology is the scientific approach to studying criminal behavior. In their classic definition, criminologists Edwin Sutherland and Donald Cressey state:

Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the processes of making laws, of breaking laws, and of reacting toward the breaking of laws. . . . The objective of criminology is the development of a body of general and verified principles and of other types of knowledge regarding this process of law, crime, and treatment.¹

Sutherland and Cressey’s definition includes the most important areas of interest to criminologists: (1) the development of criminal law and its use to define crime, (2) the cause of law violation, and (3) the methods used to control criminal behavior. This definition also makes reference to the term verified principles, which implies that the scientific method should be used in studying criminology. Criminologists use objective research methods to pose research questions (hypotheses), gather data, create theories, and test their validity. They also use every method of established social science inquiry, including analysis of existing records, experimental designs, surveys, historical analysis, and content analysis. Criminology is essentially an interdisciplinary science; criminologists have been trained in diverse fields, most commonly sociology, but also criminal justice, political science, psychology, economics, and the natural sciences.

**Criminology and Criminal Justice**

Although the terms criminology and criminal justice may seem similar, and people often confuse the two, there are major differences between these fields of study. Criminology explains the etiology (origin), extent, and nature of crime in society, whereas criminal justice refers to the agencies of social control that handle criminal offenders. While criminologists are mainly concerned with identifying the nature, extent, and cause of crime, criminal justice scholars are engaged in describing, analyzing, and explaining the behavior of the agencies of justice—police departments, courts, and corrections—and identifying effective methods of crime control.

Because both fields are crime related, they do overlap. Criminologists must be aware of how the agencies of justice operate and how they influence crime and criminals. Criminal justice experts cannot begin to design programs of crime prevention or rehabilitation without understanding something of the nature of crime. It is common, therefore, for criminal justice programs to feature courses on criminology and for criminology courses to evaluate the agencies of justice.

**Criminology and Deviance**

Criminology is also sometimes confused with the study of deviant behavior. However, significant distinctions can be made between these areas of scholarship. Deviant behavior is behavior that departs from social norms. Included within the broad spectrum of deviant acts are behaviors ranging from committing violent crimes to joining a nudist colony.

Crime and deviance are often confused because not all crimes are deviant or unusual acts and not all deviant acts are illegal or criminal. For example, using recreational drugs, such as marijuana, may be illegal, but is it deviant? A significant percentage of U.S. youth have used or are using drugs. Therefore, to argue that all crimes are behaviors that depart from the norms of society is probably erroneous. Similarly, many deviant acts are not criminal even though they may be shocking to the conscience. For example, suppose a passerby observes a person drowning and makes no effort to save that person. Though the general public would probably condemn the observer’s behavior as callous, immoral, and deviant, no legal action could be taken because citizens are not required by law to effect rescues. There is no legal requirement that someone rush into a burning building, brave...
a flood, or dive into the ocean to save another from harm. In sum, many criminal acts, but not all, fall within the concept of deviance. Similarly, some deviant acts, but not all, are considered crimes.

The principal purpose of the Office on National Drug Control Policy (ONDCP) is to establish policies, priorities, and objectives for the nation’s drug control program, the goals of which are to reduce illicit drug use, manufacturing, and trafficking; reduce drug-related crime and violence; and reduce drug-related health consequences. To read more about their efforts, go to their website at http://www.whitehousedrugpolicy.gov. For an up-to-date list of weblinks, go to http://cj.wadsworth.com/siegel_crim_9e.

To understand the nature and purpose of law, criminologists study both the process by which deviant acts are criminalized and become crimes and, conversely, how criminal acts are decriminalized and become legal albeit deviant. In some instances, individuals, institutions, or government agencies mount a campaign aimed at convincing both the public and lawmakers that what was considered relatively innocuous deviant behavior is actually dangerous and must be outlawed. For example, marijuana use was at one time legal but was later banned because of an extensive lobbying effort by Harry Anslinger, head of the Federal Bureau of Narcotics, who used magazine articles, public appearances, and public testimony to sway public opinion. In testimony before the House Ways and Means Committee considering passage of the Marijuana Tax Act of 1938, Anslinger stated:

In Florida a 21-year-old boy under the influence of this drug killed his parents and his brothers and sisters. The evidence showed that he had smoke marihuana. In Chicago recently two boys murdered a policeman while under the influence of marihuana. Not long ago we found a 15-year-old boy going insane because, the doctor told the enforcement officers, he thought the boy was smoking marihuana cigarettes. They traced the sale to some man who had been growing marihuana and selling it to these boys all under 15 years of age, on a playground there.

As a result of these efforts, a deviant behavior, marijuana use, became a criminal behavior, and previously law-abiding citizens were now defined as criminal offenders. Today, some national organizations, such as the Drug Policy Alliance, are committed to both repealing draconian drug laws and ending what they consider to be the socially irresponsible “war against drugs,” which has gone overboard in its effort to detect drug users and punish them severely. In 2004, the alliance issued this statement:

Many of the problems the drug war purports to resolve are in fact caused by the drug war itself. So-called “drug-related” crime is a direct result of drug prohibition’s distortion of immutable laws of supply and demand. Public health problems like HIV and Hepatitis C are all exacerbated by zero tolerance laws that restrict access to clean needles. The drug war is not the promoter of family values that some would have us believe. Children of inmates are at risk of educational failure, joblessness, addiction and delinquency. Drug abuse is bad, but the drug war is worse.

There is also frequent discussion about where to draw the line between behavior that is considered deviant but legal and behavior that is outlawed and criminal. For example, when does sexually oriented material cross the line between being merely suggestive and become pornographic? Can a line be drawn separating sexually oriented materials into two groups, one considered legally acceptable and a second considered depraved or obscene? And, if such a line could be drawn, who gets to draw it? Radio host Howard Stern was fined by the Federal Communications Commission (FCC) in 2004 for “repeated, graphic and explicit sexual descriptions were pandering, titillating or used to shock the audience.” The government action prompted Clear Channel Communications to drop his show from their stations. Stern later posted transcripts from other programs such as Oprah Winfrey that used language very similar to what was used on his show but was deemed not offensive by government regulators. It is often difficult to determine when behavior crosses the line from the merely deviant to the outright criminal.

In sum, criminologists are concerned with the concept of deviance and its relationship to criminality. The shifting definition of deviant behavior is closely associated with our concepts of crime. The relationship among criminology, criminal justice, and deviance is illustrated in Concept Summary 1.1.

To quiz yourself on this material, go to the Criminology 9e website.

A BRIEF HISTORY OF CRIMINOLOGY

The scientific study of crime and criminality is relatively recent. Although written criminal codes have existed for thou-
During the Middle Ages, superstition and fear of satanic possession dominated thinking. People who violated social norms or religious practices were believed to be witches or possessed by demons. The prescribed method for dealing with the possessed was burning at the stake, a practice that survived into the seventeenth century. For example, between 1581 and 1590, Nicholas Remy, head of the Inquisition in the French province of Lorraine, ordered 900 sorcerers and witches burned to death; likewise, a contemporary, Peter Binsfield, the bishop of the German city of Trier, ordered the death of 6,500 people. An estimated 100,000 people were prosecuted throughout Europe for witchcraft during the sixteenth and seventeenth centuries. It was also commonly believed that some families produced unsound or unstable offspring and that social misfits were inherently damaged by reason of their “inferior blood.”

Classical Criminology

By the mid-eighteenth century, social philosophers began to rethink the prevailing concepts of law and justice. They argued for a more rational approach to punishment, stressing that the relationship between crimes and their punishment should be balanced and fair. This view was based on the prevailing philosophy of the time called utilitarianism, which...
emphasized that behavior occurs when the actor considers it useful, purposeful, and reasonable. It stands to reason that criminal behaviors can be eliminated or controlled if people begin to view them as troublesome and disappointing and not easily rewarding. Reformers called for a more moderate and just approach to penal sanctions, which could substitute for the cruel public executions designed to frighten people into obedience. The most famous of these was Cesare Beccaria (1738–1794), whose writings described both a motive for committing crime and methods for its control.

Beccaria believed people want to achieve pleasure and avoid pain. Therefore, he concluded, crimes must provide some pleasure to the criminal. To deter crime, he believed one must administer pain in an appropriate amount to counterbalance the pleasure obtained from crime. Beccaria stated his famous theorem like this:

In order for punishment not to be in every instance, an act of violence of one or many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, and dictated by the laws.8

The writings of Beccaria and his followers form the core of what today is referred to as classical criminology. As originally conceived in the eighteenth century, classical criminology theory had several basic elements:

- In every society people have free will to choose criminal or lawful solutions to meet their needs or settle their problems.
- Criminal solutions may be more attractive than lawful ones because they usually require less work for a greater payoff.
- A person's choice of crime may be controlled by his or her fear of punishment.
- The more severe, certain, and swift the punishment, the better able it is to control criminal behavior.

This classical perspective influenced judicial philosophy during much of the late eighteenth and nineteenth centuries. Prisons began to be used as a form of punishment, and sentences were geared proportionately to the seriousness of the crime. Executions were still widely used but slowly began to be employed for only the most serious crimes. The catch phrase was “let the punishment fit the crime.”

Nineteenth-Century Positivism

The classical position served as a guide to crime, law, and justice for almost 100 years, but during the late nineteenth century a change in the way information was gathered challenged its dominance. The scientific method was beginning to take hold in Europe, and, rather than rely on pure thought and reason, people began using careful observation and analysis of natural phenomena to understand the way the world worked. This movement inspired new discoveries in biology, astronomy, and chemistry. If the scientific method could be applied to the study of nature, then why not use it to study human behavior?

Auguste Comte (1798–1857), considered the founder of sociology, applied scientific methods to the study of society. According to Comte, societies pass through stages that can be grouped on the basis of how people try to understand the world in which they live. People in primitive societies consider inanimate objects as having life (for example, the sun is a god); in later social stages, people embrace a rational, scientific view of the world. Comte called this final stage the positive stage, and those who followed his writings became known as positivists.

As we understand it today, positivism has two main elements. The first is the belief that human behavior is a function of forces beyond a person’s control. Some of these forces are social, such as the effect of wealth and class, and others are political and historical, such as war and famine. Other forces are more personal and psychological, such as an individual’s
brain structure and his or her biological makeup or mental ability. Each of these forces influences human behavior.

The second aspect of positivism is embracing the scientific method to solve problems. Positivists rely on the strict use of empirical methods to test hypotheses. That is, they believe in the factual, firsthand observation and measurement of conditions and events. Positivists would agree that an abstract concept such as intelligence exists because it can be measured by an IQ test. They would challenge a concept such as the soul because it is a condition that cannot be verified by the scientific method. The positivist tradition was popularized by Charles Darwin (1809–1882), whose work on the evolution of man encouraged a nineteenth-century “cult of science” that mandated that all human activity could be verified by scientific principles.

**POSITIVIST CRIMINOLOGY** The earliest “scientific” studies examining human behavior were biologically oriented. Physiognomists, such as J. K. Lavater (1741–1801), studied the facial features of criminals to determine whether the shape of ears, nose, and eyes and the distance between them were associated with antisocial behavior. Phrenologists, such as Franz Joseph Gall (1758–1828) and Johann K. Spurzheim (1776–1832), studied the shape of the skull and bumps on the head to determine whether these physical attributes were linked to criminal behavior. Phrenologists believed that external cranial characteristics dictate which areas of the brain control physical activity. Though their primitive techniques and quasi-scientific methods have been thoroughly discredited, these efforts were an early attempt to use a scientific method to study crime.

By the early nineteenth century, abnormality in the human mind was being linked to criminal behavior patterns. Philippe Pinel (1745–1826), one of the founders of French psychiatry, claimed that some people behave abnormally even without being mentally ill. He coined the phrase *sans délire* to denote what eventually was referred to as a *psychopathic personality*. In 1812, an American, Benjamin Rush, described patients with an “inmate preternatural moral depravity.” Another early criminalogical pioneer, English physician Henry Maudsley (1835–1918), believed that insanity and criminal behavior were strongly linked. He stated: “Crime is a sort of outlet in which their unsound tendencies are discharged; they would go mad if they were not criminals, and they do not go mad because they are criminals.” These early research efforts shifted attention to brain functioning and personality as the keys to criminal behavior. When Sigmund Freud’s (1856–1939) work on the unconscious gained worldwide attention, the psychological basis of behavior was forever established.

**BIOLOGICAL DETERMINISM** In Italy, Cesare Lombroso (1835–1909) was studying the cadavers of executed criminals in an effort to scientifically determine whether law violators were physically different from people of conventional values and behavior. Lombroso, known as the “father of criminology,” was a physician who served much of his career in the Italian army. That experience gave him ample opportunity to study the physical characteristics of soldiers convicted and executed for criminal offenses. Later, he studied inmates at institutes for the criminally insane at Pavia, Pesaro, and Reggio Emilia.

Lombroso’s concept of strict biological determinism is no longer taken seriously. Later in his career even he recognized that not all criminals were biological throwbacks. Today, those criminologists who suggest that crime has some biological basis also believe that environmental conditions influence human behavior. Hence, the term *biosocial theory* has been coined to reflect the assumed link among physical and mental traits, the social environment, and behavior.

**SOCIAL POSITIVISM** At the same time that biological views were dominating criminology, other positivists were developing the field of sociology to scientifically study the major social changes that were taking place in nineteenth-century society.

Sociology seemed an ideal perspective from which to study society. After thousands of years of stability, the world was undergoing a population explosion. The population estimated at 600 million in 1700 had risen to 900 million by 1800; people were flocking to cities in ever-increasing numbers; Manchester, England, had 12,000 inhabitants in 1760 and 400,000 in 1850; during the same period, the population of Glasgow, Scotland, rose from 30,000 to 300,000.
The development of machinery such as power looms had doomed cottage industries and given rise to a factory system in which large numbers of people toiled for extremely low wages. The spread of agricultural machines increased the food supply while reducing the need for a large rural workforce; these excess laborers further swelled city populations. At the same time, political, religious, and social traditions continued to be challenged by the scientific method.

**Foundations of Sociological Criminology**

The foundations of sociological criminology can be traced to the works of pioneering sociologists L. A. J. (Adolphe) Quetelet (1796–1874) and (David) Émile Durkheim (1858–1917). Quetelet instigated the use of data and statistics in performing criminological research. Durkheim, considered one of the founders of sociology, defined crime as a normal and necessary social event. These two perspectives have been extremely influential on modern criminology.

**ADOLPHE QUETELET** Quetelet was a Belgian mathematician who began (along with a Frenchman, André-Michel Guerry) what is known as the *cartographic school of criminology.* This approach made use of social statistics that were being developed in Europe in the early nineteenth century. Statistical data provided important demographic information on the population, including density, gender, religious affiliation, and wealth.

Quetelet studied data gathered in France (called the *Comptes généraux de l’administration de la justice*) to investigate the influence of social factors on the propensity to commit crime. In addition to finding a strong influence of age and sex on crime, Quetelet also uncovered evidence that season, climate, population composition, and poverty were related to criminality. More specifically, he found that crime rates were greatest in the summer, in southern areas, among heterogeneous populations, and among the poor and uneducated. He also found crime rates to be influenced by drinking habits. Quetelet identified many of the relationships between crime and social phenomena that still serve as a basis for criminology today.

**EMILE DURKHEIM** According to Durkheim’s vision of social positivism, crime is part of human nature because it has existed during periods of both poverty and prosperity. Crime is normal because it is virtually impossible to imagine a society in which criminal behavior is totally absent. Such a society would almost demand that all people be and act exactly alike. Durkheim believed that the inevitability of crime is linked to the differences (heterogeneity) within society. Since people are so different from one another and employ such a variety of methods and forms of behavior to meet their needs, it is not surprising that some will resort to criminality. Even if “real” crimes were eliminated, human weaknesses and petty vices would be elevated to the status of crimes. As long as human differences exist, then, crime is inevitable and one of the fundamental conditions of social life.

Durkheim argued that crime can be useful and, on occasion, even healthy for society. He held that the existence of crime paves the way for social change and that the social structure is not rigid or inflexible. Put another way, if crime did not exist, it would mean that everyone behaved the same way and agreed on what is right and wrong. Such universal conformity would stifle creativity and independent thinking. To illustrate this concept, Durkheim offered the example of the Greek philosopher Socrates, who was considered a criminal and put to death for corrupting the morals of youth simply because he expressed ideas that were different from what others believed at that time.

Durkheim reasoned that another benefit of crime is that it calls attention to social ills. A rising crime rate can signal the need for social change and promote a variety of programs designed to relieve the human suffering that may have caused crime in the first place. For example, national surveys conducted since the 1970s show that a surprising number of teens are substance abusers. This has prompted school systems to develop school-based antidrug programs, which may have helped lower use rates in the teenage population.

In his famous book *The Division of Labor in Society,* Durkheim described the consequences of the shift from a small rural society, which he labeled “mechanical,” to the more modern “organic” society with a large urban population, division of labor, and personal isolation. From this shift flowed *anomie,* or norm and role confusion, a powerful sociological concept that helps describe the chaos and disarray accompanying the loss of traditional values in modern society. Durkheim’s research on suicide indicated that anomie societies maintain high suicide rates; by implication, anomie might cause other forms of deviance as well.

**The Chicago School and Beyond**

The primacy of sociological positivism was secured by research begun in the early twentieth century by Robert Ezra Park (1864–1944), Ernest W. Burgess (1886–1966), Louis Wirth (1897–1952), and their colleagues in the sociology department at the University of Chicago. The scholars who taught at this program created what is still referred to as the Chicago School, in honor of their unique style of doing research. These urban sociologists pioneered research on the social ecology of the city. Their work inspired a generation of scholars to conclude that social forces operating in urban areas create criminal interactions; some neighborhoods become “natural areas” for crime. These urban
neighborhoods maintain such a high level of poverty that critical social institutions, such as the school and the family, break down. The resulting social disorganization reduces the ability of social institutions to control behavior, and the outcome is a high crime rate.

The Chicago School sociologists and their contemporaries focused on the functions of social institutions, such as the school and family, and how their breakdown influenced deviant and antisocial behavior. Criminal behavior, they argued, was not a function of personal traits or characteristics but rather a reaction to an environment that was inadequate for proper human relations and development. They initiated the ecological study of crime by examining how neighborhood conditions, such as poverty levels, influenced crime rates. Their findings substantiated their belief that crime was a function of where one lived.

During the 1930s and 1940s, another group of sociologists—strong believers in a social-psychological link to criminal behavior—conducted research to support their beliefs. They concluded that the individual’s relationship to important social processes—such as education, family life, and peer relations—was the key to understanding human behavior. For example, they found that children who grow up in homes wracked by conflict, who attend inadequate schools, or who associate with deviant peers become exposed to pro-crime forces. One position, championed by the preeminent American criminologist Edwin Sutherland, was that people learn criminal attitudes from older, more experienced law violators. Another view, developed by Chicago School sociologist Walter Reckless, was that crime occurs when children develop an inadequate self-image, which renders them incapable of controlling their misbehavior. Both of these views linked criminality to the failure of socialization, the interactions people have with the various individuals, organizations, institutions, and processes of society that help them mature and develop.

By mid-century, most criminologists had embraced either the ecological view or the socialization view of crime. However, these were not the only views of how social institutions influence human behavior. In Europe, the writings of another social thinker, Karl Marx (1818–1883), had pushed the understanding of social interaction in another direction and sowed the seeds for a new approach in criminology.

Conflict Criminology

In his *Communist Manifesto* and other writings, Marx described the oppressive labor conditions prevalent during the rise of industrial capitalism. His observations of the economic structure convinced Marx that the character of every civilization is determined by its mode of production—the way its people develop and produce material goods (materialism). The most important relationship in industrial culture is between the owners of the means of production, the capitalist bourgeoisie, and the people who do the actual labor, the proletariat. The economic system controls all facets of human life; consequently, people’s lives revolve around the means of production. The exploitation of the working class, he believed, would eventually lead to class conflict and the end of the capitalist system.

Although these writings laid the foundation for a Marxist criminology, decades passed before the impact of Marxist theory was realized. In the United States during the 1960s, social and political upheaval was fueled by the Vietnam War, the development of an anti-establishment counterculture movement, the civil rights movement, and the women’s movement. Young sociologists who became interested in applying Marxist principles to the study of crime began to analyze the social conditions in the United States that promoted class conflict and crime. What emerged from this intellectual ferment was a Marxist-based radical criminology that indicted the economic system as producing the conditions that support a high crime rate. The radical tradition has played a significant role in criminology ever since.

**Contemporary Criminology**

Various schools of criminology developed throughout the past two centuries. Though they have evolved, each continues to have an impact on the field. For example, classical theory has evolved into rational choice and deterrence theories. Choice theorists today argue that criminals are rational and use available information to decide if crime is a worthwhile undertaking; deterrence theory holds that this choice is structured by the fear of punishment. Biological positivism has undergone similar transformation. Although criminologists no longer believe that a single trait or inherited characteristic can explain crime, some are convinced that biological and psychological traits interact with environmental factors to influence all human behavior, including criminality. Biological and psychological theorists study the association between criminal behavior and such traits as diet, hormonal makeup, personality, and intelligence.
Sociological theories, tracing back to Quetelet and Durkheim, maintain that individuals’ lifestyles and living conditions directly control their criminal behavior. Those at the bottom of the social structure cannot achieve success, and thus they experience anomie, strain, failure, and frustration.

Some sociologists have added a social-psychological dimension to their views of crime causation and believe that individuals’ learning experiences and socialization directly control their behavior. In some cases, children learn to commit crime by interacting with and modeling their behavior on those they admire, whereas other criminal offenders are people whose life experiences have shattered their social bonds to society.

The writings of Marx and his followers continue to be influential. Many criminologists still view social and political conflict as the root cause of crime. The inherently unfair economic structure of the United States and other advanced capitalist countries is the engine that drives the high crime rate. Critical criminology, the contemporary form of Marxist/conflict theory, will be discussed further in Chapter 8. Some criminologists are now integrating each of these concepts into more complex theories that link personal, situational, and social factors. These developmental theories of crime are analyzed in Chapter 9. Each of the major perspectives is summarized in Concept Summary 1.2.

**CONCEPT SUMMARY 1.2**

**Criminological Perspectives**

The major perspectives of criminology focus on individual (biological, psychological, and choice theories); social (structural and process theories); political and economic (conflict theory); and multiple (developmental theory) factors.

- **Classical/Choice Perspective**
  - Situational forces: Crime is a function of free will and personal choice. Punishment is a deterrent to crime.

- **Biological/Psychological Perspective**
  - Internal forces: Crime is a function of chemical, neurological, genetic, personality, intelligence, or mental traits.

- **Structural Perspective**
  - Ecological forces: Crime rates are a function of neighborhood conditions, cultural forces, and norm conflict.

- **Process Perspective**
  - Socialization forces: Crime is a function of upbringing, learning, and control. Peers, parents, and teachers influence behavior.

- **Conflict Perspective**
  - Economic and political forces: Crime is a function of competition for limited resources and power. Class conflict produces crime.

- **Developmental Perspective**
  - Multiple forces: Biological, social-psychological, economic, and political forces may combine to produce crime.

Regardless of their background or training, criminologists are primarily interested in studying crime and criminal behavior. As two noted criminologists, Marvin Wolfgang and Franco Ferracuti, put it: “A criminologist is one whose professional training, occupational role, and pecuniary reward are primarily concentrated on a scientific approach to, and study and analysis of, the phenomenon of crime and criminal behavior.”

Several subareas exist within the broader arena of criminology. Taken together, these subareas make up the criminological enterprise. Criminologists may specialize in a subarea in the same way that psychologists might specialize in a subfield of psychology, such as child development, perception, personality, psychopathology, or sexuality. Some of the more important criminological specialties are described next and summarized in Concept Summary 1.3.

**Criminal Statistics**

The subarea of criminal statistics involves measuring the amount and trends of criminal activity. How much crime occurs annually? Who commits it? When and where does it occur? Which crimes are the most serious?

Criminologists interested in criminal statistics try to create valid and reliable measurements of criminal behavior. For example, they create techniques to access the records of police and court agencies. They develop paper-and-pencil survey instruments and then use them on large samples of citizens to determine the percentage of people who actually commit crime and the number of law violators who escape detection by the justice system. They also develop techniques to identify the victims of crime to establish more accurate indicators of the true number of criminal acts: How many people are victims of crime, and what percentage reports crime to police? The study of criminal statistics is a crucial aspect of the criminological enterprise, because without valid and reliable data sources, efforts to conduct research on crime and create criminological theories would be futile.

**The Sociology of Law**

The sociology of law is a subarea of criminology concerned with the role social forces play in shaping criminal law and, concomitantly, the role of criminal law in shaping society. Criminologists study the history of legal thought in an effort to understand how criminal acts—such as theft, rape, and murder—evolved into their present form.

Often, criminologists are asked to join in the debate when a new law is proposed to banish or control behavior.
For example, across the United States, a debate has been raging over the legality of art works, films, photographs, and even rock albums that some people find offensive and lewd and others consider harmless. Criminologists help determine the role that the law will take in curbing the public’s access to media and culture. They help answer questions such as these: Should society curtail actions that some people consider immoral but by which no one is actually harmed? How is “harm” defined? Is a child who reads a pornographic magazine “harmed”?

Criminologists are also active participants in updating the content of the criminal law. Computer fraud, airplane hijacking, theft from automatic teller machines, Internet scams, and illegally tapping into TV cable lines are all behaviors that did not exist when the criminal law was originally conceived. Consequently, the law must be constantly revised to reflect cultural, societal, and technological adaptations to common acts. For example, Dr. Jack Kevorkian made headlines for helping people kill themselves by using his “suicide machine.” Some believe Kevorkian’s actions are criminal, immoral, and socially harmful, and national media coverage made his actions widely known. However, even though many tried to take him to court, there was no law punishing second-party help in suicides. In response to the national media coverage, however, Michigan passed legislation making it a felony to help anyone commit suicide, and in the November 1998 election, Michigan voters defeated an attempt to legalize physician-assisted suicide. Kevorkian was convicted for his acts and sent to prison. Is he a criminal or someone who truly cares about human suffering? Regardless of what you may think, the law argues the former, and Kevorkian remains incarcerated at the time of this writing.

CONCEPT SUMMARY 1.3

The Criminological Enterprise

These subareas constitute the discipline of criminology.

Criminal Statistics
- Gathering valid crime data: Devising new research methods; measuring crime patterns and trends.

The Sociology of Law
- Determining the origin of law: Measuring the forces that can change laws and society.

Theory Construction
- Predicting individual behavior: Understanding the cause of crime rates and trends.

Criminal Behavior Systems
- Determining the nature and cause of specific crime patterns: Studying violence, theft, organized, white-collar, and public order crimes.

Penology
- Studying the correction and control of criminal behavior: Using scientific methods to assess the effectiveness of crime control and offender treatment programs.

Victimology
- Studying the nature and cause of victimization: Aiding crime victims; understanding the nature and extent of victimization; developing theories of victimization risk.

The Nature of Theory and Theory Development

Social theory is typically viewed as a systematic set of interrelated statements or principles that explain some aspect of social life; it serves as a model or framework for understanding human behavior. Grand theories, such as those developed by renowned social thinkers such as Karl Marx and Émile Durkheim, are aimed at trying to explain the structure of human behavior and the forces that change or alter its content and direction. There are also narrowly drawn theories that focus on everyday activities, such as the relationship between child abuse and delinquency or whether the number of police on patrol influences neighborhood crime rates.

Regardless of whether they are grand or narrow in focus, theories should not be based on mere conjecture but rather on social facts: readily observed phenomena that can be consistently quantified and measured. Once constructed, theories are tested with hypotheses: testable expectations of behavior that can be derived from the theory. For example, if a
theory states that the greater the number of police on the street, the lower the crime rate, then the hypothesis to test this theory might include: (1) Cities with the most police per capita will have the lowest crime rates, and (2) adding more police officers to the local force will cause the crime rate to decline.

The theory's validity would be challenged if it were observed that adding police had little or no effect on the crime rate. Such an observation would require the theory to be altered or abandoned. For a theory to be accepted it must be able to survive numerous tests in the real world that are designed to verify its principles or premises. The theory will become an accepted element of social thought if the relationships assumed by the theory are consistent and verifiable and if predictions derived from the theory prove accurate.

Criminologists bring their personal beliefs and backgrounds to bear when they study criminal behavior, so there are diverse theories of crime causation. Some criminologists have a psychological orientation and view crime as a function of personality, development, social learning, or cognition. Others investigate the biological correlates of antisocial behavior and study the biochemical, genetic, and neurological links to crime. Sociologists look at the social forces producing criminal behavior, including neighborhood conditions, poverty, socialization, and group interaction.

In some instances, criminologists have formulated grand theories that attempt to explain all criminal behavior with a single construct. For example, Michael Gottfredson and Travis Hirschi’s General Theory of Crime links all forms of antisocial behavior to the lack of self-control. Sometimes criminologists investigate narrow issues of crime causation. For example, one prominent theory is termed “continuity of crime”: People who commit crime in their youth are the ones most likely to commit crime as adults. But why does this happen? Ronald Simons and his colleagues looked at a sample of 236 young adults and their romantic partners in order to discover the influence of mating behaviors on crime. They found that people who engage in delinquent behaviors as adolescents were more likely to choose antisocial romantic partners as young adults and associate with a delinquent peer group. Involvement with antisocial romantic partners and friends helps reinforce criminal activities. The effect of antisocial romantic partners/peers differed between the sexes: Females were much more likely to be influenced by criminal boyfriends; males were more likely to be influenced by criminal peers. The Simons research helps criminologists address the question of continuity of crime: Why do some adolescent delinquents become adult criminals while others desist from crime? For females, the choice of a romantic partner may be a key element; for males, it is rejection of deviant friends.

Criminal Behavior Systems

The criminal behavior systems subarea of criminology involves research on specific criminal types and patterns: violent crime, theft crime, public order crime, and organized crime. Numerous attempts have been made to describe and understand particular crime types. Marvin Wolfgang’s famous 1958 study, Patterns in Criminal Homicide, is considered a landmark analysis of the nature of homicide and the
relationship between victim and offender. Edwin Sutherland’s analysis of business-related offenses helped coin a new phrase—white-collar crime—to describe economic crime activities. The study of criminal behavior also involves research on the links between different types of crime and criminals; this is known as crime typology. Unfortunately, because people often disagree about types of crimes and criminal motivation, no standard exists within the field. Some typologies focus on the criminal, suggesting the existence of offender groups—such as professional criminals, psychotic criminals, occasional criminals, and so on. Others focus on the crimes, clustering them into categories such as property crimes, sex crimes, and so on.

Penology

The study of penology—an aspect of criminology that overlaps with the study of criminal justice—Involves the correction and control of known criminal offenders. Penologists formulate strategies for crime control and then help implement these policies in the real world. Criminologists have continued their efforts to develop new crime-control programs and policies. Some criminologists view penology as involving rehabilitation and treatment. Their efforts are directed at providing behavior alternatives for would-be criminals and treatment for individuals convicted of law violations. This view portrays the criminal as someone society has failed; someone under social, psychological, or economic stress; someone who can be helped if society is willing to pay the price. Others argue that crime can only be prevented through a strict policy of social control. They advocate such strict penological measures as the death penalty (capital punishment) and mandatory prison sentences. Criminologists also help evaluate correctional initiatives to determine if they are effective and how they impact people’s lives.

Victimology

In two classic criminological studies, one by Hans von Hentig and the other by Stephen Schafer, the critical role of the victim in the criminal process was first identified. These authors were among the first to suggest that victim behavior is often a key determinant of crime and that victims’ actions may actually precipitate crime. Both men believed that the study of crime is not complete unless the victim’s role is considered. For those studying the role of the victim in crime, these areas are of particular interest:

- Using victim surveys to measure the nature and extent of criminal behavior; calculating the actual costs of crime to victims
- Creating probabilities of victimization risk

Criminologists also help evaluate correctional initiatives to determine if they are effective and how they impact people’s lives.

HOW CRIMINOLOGISTS VIEW CRIME

Professional criminologists usually align themselves with one of several schools of thought or perspectives in their field. Each perspective maintains its own view of what constitutes criminal behavior and what causes people to engage in criminality. This diversity of thought is not unique to criminology; biologists, psychologists, sociologists, historians, economists, and natural scientists disagree among themselves about critical issues in their respective fields. Considering the multidisciplinary nature of the field of criminology, fundamental issues—such as the nature and definition of crime itself—are cause for disagreement among criminologists.

A criminologist’s choice of orientation or perspective depends, in part, on his or her definition of crime. The beliefs and research orientations of most criminologists are related to this definition. This section discusses the three most common concepts of crime used by criminologists.

The Consensus View of Crime

According to the consensus view, crimes are behaviors believed to be repugnant to all elements of society. The substantive criminal law, which is the written code that defines crimes and their punishments, reflects the values, beliefs, and opinions of society’s mainstream. The term consensus is used because it implies that there is general agreement among a majority of citizens on what behaviors should be outlawed by the criminal law and viewed as crimes. Several attempts have been made to create a concise, yet thorough and encompassing, consensus definition of crime.
The eminent criminologists Edwin Sutherland and Donald Cressey have taken the popular stance of linking crime with the criminal law:

Criminal behavior is behavior in violation of the criminal law. . . . [I]t is not a crime unless it is prohibited by the criminal law [which] is defined conventionally as a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer, and which are enforced by punishment administered by the state.  

This approach to crime implies that it is a function of the beliefs, morality, and rules established by the existing legal power structure. According to Sutherland and Cressey’s statement, criminal law is applied “uniformly to all members of the classes to which the rules refer.” This statement reveals the authors’ faith in the concept of an “ideal legal system” that deals adequately with all classes and types of people. For example, laws banning burglary and robbery are directed at controlling the neediest members of society, whereas laws banning insider trading, embezzlement, and corporate price-fixing are aimed at controlling the wealthiest. The reach of the criminal law is not restricted to any single element of society.

**SOCIAL HARM** The consensus view of crime links illegal behavior to the concept of social harm. Though people generally enjoy a great deal of latitude in their behavior, it is agreed that behaviors that are harmful to other people and society in general must be controlled. Social harm is what sets strange, unusual, or deviant behavior—or any other action that departs from social norms—apart from criminal behaviors.  

According to the consensus view, many deviant acts are not criminal even though they may be shocking or immoral. For example, watching sexually explicit films. Though religious leaders would probably condemn this behavior as immoral and decadent, it is not considered a crime, and no legal action can be taken because the general consensus is that watching adult films does not cause sufficient harm to the person doing the watching and/or the performers who made the film. However, if the film involved children, its production and sale would be outlawed because making such films is considered extremely harmful to minors.

This position is not without controversy. Although it is clear that rape, robbery, and murder are inherently harmful and their control justified, behaviors such as drug use and prostitution are problematic because the harm they inflict is only on those who are willing participants. According to the consensus view, however, society is justified in controlling these so-called victimless crimes because public opinion holds that they undermine the social fabric and threaten the general well-being of society. Moreover, they may potentially bring harm to participants, and society has a duty to protect all its members—even those who choose to engage in high-risk behaviors.

**The Conflict View of Crime**

Central to the conflict approach to crime is the proposition that criminal law reflects and protects established economic, racial, gendered, and political power and privilege. The conflict view depicts society as a collection of diverse groups—owners, workers, professionals, students—who are in constant and continuing conflict. Groups able to assert their political power use the law and the criminal justice
system to advance their economic and social position. Criminal laws, therefore, are viewed as acts created to protect the have-nots from the have-nots. Conflict criminologists often compare and contrast the harsh penalties exacted on the poor for their “street crimes” (burglary, robbery, and larceny) with the minor penalties the wealthy receive for their white-collar crimes (securities violations and other illegal business practices), which cause considerably more social harm. While the poor go to prison for minor law violations, the wealthy are given lenient sentences for even the most serious breaches of law.

According to the conflict view, the definition of crime is controlled by those who possess wealth, power, and position. Crime is shaped by the values of the ruling class and not by an objective moral consensus that reflects the needs of all people. Crime, according to this definition, is a political concept designed to protect the power and position of the upper classes at the expense of the poor. Even crimes prohibiting violent acts, such as armed robbery, rape, and murder, may have political undertones. Banning violent acts ensures domestic tranquility and guarantees that the anger of the poor and disenfranchised classes will not be directed at their wealthy capitalist exploitors. According to this conflict view of crime, “real” crimes would include the following acts:

- Violations of human rights due to racism, sexism, and imperialism
- Unsafe working conditions
- Inadequate childcare
- Inadequate opportunities for employment and education and substandard housing and medical care
- Crimes of economic and political domination
- Pollution of the environment
- Price-fixing
- Police brutality
- Assassinations and war-making
- Violations of human dignity
- Denial of physical needs and necessities and impediments to self-determination
- Deprivation of adequate food and blocked opportunities to participate in political decision making

Although this list might be criticized as containing vague and subjectively chosen acts, conflict theorists counter that consensus law also contains crimes that have vague and subjective definitions. Consider the case of substance abuse. Narcotics and similar drugs are illegal, but alcohol, which causes far more social harm, is readily available. Similarly, gambling among friends is prohibited, but the state sells lottery tickets and licenses horse tracks. The sale of obscene material is illegal, but people can buy magazines featuring sex and nudity such as Maxim, Playboy, and Hustler at every newsstand.

The Interactionist View of Crime

The interactionist view of crime traces its antecedents to the symbolic interaction school of sociology, first popularized by pioneering sociologists George Herbert Mead, Charles Horton Cooley, and W. I. Thomas. This position holds that (1) people act according to their own interpretations of reality, through which they assign meaning to things; (2) they observe the way others react, either positively or negatively; and (3) they reevaluate and interpret their own behavior according to the meaning and symbols they have learned from others.

According to this perspective, there is no objective reality. People, institutions, and events are viewed subjectively and labeled either good or evil according to the interpretation of the evaluator. For example, some people might consider films such as American Pie, Scary Movie, and Road Trip obscene, foul-mouthed, and degrading, but others might consider the same films light-hearted fun.

In the interactionist view, the definition of crime reflects the preferences and opinions of people who hold social power in a particular legal jurisdiction. These people use their influence to impose their definition of right and wrong on the rest of the population. Conversely, criminals are individuals society chooses to label as outcasts or deviants because they have violated social rules. In a classic statement, sociologist Howard Becker argued, “The deviant is one to whom that label has successfully been applied; deviant behavior is behavior people so label.” Crimes are outlawed behaviors because society defines them that way and not because they are inherently evil or immoral acts.

The interactionist view of crime is similar to the conflict perspective; both suggest that behavior should be outlawed when it offends people who maintain the social, economic, and political power necessary to have the law conform to their interests or needs. However, unlike the conflict view, the interactionist perspective does not attribute capitalist economic and political motives to the process of defining crime. Instead, interactionists see the criminal law as conforming to the beliefs of moral crusaders or moral entrepreneurs, who use their influence to shape the legal process in the way they see fit. Laws against pornography, prostitution, and drugs are believed to be motivated more by moral crusades than by capitalist sensibilities. Consequently, interactionists are concerned with shifting moral and legal standards.

To the interactionist, crime has no meaning unless people react to it negatively. The one-time criminal, if not caught or labeled, can simply return to a “normal” way of life with little permanent damage. Consider the college student who tries marijuana. He does not view himself, nor do others view him, as a criminal or a drug addict. Only when prohibited acts are recognized and sanctioned do they become important, life-transforming events.

The three main views of crime are summarized in Concept Summary 1.4.
The Definition of Crime

The definition of crime affects how criminologists view the cause and control of illegal behavior and shapes their research orientation.

Consensus View
- The law defines crime.
- Agreement exists on outlawed behavior.
- Laws apply to all citizens equally.

Conflict View
- The law is a tool of the ruling class.
- Crime is a politically defined concept.
- “Real crimes” are not outlawed.
- The law is used to control the underclass.

Interactionist View
- Moral entrepreneurs define crime.
- Acts become crimes because society defines them that way.
- Criminal labels are life-transforming events.

Defining Crime

The consensus view of crime dominated criminological thought until the late 1960s. Criminologists devoted themselves to learning why lawbreakers violated the rules of society. The criminal was viewed as an outlaw who, for one reason or another, flouted the rules defining acceptable conduct and behavior. In the 1960s, the interactionist perspective gained prominence. Rapid changes in U.S. society made traditional law and values questionable. Many criminologists were swept along in the social revolution of the 1960s and likewise embraced an ideology that suggested that crimes reflected rules imposed by a conservative majority on non-conforming members of society. At the same time, more radical scholars gravitated toward conflict explanations, which they believed were a more accurate assessment of the social harms caused by crime.

Today, each position still has many followers. This is important because criminologists’ personal definitions of crime dominate their thinking, research, and attitudes toward their profession. Because of their diverse perspectives, criminologists have taken a variety of approaches in explaining the causes of crime and suggesting methods for its control. Considering these differences, it is possible to take elements from each school of thought to formulate an integrated definition of crime:

Crime is a violation of societal rules of behavior as interpreted and expressed by a criminal legal code created by people holding social and political power. Individuals who violate these rules are subject to sanctions by state authority, social stigma, and loss of status.

This definition combines the consensus position that the criminal law defines crimes with the conflict perspective’s emphasis on political power and control and the interactionist concept of stigma. Thus crime, as defined here, is a political, social, and economic function of modern life.

To quiz yourself on this material, go to the Criminology 9e website.

CRIME AND THE CRIMINAL LAW

No matter which definition of crime we embrace, criminal behavior is tied to the criminal law. It is therefore important for all criminologists to have some understanding of the development of criminal law, its objectives, its elements, and how it evolves. The concept of criminal law has been recognized for more than 3,000 years. Hammurabi (1792–1750 BCE), the sixth king of Babylon, created the most famous set of written laws of the ancient world, known today as the Code of Hammurabi. Preserved on basalt rock columns, the code established a system of crime and punishment based on physical retaliation (“an eye for an eye”). The severity of punishment depended on class standing. If convicted of an unprovoked assault, a slave would be killed, whereas a freeman might lose a limb.

More familiar is the Mosaic Code of the Israelites (1200 BCE). According to tradition, God entered into a covenant or contract with the tribes of Israel in which they agreed to obey his law (the 613 laws of the Old Testament, including the Ten Commandments), as presented to them by Moses, in return for God’s special care and protection.

Most people do not realize that the Ten Commandments are only the most well known of the 613 commandments in the Old Testament. To review the others, go to http://www.jewishencyclopedia.com/view.jsp?artid=689&letter=C. For an up-to-date list of weblinks, go to http://cj.wadsworth.com/siegel_crim_9e.

The Mosaic Code is not only the foundation of Judeo-Christian moral teachings but also a basis for the U.S. legal system. Prohibitions against murder, theft, perjury, and adultery preceded, by several thousand years, the same laws in the U.S. legal system.
Common Law

After the Norman conquest of England in 1066, royal judges began to travel throughout the land, holding court in each county several times a year. When court was in session, the royal administrator, or judge, would summon a number of citizens who would, on their oath, tell of the crimes and serious breaches of the peace that had occurred since the judge's last visit. The royal judge would then decide what to do in each case, using local custom and rules of conduct as his guide. Courts were bound to follow the law established in previous cases unless a higher authority, such as the king or the pope, overruled the law.

The present English system of law came into existence during the reign of Henry II (1154–1189), when royal judges began to publish their decisions in local cases. Judges began to use these written decisions as a basis for their decision making, and eventually a fixed body of legal rules and principles was established. If a new rule was successfully applied in a number of different cases, it would become a precedent. These precedents would then be commonly applied in all similar cases—hence the term common law. Crimes such as murder, burglary, arson, and rape are common-law crimes whose elements were initially defined by judges. They are referred to as mala in se, or inherently evil and depraved. When the situation required, the English Parliament enacted legislation to supplement the judge-made common law. Crimes defined by Parliament, which reflected existing social conditions, were referred to as mala prohibitum, or statutory crimes.

CONCEPT SUMMARY 1.5

Common-Law Crimes

Crimes against the Person

- First-degree murder: First-degree murder is unlawful killing of another human being with malice aforethought and with premeditation and deliberation. Example: A woman buys poison and pours it into a cup of coffee her husband is drinking, intending to kill him for the insurance benefits.
- Voluntary manslaughter: Voluntary manslaughter is intentional killing committed under extenuating circumstances that mitigate the killing, such as killing in the heat of passion after being provoked. Example: A husband coming home early from work finds his wife in bed with another man. The husband goes into a rage and shoots and kills both lovers with a gun he keeps by his bedside.
- Battery: Battery is the unlawful touching of another with intent to cause injury. Example: A man sees a stranger sitting in his favorite seat in a cafeteria and goes up to that person and pushes him out of the seat.
- Assault: Assault is intentional placing of another in fear of receiving an immediate battery. Example: A student aims an unloaded gun at her professor and threatens to shoot. The professor believes the gun is loaded.
- Rape: Rape is unlawful sexual intercourse with a female without her consent. Example: After a party, a man offers to drive a young female acquaintance home. He takes her to a wooded area and, despite her protests, forces her to have sexual relations with him.
- Robbery: Robbery is wrongful taking and carrying away of personal property from a person by violence or intimidation. Example: A man armed with a loaded gun approaches another man on a deserted street and demands his wallet.

Inchoate (Incomplete) Offenses

- Attempt: An intentional act for the purpose of committing a crime that is more than mere preparation or planning of the crime. The crime is not completed, however. Example: A person places a bomb in the intended victim’s car so that it will detonate when the ignition key is used. The bomb is discovered before the car is started. Attempted murder has been committed.
Criminal laws are now divided into felonies and misdemeanors. The distinction is based on seriousness: A felony is a serious offense; a misdemeanor is a minor or petty crime. Crimes such as murder, rape, and burglary are felonies; they are punished with long prison sentences or even death. Crimes such as unarmed assault and battery, petty larceny, and disturbing the peace are misdemeanors; they are punished with a fine or a period of incarceration in a county jail.

Regardless of their classification, acts prohibited by the criminal law constitute behaviors considered unacceptable and impermissible by those in power. People who engage in these acts are eligible for severe sanctions. By outlawing these behaviors, the government expects to achieve a number of social goals:

- **Enforce social control**: Those who hold political power rely on criminal law to formally prohibit behaviors believed to threaten societal well-being or to challenge their authority. For example, U.S. criminal law incorporates centuries-old prohibitions against the following behaviors harmful to others: taking another person’s possessions, physically harming another person, damaging another person’s property, and cheating another person out of his or her possessions. Similarly, the law prevents actions that challenge the legitimacy of the government, such as planning its overthrow, collaborating with its enemies, and so on.

- **Discourage revenge**: By punishing people who infringe on the rights, property, and freedom of others, the law shifts the burden of revenge from the individual to the state. As Oliver Wendell Holmes stated, this prevents “the greater evil of private retribution.”

Although state retaliation may offend the sensibilities of many citizens, it is greatly preferable to a system in which people would have to seek justice for themselves.

- **Express public opinion and morality**: Criminal law reflects constantly changing public opinions and moral values. *Mala in se* crimes, such as murder and forcible rape, are almost universally prohibited; however, the prohibition of legislatively created *mala prohibita* crimes, such as traffic offenses and gambling violations, changes according to social conditions and attitudes. Criminal law is used to codify these changes.

- **Deter criminal behavior**: Criminal law has a social control function. It can control, restrain, and direct human behavior through its sanctioning power. The threat of punishment associated with violating the law is designed to prevent crimes before they occur. During the Middle Ages, public executions drove home this point. Today criminal law’s impact is felt through news accounts of long prison sentences and an occasional execution.

- **Punish wrongdoing**: The deterrent power of criminal law is tied to the authority it gives the state to sanction or punish offenders. Those who violate criminal law are subject to physical coercion and punishment.

- **Maintain social order**: All legal systems are designed to support and maintain the boundaries of the social system they serve. In medieval England, the law protected the feudal system by defining an orderly system of property transfer and ownership. Laws in some socialist nations protect the primacy of the state by strictly curtailing profiteering and individual enterprise. The U.S. capitalist system is also supported and sustained by criminal law. In a sense, the content of criminal law is more a reflection of the needs of those who control the existing economic and political system than a representation of some idealized moral code.
The Elements of Criminal Law

While each state and the federal government have unique methods of defining crime, there are significant uniformities and similarities that shape the essence of almost all criminal law codes. Although the laws of California, Texas, and Maine may be somewhat different, the underlying concepts that guide and shape their legal systems are universal. The question remains: Regardless of jurisdictional boundaries, what is the legal definition of a crime, and how does the criminal law deal with it?

Legal Definition of a Crime

Today, in all jurisdictions, the legal definition of a crime involves the elements of the criminal acts that must be proved in a court of law if the defendant is to be found guilty. For the most part, common criminal acts have both mental and physical elements, both of which must be present if the act is to be considered a legal crime. In order for a crime to occur, the state must show that the accused committed the guilty act, or actus reus, and had the mens rea, or criminal intent, to commit the act. The actus reus may be an aggressive act, such as taking someone’s money, burning a building, or shooting someone, or it may be a failure to act when there is a legal duty to do so, such as a parent’s neglecting to seek medical attention for a sick child.

The mens rea (guilty mind) refers to an individual’s state of mind at the time of the act or, more specifically, the person’s intent to commit the crime.

Actus Reus

To satisfy the requirements of actus reus, guilty actions must be voluntary. Even though an act may cause harm or damage, it is not considered a crime if it was done by accident or was done involuntarily. For example, it would not be a crime if a motorist obeying all the traffic laws hit a child who had run into the street. If the same motorist were drinking or speeding, then his action would be considered a vehicular crime because it was a product of negligence. Similarly, it would not be considered a crime if a baby-sitter accidentally dropped a child and the child died. However, it would be considered manslaughter if the sitter threw the child down in anger or frustration, and the blow caused the child’s death. In some circumstances of actus reus, the use of words is considered criminal. In the crime of sedition, the words of disloyalty constitute the actus reus. If a person falsely tells “fire” in a crowded theater and people are injured in the rush to exit, that person is held responsible for the injuries, because the use of the word in that situation constitutes an illegal act.

Typically, the law does not require people to aid others in distress, such as entering a burning building to rescue people trapped by a fire. However, failure to act is considered a crime in certain instances:

- Relationship of the parties based on status: Some people are bound by relationship to give aid. These relationships include parent–child and husband–wife. If a husband finds his wife unconscious because she took an overdose of sleeping pills, he is obligated to save her life by seeking medical aid. If he fails to do so and she dies, he can be held responsible for her death.

- Imposition by statute: Some states have passed laws requiring people to give aid. For example, a person who observes a broken-down automobile in the desert but fails to stop and help the parties involved may be committing a crime.

- Contractual relationships: These relationships include lifeguard and swimmer, doctor and patient, and baby-sitter and au pair and child. Because lifeguards have been hired to ensure the safety of swimmers, they have a legal duty to come to the aid of drowning people. If a lifeguard knows a swimmer is in danger and does nothing about it and the swimmer drowns, the lifeguard is legally responsible for the swimmer’s death.

Mens Rea

In most situations, for an act to constitute a crime, it must be done with criminal intent, or mens rea. Intent, in the legal sense, can mean carrying out
an act intentionally, knowingly, and willingly. However, the definition also encompasses situations in which recklessness or negligence establishes the required criminal intent.

Criminal intent also exists if the results of an action, although originally unintended, are certain to occur. For example, when Timothy McVeigh planted a bomb in front of the Murrah Federal Building in Oklahoma City, he did not intend to kill any particular person in the building. Yet the law would hold that McVeigh or any other person would be substantially certain that people in the building would be killed in the blast, and McVeigh therefore had the criminal intent to commit murder.

**Strict Liability**

Though common-law crimes require that both the actus reus and the mens rea must be present before a person can be convicted of a crime, several crimes defined by statute do not require mens rea. In these cases, the person accused is guilty simply by doing what the statute prohibits; intent does not enter the picture. These strict liability crimes, or public welfare offenses, include violations of health and safety regulations, traffic laws, and narcotic control laws. For example, a person stopped for speeding is guilty of breaking the traffic laws regardless of whether he or she intended to go over the speed limit or did it by accident.

The underlying purpose of these laws is to protect the public, therefore, intent is not required.

**Criminal Defenses**

When people defend themselves against criminal charges, they must refute one or more of the elements of the crime of which they have been accused. A number of different approaches can be taken to create this defense.

First, defendants may deny the actus reus by arguing that they were falsely accused and that the real culprit has yet to be identified. Second, defendants may claim that although they engaged in the criminal act of which they are accused, they lacked the mens rea (intent) needed to be found guilty of the crime.

If a person whose mental state is impaired commits a criminal act, it is possible for the person to excuse the criminal actions by claiming that he or she lacked the capacity to form sufficient intent to be held criminally responsible. Insanity, intoxication, and ignorance are types of excuse defenses. For example, a defendant might argue that because he suffered from a mental impairment that prevented him from understanding the harmfulness of his acts, he lacked sufficient mens rea to be found guilty as charged.

Another type of defense is justification. Here the individual usually admits committing the criminal act but maintains that he or she should not be held criminally liable because the act was justified. Among the justification defenses are necessity, duress, self-defense, and entrapment. For example, a battered wife who kills her mate might argue that she acted out of duress, her crime was committed to save her own life.

People standing trial for criminal offenses may thus defend themselves by claiming that they did not commit the act in question, that their actions were justified under the circumstances, or that their behavior can be excused by their lack of mens rea. If either the physical or mental elements of a crime cannot be proved, then the defendant cannot be convicted.

**Critical Thinking**

1. Should the concept of the guilty mind be eliminated from the criminal law and replaced with a strict liability standard? If you do the crime, you do the time?

2. Some critics believe that current criminal defenses, such as the battered wife defense or the insanity defense, allow the guilty to go free even though they committed serious criminal acts. Do you agree?

**InfoTrac College Edition Research**

To find out more about the insanity defense, use the term as a key word with InfoTrac College Edition.


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was killed in 1994 by a repeat sex offender who had moved into her neighborhood, the federal government passed legislation requiring that the general public be notified of local pedophiles (sexual offenders who target children). California’s sexual predator law, which took effect on January 1, 1996, allows people convicted of sexually violent crimes against two or more victims to be committed to a mental institution after their prison terms have been served. This law has already been upheld by appellate court judges in the state.

The criminal law may also change because of shifts in the culture and in social conventions, reflecting a newfound tolerance of behavior condemned only a few years before. For example, in an important 2003 case, Lawrence v. Texas, the Supreme Court declared that laws banning sodomy were unconstitutional because they violated the due process rights...
The criminal law is constantly evolving to reflect social, economic, and cultural shifts. Changes in the law may be a sign of toleration for behavior considered socially unacceptable and harmful only a few years before. Here Boston City Registrar Judith McCarthy goes over the application for a marriage license submitted by successful same-sex marriage lawsuit plaintiffs Julie and Hillary Goodridge at City Hall in Boston May 17, 2004. Massachusetts became the first state in the United States to legally sanction same-sex marriage based on the ruling of the Massachusetts Supreme Judicial Court that required the state to issue marriage licenses to gay and lesbian couples. Does Massachusetts' same-sex marriage law reflect changing national values or is it merely a reflection of the beliefs of a few liberal judges in an open-minded state?

Although the laws involved . . . here . . . do not more than prohibit a particular sexual act, their penalties and purposes have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. They seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals. The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons.

As a result of the decision, all sodomy laws in the United States are now unconstitutional and therefore not enforceable.41

The future direction of U.S. criminal law remains unclear. Certain actions, such as crimes by corporations and political corruption, will be labeled as criminal and given more attention. Other offenses, such as recreational drug use, may diminish in importance or be removed entirely from the criminal law system. In addition, changing technology and its ever-increasing global and local roles in our lives will require modifications in criminal law. For example, such technologies as automatic teller machines and cellular phones have already spawned a new generation of criminal acts such as identity theft and software piracy.

To quiz yourself on this material, go to the Criminology 9e website.

As the information highway sprawls toward new expanses, the nation’s computer network advances, and biotechnology produces new substances, criminal law will be forced to address threats to the public safety that today are unknown. These new forms of Internet-related technocrimes will be discussed in more detail in Chapter 12.
and be prepared to defend their work in the light of public scrutiny. Major ethical issues include these:

- What is to be studied?
- Who is to be studied?
- How are studies to be conducted?

**WHAT TO STUDY?** Under ideal circumstances, when criminologists choose a subject for study, they are guided by their own scholarly interests, pressing social needs, the availability of accurate data, and other similar concerns. Nonetheless, in recent years, a great influx of government and institutional funding has influenced the direction of criminological inquiry. Major sources of monetary support include the Justice Department’s National Institute of Justice and the Substance Abuse and Mental Health Services Administration (SAMHSA). Both the National Science Foundation and the National Institute of Mental Health have been prominent sources of government funding. Private foundations, such as the Edna McConnell Clark Foundation, have also played an important role in supporting criminological research.

Though the availability of research money has spurred criminological inquiry, it has also influenced the direction research has taken. State and federal governments provide a significant percentage of available research funds, and they may also dictate the areas that can be studied. In recent years, for example, the federal government has spent millions of dollars funding long-term cohort studies of criminal careers. Consequently, academic research has recently focused on criminal careers. Other areas of inquiry may be ignored because there is simply not enough funding to pay for or sponsor the research.

A potential conflict of interest may arise when the institution funding research is itself one of the principal subjects of the research project. For example, governments may be reluctant to fund research on fraud and abuse of power by government officials. They may also exert a not-so-subtle influence on the criminologists seeking research funding. If criminologists are too critical of the government’s efforts to reduce or counteract crime, perhaps they will be barred from receiving further financial help. This situation is even more acute when we consider that criminologists typically work for universities or public agencies and are under pressure to bring in a steady flow of research funds or to preserve the continued viability of their agency. Even when criminologists maintain discretion of choice, the direction of their efforts may not be truly objective. The objectivity of research may be questioned if studies are funded by organizations that have a vested interest in the outcome of the research. For example, a study on the effectiveness of the defensive use of handguns to stop crime may be tainted if the funding for the project comes from a gun manufacturer whose sales may be affected by the research findings. Efforts to show that private prisons are more effective than state correctional facilities might be tainted if the researchers received a research grant from a corporation that maintains private prisons.

It has been shown over the past decades that criminological research has been influenced by government funding that is linked to the topics the government wants researched and those it wants to avoid. Recently funding by political agencies has increased the likelihood that criminologists will address drug issues while spending less time on topics such as incapacitation and white-collar crime. Should the nature and extent of scientific research be shaped by the hand of government or should it remain independent of outside interference?

**WHOM TO STUDY?** A second major ethical issue in criminology concerns the subject of the inquiries and study. Too often, criminologists focus their attention on the poor and minorities while ignoring the middle-class criminal who may be committing white-collar crime, organized crime, or government crime. Critics have charged that by “unmasking” the poor and desperate, criminologists have justified any harsh measures taken against them. For example, a few social scientists have suggested that criminals have lower intelligence quotients than the average citizen and that because minority group members have lower than average IQ scores, their crime rates are high. This was the conclusion reached in *The Bell Curve*, a popular though highly controversial book written by Richard Herrnstein and Charles Murray. Although such research is often methodologically unsound, it brings to light the tendency of criminologists to focus on one element of the community while ignoring others. The question that remains is whether it is ethical for criminologists to publish biased or subjective research findings, paving the way for injustice.

**HOW TO STUDY?** Ethics are once again questioned in cases where subjects are misled about the purpose of the research. When white and African American youngsters are asked to participate in a survey of their behavior or to take an IQ test, they are rarely told in advance that the data they provide may later be used to prove the existence of significant racial differences in their self-reported crime rates. Should subjects be told about the true purpose of a survey? Would such disclosures make meaningful research impossible? How far should criminologists go when collecting data? Is it ever permissible to deceive subjects to collect data? Criminologists must take extreme care when they choose subjects for their research studies to ensure that they are selected in an unbiased and random manner.

When criminological research efforts involve experimentation and treatment, care must be taken to protect those subjects who have been chosen for experimental and control groups. For example, it may be unethical to provide a special treatment program for one group while depriving others of...
than being frightened into conformity, subjects actually increased their criminal behavior.46

To quiz yourself on this material, go to the Criminology 9e website.

SUMMARY

- Criminology is the scientific approach to the study of criminal behavior and society’s reaction to law violations and violators. It is essentially an interdisciplinary field; many of its practitioners were originally trained as sociologists, psychologists, economists, political scientists, historians, and natural scientists.
- Criminology has a rich history, with roots in the utilitarian philosophy of Beccaria, the biological positivism of Lombroso, the social theory of Durkheim, and the political philosophy of Marx.
- The criminological enterprise includes subareas such as criminal statistics, the sociology of law, theory construction, criminal behavior systems, penology, and victimology.
- When they define crime, criminologists typically hold one of three perspectives: the consensus view, the conflict view, or the interactionist view.
- The consensus view holds that criminal behavior is defined by laws that reflect the values and morals of a majority of citizens.
- The conflict view states that criminal behavior is defined in such a way that economically powerful groups can retain their control over society.
- The interactionist view portrays criminal behavior as a relativistic, constantly changing concept that reflects society’s current moral values. According to the interactionist view, behavior is labeled as criminal by those in power; criminals are people society chooses to label as outsiders or deviants.
- The criminal law is a set of rules that specify the behaviors society has outlawed.
- The criminal law serves several important purposes: It represents public opinion and moral values; it enforces social controls; it deters criminal behavior and wrongdoing; it punishes transgressors; and it banishes private retribution.
- The criminal law used in U.S. jurisdictions traces its origin to the English common law. In the U.S. legal system, lawmakers have codified common-law crimes into state and federal penal codes.
- Every crime has specific elements. In most instances, these elements include both the actus reus (guilty act) and the mens rea (guilty mind or criminal intent).
- At trial, a defendant may claim to have lacked mens rea and, therefore, not be responsible for a criminal action. One type of defense is excuse for mental reasons, such as insanity, intoxication, necessity, or duress. Another type of defense is justification by reason of self-defense or entrapment.
- The criminal law is undergoing constant reform. Some acts are being decriminalized—their penalties are being reduced—while penalties for others are becoming more severe.
- Ethical issues arise when information-gathering methods appear biased or exclusionary. These issues may cause serious consequences because research findings can significantly impact individuals and groups.

Thinking Like a Criminologist

You have been experimenting with various techniques to identify a surefire method to predict violence-prone behavior in delinquents. Your procedure involves brain scans, DNA testing, and blood analysis. Used with samples of incarcerated adolescents, your procedure has been able to distinguish with 80 percent accuracy
between youths with a history of violence and those who are exclusively property offenders. Your research indicates that if any youth were tested with your techniques, potentially violence-prone career criminals easily could be identified for special treatment. For example, children in the local school system could be tested, and those who are identified as violence prone carefully monitored by teachers. Those at risk to future violence could be put into special programs as a precaution.

Some of your colleagues argue that this type of testing is unconstitutional because it violates the subjects’ Fifth Amendment right against self-incrimination. There is also the problem of error: Some kids may be falsely labeled as violence prone. How would you answer your critics? Is it fair or ethical to label people as potentially criminal and violent even though they have not yet exhibited antisocial behaviors? Do the risks of such a procedure outweigh its benefits?

**Doing Research on the Web**


You can read Nicole Rafter’s take on biological theories of crime at: http://www.albany.edu/museum/museum/criminal/curator/nicole.html.

To read about the effects of stigma as it pertains to mental health, go to: http://www.cmha-tb.on.ca/stigma.html#what.

**KEY TERMS**

- criminologists (4)
- criminology (4)
- interdisciplinary science (4)
- decriminalized (5)
- utilitarianism (6)
- classical criminology (7)
- positivism (7)
- physiognomist (8)
- phrenologist (8)
- psychopathic personality (8)
- criminal anthropology (8)
- atavistic anomalies (8)
- biological determinism (8)
- biosocial theory (8)
- cartographic school of criminology (9)
- anomie (9)
- Chicago School (9)
- social ecology (9)
- socialization (10)
- ecological view (10)
- socialization view (10)
- bourgeoisie (10)
- proletarian (10)
- criminological enterprise (11)
- ex post facto laws (13)
- white-collar crime (14)
- crime typology (14)
- penology (14)
- consensus view (14)
- substantive criminal law (14)
- social harm (15)
- deviant behavior (15)
- conflict view (15)
- interactionist view (16)
- moral entrepreneurs (16)
- crime (17)
- Code of Hammurabi (17)
- Mosaic Code (17)
- legal code (18)
- compurgation (18)
- ordeal (18)
- common law (18)
- mala in se (18)
- mala prohibitum (18)
- statutory crimes (18)
- first-degree murder (18)
- voluntary manslaughter (18)
- battery (18)
- assault (18)
- rape (18)
- robbery (18)
- inchoate offenses (18)
- burglary (19)
- arson (19)
- larceny (19)
- felony (19)
- social control function (19)
- actus reus (20)
- mens rea (20)
- strict liability crimes (21)
- justification (21)
- stalking (20)
- pedophiles (21)
- sexual predator law (21)
- appellate court (21)

**CRITICAL THINKING QUESTIONS**

1. Beccaria argued that the threat of punishment controls crime. Are there other forms of social control? Aside from the threat of legal punishments, what else controls your own behavior?
2. What research method would you employ if you wanted to study drug and alcohol abuse at your own school?
3. Would it be ethical for a criminologist to observe a teenage gang by “hanging” with them, drinking, and watching as they steal cars? Should he report that behavior to the police?
4. Can you identify behaviors that are deviant but not criminal? What about crimes that are not deviant?
5. Do you agree with conflict theorists that some of the most damaging acts in society are not punished as crimes? If so, what are they?

6. Under common law a person must have mens rea to be guilty of a crime. Would society be better off if criminal intent was not considered?

After all, aren't we merely guessing about a person's actual motivation for committing crime?

NOTES


12. Ibid., p. 9.


17. Ibid., p. 85.


33. Lynch and Groves, A Primer in Radical Criminology.


36. Ibid.


