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FICHTELBERG

Criminal [IN] Justice  
SECOND EDITION



AARON FICHTELBERG / SECOND EDITION

# Criminal [IN] Justice

**A Critical Introduction**



# **Criminal (In)Justice**

Second Edition

*This book is dedicated to all the students who have taught me  
over the last 20 years.*

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# Criminal (In)Justice

## A Critical Introduction

Second Edition

Aaron Fichtelberg

*University of Delaware*



Los Angeles | London | New Delhi  
Singapore | Washington DC | Melbourne



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## ABOUT THE AUTHOR

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**Aaron Fichtelberg** was in school for a long time. He received his BA from the University of California at San Diego, a master's degree from DePaul University, an LLM from Utrecht University in the Netherlands, and a PhD from Emory University. He is currently an associate professor at the Department of Sociology and Criminal Justice at the University of Delaware, where he has taught criminal law and criminal justice for 15 years. This is his fourth book. His earlier works are *Crime Without Borders: An Introduction to International Criminal Justice* (Pearson, 2007), *Law at the Vanishing Point* (Routledge, 2008), and *Hybrid Tribunals: A Comparative Examination* (Springer, 2015). He has also published in journals such as the *Journal of International Criminal Justice*, *Criminal Justice Ethics*, the *Journal of Science and Engineering Ethics*, and the *Journal of Theoretical and Philosophical Criminology*. His work generally combines the study of criminal justice with a critical perspective provided by the humanities.

He lives in Kennett Square, Pennsylvania, with his wife and two sons, and he is bad at writing about himself.

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---

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Of course, none of this would matter to me if it weren't for my wonderful wife, Renée Bowers, and my two amazing children, Oliver and Theodore. I hope we leave you a better world.

This book has changed a great deal since I started writing it nearly a decade ago. It will change in the future. If you as a student or professor have any feedback you'd like to give about it, I'd happily receive it. I can be reached at [afichte@udel.edu](mailto:afichte@udel.edu). Even your critical comments can help make future editions better.

## TO PROFESSORS USING THIS BOOK

---

I wanted to write a brief preface to explain a few things about this book that might help you better use it in your classes. In writing it, I was trying to achieve something both very specific and, I believe, unique in the world of criminal justice textbooks. On one hand, I wanted to provide a critical take on criminal justice, one that didn't treat deeply troubling aspects of the American criminal justice system as though they were accidental to the overall functioning of the system. Protecting an unequal social order is an essential function of American criminal justice at every level, and I wanted this book to reflect that reality.

On the other hand, this book is intended as an introductory textbook and is meant to serve as a gateway to understanding a very complex set of interlocking institutions. Toward this end, a lot of this book discusses criminal justice in a more traditional fashion. While I wanted students to comprehend the role that racial profiling plays in policing and the historic role that the police played in maintaining social and economic inequalities, I also wanted them to understand more routine things, such as the difference between municipal police departments and sheriff's departments, or general aspects of the Uniform Crime Report. While it is important to see the way that the courtroom work group and plea bargains funnel people who are impoverished into guilty pleas, it is equally important to understand voir dire procedures or how the appellate system is structured. Even if students are completely closed off to the critical approach presented here, they can still learn a lot about how the system works, though undoubtedly it will be diminished without this critical edge.

I've been teaching a long time, and I've learned that imposing one's views on students is not an effective or even an ethical teaching strategy. It is not effective because many students, particularly those from privileged or conservative backgrounds, are deeply committed to the traditional values of criminal justice and are often very reluctant to abandon them. They believe that the police are almost always a force of law and order and that the criminal justice system generally does what's right when it comes to the "bad guys." Abandoning that worldview is uncomfortable and difficult for many students. The image of the dogmatic left-wing professor is often deeply baked into their thinking and can be used by students as grounds to ignore lessons that are ideologically challenging. In short, a dogmatic or overbearing teacher doesn't help students think critically. Usually, it only closes students' minds and puts them in a defensive crouch.

I have struck a conversational tone throughout this book because I believe that engaging with students is a much more persuasive way to get a point across. Equally important, these students are human beings and deserve to be respected as such—regardless of their views about law and order. Engaging with them rather than imposing one's views on them embodies this. In my experience, some of my best students are often those who are my ideological opposites. Once they understand that they will be treated with respect by their professor, I find that they open and are far more willing to consider other views in the long run. This book was written with

this in mind, raising questions and issues for the student to think through rather than forcing a perspective on them. I have tried to use the boxed sections such as “What Would You Do?” to get students to think critically without forcing them to adopt any particular worldview.

Finally, I’ve worked with SAGE to find ways to keep down the cost of this book. One of the challenges that underprivileged college students face is the high price of textbooks, and the publisher agreed with me to strip down some parts of the book to keep the prices low. It may not always be as flashy as other criminal justice books, but I hope this means that more students can afford it. An expensive book that many students can’t buy doesn’t do a lot of good.

I have worked to refine the messages of the book in the second edition. I’ve learned a lot from the feedback from those teachers who have used it in their classes. I’ve been humbled by the positive responses to the text as well as grateful for the critical feedback I have received. A lot has gone on in the world of criminal justice since SAGE published the first edition, and I believe that the critical approach of this book is even more relevant now than when I first wrote it.

### **New to the Second Edition**

There have been numerous changes made to the second edition. There have also been structural changes to make the book more suitable for an online audience. We have also updated some of the data to include more recent research on crime and criminal justice. The language has been changed in many ways to be more inclusive, and material involving the experiences with different racial and ethnic minority groups has been incorporated into the text to better track the experiences of a diverse society. And, of course, there have been multiple places where more recent events have been incorporated into the text—including, of course, the prosecution and conviction of Derek Chauvin for the murder of George Floyd. Other new topics include rape on college campuses (Chapter 4), defunding the police (Chapter 7), and voting rights of people who are incarcerated (Chapter 11).

# GENERAL INTRODUCTION

---

## LEARNING OBJECTIVE

**0.1** Explain what it means to study criminal justice from a critical perspective.

America is obsessed with crime. It is a staple of prime-time drama, movies, and novels—whether it is mafia epics, drug-dealing street gangs, or suave serial killers, crime and those who fight it are everywhere in American culture. It is an enduring feature of American politics as politicians promise to restore law and order if put into office while routinely denouncing their political opponents as criminals. Musicians brag about committing crimes from drug dealing to murder in their songs, and superheroes bring super-powered bad guys to justice all over our movie screens. There is no escaping crime and criminals in American culture.

Over the past few years, however, this obsession has turned into a massive cultural brawl as critics both in the media and on the streets have protested the deep problems with American justice—and, by extension, America as a whole. Led by people of color who believe they have been mistreated and abused long enough, groups like #blacklivesmatter have shouted slogans like “Defund the Police!”—demands that were previously unimaginable. People like George Floyd, Breonna Taylor, and Eric Garner, victims of police violence, have become household names. Terms like *systemic racism*, once reserved for an elite cadre of academic researchers, have filtered into the streets and led many Americans to question basic aspects of law and order in our society. These protests have gone further, as critics have argued that police violence is woven into the fabric of both American history and the American present and is intimately connected with white supremacy—tearing down statues of people who were once considered America’s greatest leaders. Other groups have equally stood by the police, furiously denouncing those who criticize the police, claiming that any police brutality is either “fake news” or the misdeeds of a few bad apples and is un-American. This angry debate has taken place on social media, on television, and in the news, and it has spilled out into the streets, sometimes with violent and even lethal consequences.

Our society is full of economic and social inequalities. People of wealth live way better lives than people whose incomes are below the federal poverty threshold. White people are in the majority and usually at the top of the social order with far more opportunities and privileges than people of color. Men have a great deal of social and economic influence compared to women and others. As a result, people of wealth, white people, and men have an outsized influence on the laws and policies pushed by the government. Criminal laws and policing practices

reflect these inequalities in a host of ways that we will examine here. They also subtly influence the way that we think about crime, law, government, and even each other, often creating fear, prejudice, and distrust between different groups. Politicians and criminal justice professionals work in a society where people aren't treated equally, but the law is meant to apply to everyone in the same way. It is only natural that criminal justice in America would reflect these deeper inequalities. This is the line taken in this book.

This approach is part of the tradition known as *critical theory*, which has a long history in social sciences, psychology, economics, and philosophy. To be critical in the academic sense (and not, say, the guy who doesn't like a movie or your new haircut) is to look at society as *fractured*. By this, I mean that society is shot through with all kinds of injustices and inequalities, and these injustices shape how we live. Racial inequalities, gender inequalities, and economic inequalities run through our society and shape it on every level, and they do so in ways that are often invisible to us. The term that sociologists use to describe these problems is *structural*: problems that are rooted in the foundations of our society, with our social, cultural, and political institutions built upon them. Structural problems are nobody's fault: They are part of a social system that nobody chose but that we all participate in. Some people benefit from these structural inequalities, but many don't. Critical theorists believe that our society is deeply unjust and that this injustice shapes our society on every level.

## WHY A "CRITICAL" INTRODUCTION?

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This text provides a *critical* introduction to criminal justice. What does this mean? How is it different from a normal introductory textbook? Simply put, most criminal justice textbooks provide a more or less straightforward analysis of how the criminal justice system operates. According to this approach, "criminals" are individuals who break the law (people who steal others' property, people who sell illegal drugs, and people who have committed murder), and the purpose of the criminal justice system is to apprehend these people and either put them on the path to a law-abiding life or punish them for their misdeeds. Ordinary textbooks may criticize parts of this picture and give it some nuance, usually with a small set of discussion questions at the end of a reading that allows students to critically evaluate the topics discussed in the chapter. But for the most part, almost all introductory textbooks stick to this conventional approach. Crime, justice, law, and order are taken for granted as the best categories for understanding the workings of the criminal justice system.

While some textbooks may challenge parts of the conventional approach to criminal justice in places, popular media—film, television, books, and so on—rarely if ever challenge it. Almost all crooks are seen as *bad guys*—enemies of decency and threats to the innocent—and the police are almost always *good guys*—defenders of the innocent and protectors of the broader social order. Because as we all know, law and order are inherently good things. The police investigate crimes, arrest those who commit them, and throw them in jail or, when absolutely necessary, use lethal force to kill them. On the whole, the system is aimed at stopping injustice and protecting the social order against those who threaten it.

Even when movies or television present a more complicated view regarding good guys and bad guys (sometimes, the fugitive is accused of a crime she didn't commit or is pursued by corrupt officers), almost all crime-based television shows and movies still neatly break the world into tidy moral categories. When the corrupt officers are exposed at the end of the movie or the fugitive is redeemed, the world is returned to the way that it's supposed to be—police are good; crooks are bad. When the story is over, our moral view of the universe is largely unshaken. Some movies and television programs (such as *The Wire*) provide a more complicated view about good guys and bad guys, but these are usually the ones that almost nobody goes to see: We want our crime films to come with neat moral messages, and filmmakers know this. We want to know who the good guys are—the people we should root for, and we want to know who the bad guys are—the people we should despise. Not only do we want this, but we also want to know ahead of time that the bad guys will be arrested or, more likely, dead before we reach the bottom of our overpriced popcorn. On our screens, we expect our criminal justice to be heavy on the *justice*.

But what if the world doesn't neatly break down into good guys and bad guys anywhere? What if criminal justice is only partially about justice but also about a great deal of other things? It is undoubtedly true that most criminal justice professionals (police, judges, lawyers, etc.) see themselves as catching bad guys and sincerely believe that they are helping others. In many cases, they are. They do tremendous good in protecting people from those who would want to harm them.

But these criminal justice professionals are not fighting crime purely out of the goodness of their hearts—they do it for a paycheck. They may want to help society and fight crime, but if crime were too low, paradoxically, they would no longer need to exist. Thus, while the police fight crime, they have a financial interest in crime existing and therefore have an economic interest in society needing it around. Nothing is shocking about this: Police officers are people too, and as such, they live by the same laws of supply and demand as everybody else does. If crime disappeared, so would their jobs.

Politicians are the same way. They usually want to make their communities better places, but to do this, they need to keep their jobs as lawmakers, which in turn means getting votes. Fed a steady diet of crime news from the media, the public tends to fear crime even where there is little of it to be afraid of and thinks that the criminal justice system is too soft on crime, independent of whether it in fact is. Politicians sometimes fan these fears when they need to get votes. It's usually a far better strategy for a politician to be too tough on people who commit crimes than risk being too kind to them. During the 1988 presidential election campaign, for example, a furlough program in Massachusetts overseen by then-governor Michael Dukakis freed a man named Willie Horton, who later raped a woman. Many observers believe that relentless political commercials on the subject cost the governor the presidency—a lesson that all politicians remember. Thus, while the system is about fighting crime, in some ways, it is also about politicians trying to maintain their popularity and keep their jobs.

To truly understand the criminal justice system from a critical perspective, then, you need to understand the society that it is designed to protect. Crime in many ways reflects deep social inequalities, and the criminal justice system can only do so much to stop it. Poverty and inequality create crime much more than do “greed” or “evil.” To fight crime without addressing

the deeper problems in our society is to treat a symptom while ignoring the underlying disease. Protecting order in an unequal society is always going to be problematic. The analysis of criminal justice here will often examine the role that the law, the police, and other criminal justice actors play in protecting the deeper inequalities that shape American life in the first half of the 21st century. The criminal justice system is a tool for maintaining an unequal, unjust social order.

This doesn't mean that the criminal justice system is entirely bad, of course. The police, the courts, and other aspects of criminal justice provide many important and valuable services. The police often protect people who live in fear of crime and help those who are in danger. We're better off with police forces and laws that protect the public. But they don't protect everyone in the same way or to the same degree. As we will see, there are vast differences in how the criminal justice system works and who it benefits, and these differences often reflect these deeper social inequalities.

Furthermore, crime is so central to our politics that every citizen should have a realistic understanding of crime and justice so that she may be an informed voter. Politicians and policy-makers often count on the fact that most people are ignorant about the facts of crime and justice issues when they hit the campaign trail seeking votes.

If you're going to major in criminal justice, a good introductory course can be valuable for your future. If it is well structured, it should lay the foundations for what lies ahead in your studies—providing a rough outline of many subjects that you are going to study in future classes. In most criminal justice programs, each of the subjects discussed in this book will be the topic of at least one entire course that will further develop the information that is offered here. Law, courts, policing, and criminology are all basic elements of the criminal justice program in most universities, so this course should help lay the groundwork for each of these subjects. You'll know what some of your future classes are going to look like if I've provided a decent guide.

Students enroll in a criminal justice course for a host of reasons, many of which have nothing to do with the subject of the course itself, and any professor worth the title knows this when she walks into the class on the first day. I hope to start with a somewhat different perspective than most criminal justice books, one that will address all kinds of students in different ways, and engage those students who aren't interested in the subject at the outset. For example, if you're considering starting a career as a criminal justice major, I want to show you some of the realities lying behind the myths about the field so that you can make an informed decision about your future. Many unscrupulous universities weave fantastical stories about working in the criminal justice field as detectives, forensic investigators, or criminal profilers, hoping to lure students into their department. (For example, even though there are almost no jobs in forensic science, biology departments have developed courses and majors on the subject to get "butts in seats" and the tuition money that accompanies them.) If you're just looking for an easy *A* or a chance to sleep in, I hope to make the subject interesting enough that at a minimum, you don't mind coming to class and reading this book. You just might find something useful and valuable on these pages.

The odds are pretty good that you will have an encounter with the criminal justice system sometime in your life if you haven't already. You may be victimized by a person committing a crime and turn to the police for help. You may be a suspect who is arrested or interrogated by the police. The police may stop by your house when you're hosting a party to ask you to turn the noise down, or they may pull you over for speeding or running a red light. Regardless of whether you're a victim, a suspect, or just an innocent bystander, you must know how the system works so that you can protect yourself and your interests. When an officer stops a driver, she will often ask the driver, "Do you know why I stopped you?" The driver may innocently respond with some explanation of her infraction ("Because I failed to signal when I changed lanes?"), but what may seem like innocent cooperation is in fact an admission of guilt that can be used in court later. A simple question from an officer such as, "May I look around your car?" is a request to search your car (one that can be lawfully refused) and can be an easy way for police officers to get evidence against you. When a person is arrested and interrogated by the police, there is often a subtle game being played in which interrogators manipulate an unknowing suspect into saying or doing something that can get her into trouble. In short, the system sometimes exploits the ignorance of citizens, and so knowing your rights and understanding the mechanics of the criminal justice system can be crucial to getting through the system and maybe avoiding prison.

Most students have some idea about what criminal justice is and what police officers, courts, and the other criminal justice professionals do. But these ideas are usually shaped by movies and television. These shows are entertainment, not reality, and they often play fast and loose with the facts of crime and criminal justice. Few officers engage in high-speed chases through crowded city streets as they do in movies and on TV, and serial killers are extremely rare. Gunplay seldom happens. As one New York City prosecutor put it, "[The film] *Dirty Harry* has more shootings in a movie's half-hour than the New York City Police Department cop with the most shootings in his entire career" (Sexton, 1998, p. 20). No attorney would dare pound his fist on the desk and shout at a judge, "This whole courtroom is out of order!" as Al Pacino famously did in... *And Justice for All*. Most trials are bureaucratic and at times boring affairs, and most police officers spend most of their time on far more mundane activities than catching bad guys. Criminal justice is fascinating for a lot of reasons, but they're probably not the ones that you think. Rather than flashy crimes and daring detectives, American criminal justice is more about who we are as a society, who is going to have power over us, and how we are going to be controlled by those in power.

A critical approach to criminal justice is certainly a far cry from the movies, prime-time TV, or adolescent fantasies about heroes and villains. It is not a straightforward idea and doesn't provide simple answers regarding how to improve the criminal justice system or reduce crime. But to have a sophisticated, college-level understanding of modern criminal justice and to understand why it is so important and so controversial in contemporary society, it is vital to "put away childish things" (1 Corinthians 13) and see the criminal justice system as it truly is in the full light of day. Even if that can sometimes make you uncomfortable.



## THEMES OF THE BOOK

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Throughout the text, several different themes will recur. I want to bring them to your attention now so that you will notice them in future chapters. They're important aspects of the entire American criminal justice system, including policing, courts, and corrections. These themes are *conservatism*, *race*, and *discretion*. These three factors have a tremendous influence on American justice on every level. I'll briefly explain what I mean by each of these here.

When I say that the American criminal justice system is *conservative*, I mean that the system is set up to protect the current state of things, the *status quo*. The criminal justice system is not designed to change the world. It is designed to maintain the existing order. This is good in many ways, but if you are unhappy with the way things are and want to change them, the criminal justice system will probably not help you. Most people who have tried to change the world in important ways—those opposed to the Vietnam War, those who opposed slavery, and those opposed to segregation, to use a few examples—were labeled as criminals by many of their contemporaries. They were often arrested and sometimes beaten by the police because of their efforts. These activists were not punished because their causes were unjust but because the criminal justice system is not sympathetic to those who want to change the status quo, particularly if they believe they must break the law to do it.

The importance of *race* in American criminal justice cannot be overstated. Since the United States was founded, we've had a race problem. This country was built upon principles of individual liberty and equality, but the founding fathers had no problem enslaving tens of thousands of their fellow human beings. (The Constitution itself only counted enslaved people as three fifths of a person, after declaring in the Declaration of Independence that "all men are created equal.") After the Civil War, millions of Black Americans were oppressed by racist segregation laws abetted by a lack of sympathy and at times hostility from white Americans. Now, racial issues are significantly more complicated than they were in the 19th or early 20th century, but there remains a great deal of dissatisfaction with the state of American society among a great deal of Black people.

Criminal justice has historically been one of the primary tools for keeping Black Americans marginalized. Through aggressive policing, racially biased laws, and the large-scale incarceration of Black people in the United States, Black Americans have been kept in a subordinate position in American life. As a result, most Black Americans have very different kinds of interactions with the police than do most white Americans. Organizations like #blacklivesmatter have brought this to the public in a dramatic way over the past few years, and this movement has gone a long way toward exposing the racial divisions in American perceptions of criminal justice. *One simply cannot understand American criminal justice without understanding its historical role in keeping Black people down and the role that it still plays in maintaining racial inequality.* We will discuss the racial elements of criminal justice throughout this book, and I will make the case that the racial inequalities we see in the criminal justice system are historically connected to slavery.

Finally, *discretion* is an extremely important aspect of criminal justice. The image of a criminal justice *system* implies that everything in the system happens more or less automatically.

Many of the actors in the criminal justice system—police, prosecutors, judges, and so on—have a freedom of action known as *discretion* that allows them to decide how they will deal with an individual suspect. Thus, a cop who pulls over a speeding driver may decide to give the driver a ticket or let her go with a warning. (This could depend on a lot of things: the seriousness of the infraction, the attitude of the driver, etc.) A prosecutor may charge a person with first- or second-degree murder depending on whether she thinks she can get a conviction for the more serious offense, or she may accept a plea bargain—not wanting to risk a trial. Finally, a judge has a wide range of options in how to punish a person convicted of a criminal offense (prison, rehabilitation, probation, etc.), all of which are almost totally at her discretion. All these actors—police officers, prosecutors, prison guards, and so on—have a great deal of leeway in how they handle any individual who comes through the system. The system has a great deal of built-in flexibility: Not all laws need to be enforced, and not all lawbreakers are prosecuted.

## THE POLITICS OF JUSTICE AND THE WAR OVER POLICING

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I have taught criminal justice for more than 15 years, but I never found a book that suited my critical approach to the subject. As a result, I began writing this book to use it in my classes about 10 years ago. Since I began writing it, criminal justice has become a significantly more important part of public discussions and a source of angry debate. Police officer killings of Black Americans like Tamir Rice, Eric Garner, Freddie Gray, Walter Scott, Breonna Taylor, George Floyd, and Michael Brown, among others, pushed the issue of criminal justice reform to the front of public debate. Groups like #blacklivesmatter became a major force in pushing for reforms in policing and in the criminal justice system more generally, and this movement has led to a ferocious response from the largely white #bluelivesmatter movement. Equally important, the federal government under President Obama began to slowly reform some parts of the criminal justice system at the federal level, influencing how the system worked across the country.

Many of these changes came to a screeching halt with the inauguration of Donald Trump as president in 2017. President Trump had made his unflinching support for the police a major part of his campaign and had attacked #blacklivesmatter on the stump. He described many Black neighborhoods as war zones and portrayed immigrants as thugs, drug traffickers, and terrorists. Under his watch, he declared, “Safety would be restored.” Equally important, he appointed former Alabama senator Jeff Sessions as his first attorney general, the federal government’s top law enforcer. Throughout his career, Sessions has steadfastly opposed reforming criminal justice, and as attorney general, he rolled back many of the policies that the Obama administration had championed to make the system less harsh on people convicted of criminal offenses. Clearly, Trump and Sessions marked a dramatic shift backward for criminal justice in many ways, and this will have a great deal of impact on this system over the coming years. However, even the Trump administration understood that there were deep problems with American criminal justice, passing the First Step Act, which made significant reforms to the federal prisons system.

That said, I am revising the book for this second edition at another turning point in the nation’s governance—the beginning of the Joe Biden administration. President Biden has

promised to take the concerns of the #blacklivesmatter movement seriously and has been public about his opposition to the death penalty—big changes from the previous administration. Black voters played a huge role in his electoral victory, and they will likely have an influential voice in shaping the Biden administration’s criminal justice policies during his term. On the other hand, many of Trump’s supporters claim that Biden’s win was fraudulent, and some of these people have resorted to criminal violence to express their anger. While the right wing was once a prominent supporter of the police, some of these protesters killed an officer during the January 6, 2021, riots at the US Capitol. Some terrorism experts predict a rise in right-wing terrorist violence over the next 4 years.

Furthermore, as I was writing this, the trial of former Minneapolis Police Department officer Derek Chauvin was taking place in a Minneapolis courthouse. Chauvin has been accused of murdering George Floyd by pressing his knee down on Floyd’s neck for nearly 9 minutes during an arrest for allegedly trying to use a counterfeit \$20 bill. The trial received a great deal of attention and became the biggest trial of an officer for misconduct since the officers who attacked Rodney King were prosecuted in Los Angeles nearly 30 years earlier. Both of these developments could have a huge impact on criminal justice going forward, but much of it won’t be felt for years. Criminal justice is a constantly moving target, and focusing too closely on what’s happening right now risks losing a bigger perspective as well as becoming dated too quickly. While I will discuss many of these new developments, I will do my best to put them in the context of nearly 250 years of American criminal justice as well as over 500 years of U.S. racial relations.

One final word of caution. As you can probably already tell, this textbook will probably put forward some ideas that you will disagree with. You should feel free to disagree with this book. Too many textbooks try to pass off their opinions as a neutral, objective analysis by deploying the bland tone of an encyclopedia article. On issues like crime and justice, there is very little neutral ground, and there is very little consensus about what the facts truly are. What you will have in this book is an analysis rooted in facts, but one that is open to debate and differences of opinion. The point of this book is *not* to indoctrinate you into critically thinking about criminal justice (because critical scholarship valorizes different perspectives, this would be a self-contradiction) but to open you up to seeing the criminal justice system in a lot of different lights, some positive, others negative. You may choose your own way to look at things and your own perspective. The point here is to help you develop an *informed* perspective on criminal justice, one that doesn’t take conventional assumptions about law and order for granted. That is the essence of education.

Thus, this book will strive to be controversial, to say things that might get your blood pumping, particularly if you see yourself as a strong proponent of law and order. If you believe that those who commit a crime are simply bad people, you will probably not agree with a lot of what I say here. Again, this is fine. Rather than rejecting the analysis here as nonsense because it doesn’t fit with your worldview, a better approach is to try to refute it. Research, read, discuss the subject with your friends, and arrive at a different conclusion rather than doing what most of us do when we encounter facts or analyses that differ with our views—dismiss them out of hand and turn to those with whom we agree. In most cases, higher education should not be about being *told stuff* but being guided to thinking about our world in a different light.

## THE STRUCTURE OF THIS BOOK

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This text will be structured into several sections. In the first section, we will be discussing “crime.” Here we will look first at the concept of crime by asking a series of related questions. What is crime? How does crime as a category relate to law? To morality? To society’s expectations? Here we will also discuss public perceptions of crime, including commonly believed myths about crime. Then we will turn explicitly to criminal law as one way of understanding crime, examining basic aspects of the legal system and the legal construction of crime. After this, we will look at social scientific approaches to measuring and explaining crime, focusing largely on sociological approaches but also looking at economic, biological, and psychological explanations of criminal behavior. Then we will turn to the critical tradition, the approach that grounds much of the rest of this book. This approach seeks to see crime and the criminal justice system as reflecting the deeper structural inequalities that shape our society.

After having discussed crime as such, we will then turn to the criminal justice system, that is, the set of public and private institutions that deal with those who commit crimes. Here we will follow the course that an individual would follow through the criminal justice system: We will start with arrest and look at policing, police procedures (including searches and seizures), and police institutions. Then, we will go to court and see how the different actors in the courtroom interact with each other and with the criminal defendant. If her appeal is unsuccessful, she will be placed in what we call the correctional system (although as we will see, “correcting” people is often not a high priority in most prisons) for punishment, including potentially the death penalty—the fourth section of the book. Finally, at the end, we will discuss a unique exception—the case of juvenile justice, exploring how our thinking about kids changes how we view their responsibility for breaking the law.

Keep in mind that when we get to the criminal justice system, we will only be able to speak in generalities. The United States is a federal system in which almost all criminal justice issues are handled at the state level. Each state has its own laws, its own procedures, and its own set of criminal justice institutions. That means that there is a great deal of variety among the states regarding how the police are organized, how a trial is run, and how people who commit an offense are punished. Focusing on one state would be too limited and not very helpful if you live outside of that state, and discussing every variation among the states would take too long. As a result, we will speak only in broad terms about many aspects of criminal justice, providing a few specific examples of how criminal justice is carried out in different states. If you are interested, you can research criminal justice practices in your state to notice the differences.

## A COMMENT ABOUT TERMINOLOGY

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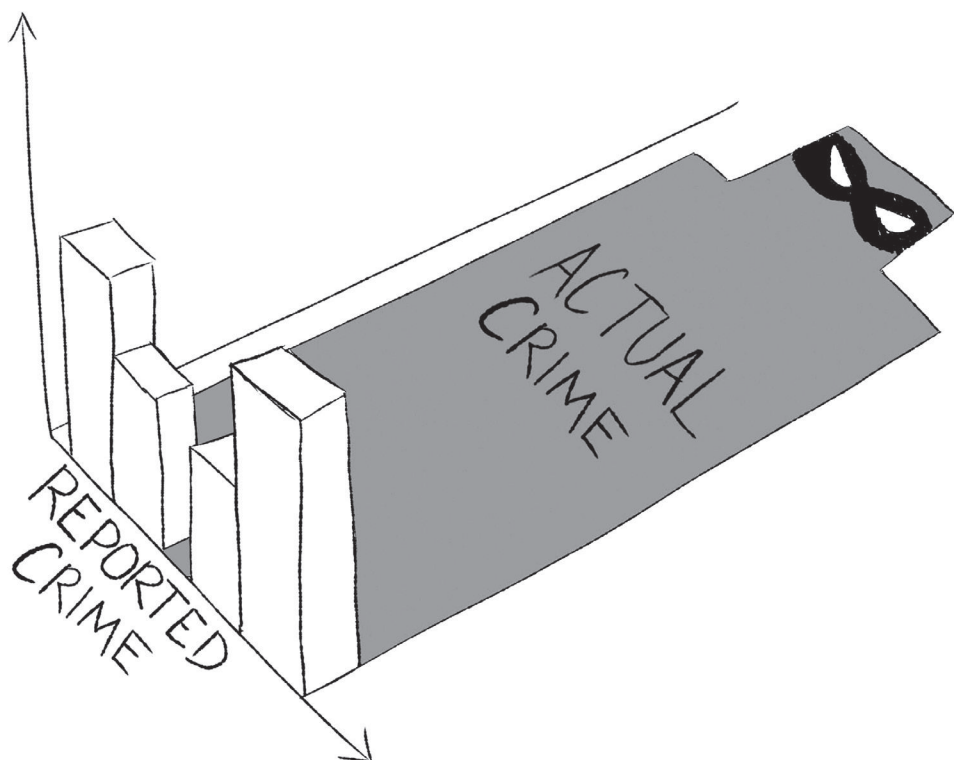
I want to say a few things about the words I have chosen to use in this book. Part of taking a critical perspective involves understanding how the words we use shape how we look at reality. *Crime* and *criminal* are just words, but when they are used to describe a person, they can be very harmful and even dehumanizing—making them seem more like an animal or a monster rather than somebody without thoughts and feelings. I have tried to be somewhat careful in how I

describe people and things in this text to avoid being misleading. One example of this is my decision to use the feminine pronoun as the “generic” pronoun when it is common to use the masculine pronoun in English. This is a bit weird, because the clear majority of people arrested and prosecuted for crimes are men, as are police officers, judges, and prosecutors. It is particularly glaring in terms of imprisonment: Men are approximately 14 times more likely to go to prison than women.

Nonetheless, using the feminine pronoun to describe victims, people who commit offenses, and criminal justice professionals seems fair. If this makes readers uncomfortable, think of it as a challenge to how we think: When we see *he* used generically, we unconsciously think of a man and only later qualify our thinking to include women. Men and male conduct become the norm and women the exception, even though there are more women than men in the world. Here, we are doing the opposite, speaking as though the ordinary person were a woman and then qualifying our thinking to apply to a man. Nonetheless, keep in mind that these are meant to be generic terms—*she* can be a man, a woman, or a person who doesn’t fit onto either side of the gender binary.

Furthermore, throughout this book, I have used different words to describe people. When a person hasn’t been accused of a crime, I have referred to her as a “citizen”—although she need not be an actual American citizen. (In most cases, noncitizens have the same rights as anybody else living in the United States, at least when it comes to issues of criminal justice.) When she has been stopped by the police, she becomes a “suspect” or a “person suspected of a crime.” When she has been charged with a crime, she is a “defendant,” and when she has been convicted, she has become a “person convicted of a crime.” If she is incarcerated, she is an “incarcerated person” or sometimes a “prisoner.” If she is on death row, she is “the condemned.” Each change of terminology points to a change in the legal and social status the person has both in and outside of the criminal justice system: As we will see, a person who is incarcerated has significantly fewer rights than a suspect, and a citizen who is suspected of nothing has more rights than a person about whom the officer has a reasonable suspicion. This is just to give you a warning that I’m going to change my terminology as the book goes on, and these changes have some significance. Also, in this second edition, I have tried to avoid terms like *criminal*, *offender*, or similar pejorative terms as much as possible so that we remember that a person’s worst acts and their role in the criminal justice system don’t define people. Keep in mind that beneath each of these labels is a human being with thoughts, feelings, hopes, and fears, just like you or me. In a system that often dehumanizes people who break the law, this in itself can be a critical act.





A lot of crime does not show up in official crime data. How significant do you think this is for understanding the causes of crime?

Sarah Yeh

# 1

## DEFINING, CLASSIFYING, AND MEASURING CRIME

In this chapter, we will be discussing “crime.” The word is between quotation marks here, because one of the things we need to keep in mind is that the concept of crime is not a very precise one. It is not static, it is not unchanging, and it is certainly not uncontroversial. Moreover, our conception of “the criminal” is often shaped by popular stories and myths—not by reality. When you imagine a criminal, you probably think of a mugger, rapist, bank robber, and so on—perhaps a guy in a ski mask with a gun lurking in a dark alleyway. You probably don’t think of the guy from your dorm who smokes pot or your friend who buys beer for the college party where some of the drinkers are underage. The mattresses that we sleep on come with a tag that warns us of criminal penalties if they are removed. Until a few years ago, people in certain states were criminals if they engaged in gay sex.

In some ways, this chapter will be the most philosophical part of the book, as we explore various ways to talk about and measure crime. In the first part, we will distinguish between the way that the media talks about crime in fictional dramas and in the news from the reality of crime. Then we will examine different approaches to analyzing the concept of crime itself. They are all “definitions” of crime, but unlike definitions found in a dictionary, each provides a different framework for thinking about crime as a subject of study, essentially treating crime in a very different way. Here, we will look at *legal*, *moral*, and *sociological* approaches to thinking about the nature of crime. Each of these takes on crime will have its own strengths and weaknesses, but none of them will be “the right one.” In some contexts, a moral approach will look stupid, while in other contexts, it will make a great deal of sense. Sociological definitions of crime are great if you’re a practicing sociologist, but if you’re a lawyer, you probably don’t care what Durkheim said about crime. There is no need to come to a final answer about the best definition of crime, because it is such a complex phenomenon that it can be helpful to use a variety of lenses to examine it. Once we have described these different ways to define the subject, we will turn to some of the different ways that we can classify various types of criminal activity.

### THE MEDIA AND CRIME

#### LEARNING OBJECTIVE

- 1.1 Explain why depictions of crime in the media often misrepresent reality.



The media, be it the news, drama, or social media, feeds us crime stories on a 24-hour cycle, and this is where most of us learn about crime. Every day, local and national news programs feature stories about crime with grainy security cam footage or shaky phone videos. These news programs are then followed by either a crime-related TV drama or a documentary on crime (*Criminal Minds*, *America's Most Wanted*, *To Catch a Predator*, *Law & Order*, *Bones*, etc.) showing police officers chasing crooks through crowded city streets or slamming a “perp” onto their car hood as they read him his rights and declare that he’s going behind bars “for a long, long time.” Given the fact that crime is almost always on TV or in the news in one way or another, it’s probably safe to say that the American media is obsessed with the subject.

However, television and the news media are only obsessed with a certain type of crime: crimes that will attract viewers and will get them to sit through their advertisements. Ordinary everyday crime and crime that doesn’t have an interesting “hook” are ignored. Often this hook is violence or sex in one form or another—“if it bleeds, it leads,” as the journalistic cliché goes. And when crimes are reported, the bigger picture is often ignored in favor of the gory, erotic, or otherwise sensationalist elements of the offense. This in turn leads the uninformed viewer to develop a skewed perspective of the nature and reality of crime in America today, which can lead many people to fear things that they need not fear and to overlook criminal activities that produce real social harm.

To use one example, every year thousands of people go missing, and news programs frequently feature stories on some of these unfortunate people. But not every person who goes missing gets attention, and it is telling who the media chooses to focus on. Young, white girls often gather far more media attention than any other type of person, and noticeably, victims who are part of racial or ethnic minority groups are frequently ignored. A pretty blonde girl is sure to get attention, while a working-class Black woman or a Native American living on a remote reservation is likely to be overlooked. People like Elizabeth Smart and Natalee Holloway are featured for weeks on the news, while others are completely ignored. Movies like *Taken*, about a white American girl snatched from the streets and sold into slavery, framed how Americans think about human trafficking—ignoring the fact that this almost never happens. Once this discrepancy was pointed out, it became so obvious that observers began to label the phenomenon as *missing white woman syndrome* (Liebler, 2010). If you got all your news from the TV, you’d sincerely (and falsely) believe that kidnapping was common and that pretty young white girls were the primary victims of such crimes.

Another example of media misrepresenting crime is its obsession with serial killers. Though we have no real hard numbers on the subject, there have been very few genuine serial killers in history, and dying at the hands of such a killer is very unlikely. According to FBI statistics, about 150 people are killed a year by serial killers, half the number killed by slipping in the bathtub. (Serial killers are simply people who have killed more than one person over an extended period; they need not be Hannibal Lecter-type slashers.) But if you watched news shows as well as crime dramas, you would believe that America was packed with brutal but colorful murderers who stalk and kill at random. Each year, Hollywood churns out dramas about vicious serial killers either in the horror genre (*Halloween*, *Friday the 13th*, etc.) or in the crime genre (*Seven*, *The Silence of the Lambs*). The public is fascinated with people like John Wayne Gacy, the Zodiac

Killer, and Jack the Ripper, who are regularly the subjects of documentaries, books, and movies, even though these figures are barely a ripple in the real world of homicide.

The media will often ignore crimes that are either too technical or too complex to make a good story. White collar crimes like insider trading or securities fraud can cause massive damage, robbing people of their savings and their homes, leaving innocent people destitute and their lives ruined. Environmental crimes like illegal dumping of dangerous materials can kill thousands. The problem with these crimes is that they often don't make good television: We get lost in the details, and the technical aspects of business or environmental law are confusing and often boring. They don't come wrapped up in a tidy story about good guys and bad guys. This means that few people know of Jeffrey Skilling (the president of Enron, a bankrupt energy corporation, who was convicted in a massive fraud and insider trading case) or Bernard Madoff (who was convicted of running a massive scam known as a *Ponzi scheme* that cost investors billions), while famous killers like Scott Peterson and O. J. Simpson are national celebrities. White collar crime is pervasive and destructive but largely ignored by both the news and by television drama, unless it can be tied into something juicier.

Other times the media will be briefly consumed by one type of crime that will seem to sweep the nation. Out of nowhere, crimes that nobody ever heard of seem to appear in epidemic proportions. For example, in the 1980s, there was a great fear that heavy metal music was linked to crimes such as murder and suicide and that it encouraged the practice of Satanism, even though there was scant evidence that the millions who listen to heavy metal were more prone to crime than anybody else. Similarly, youth crime has been blown out of proportion by a society that is understandably afraid of crime in schools; extreme cases like the shooting at Columbine High School haunted everybody's views about what high school students were like (again, despite the fact that high school is not a particularly violent place, particularly in affluent suburbs). In each case, an understandable fear, sometimes prompted by one or two extreme cases, was taken by the news media and blown way out of proportion, creating widespread public fear. In the face of a frightened public, politicians and policymakers are obliged to respond with new policies that are meant to placate the public.

Sociologists call these phenomena *moral panics*. A moral panic is a public response to a perceived problem that is way out of proportion to the problem's reality. Whether it is freeway shootings, Satanism, child abduction, or teen sex, public fear and outrage is fostered by a media seeking to give the public what they want. Even crimes like terrorism can be seen as a moral panic, as the number of Americans killed by terrorists is miniscule compared to the number killed by other types of homicide. "Experts" appear on talk shows, lending these fears a veneer of legitimacy, and a few, admittedly awful cases become focal points for public discussion. Few of these experts, however, point out the boring reality that very few kids are abducted, teen sex rates are lower than they were a generation ago, and Satanic cults that conduct human sacrifices are largely a myth. As we will see, the reality of crime is a complex thing, and its causes are a continuing point of debate, but chasing the latest moral panic is not an effective way to prevent crime, much less study it.

The point of all of this is to say that our understanding of crime is shaped by a media that has no interest in portraying crime as it really is. Instead, it is interested in attracting viewers or

readers to generate clicks and sell advertising space. This means that the portrayal of crime on television and the movies usually says more about our society, the things that we care about as a people, than it does about crime itself. So why is the public so fascinated with certain types of crime, and why does it ignore other, more damaging sorts of crimes, the crimes that are far more likely to affect our lives? Our fear of losing control of our children in a world where they are increasingly targeted by advertisers turns into a fear that our children are being led to a life of crime or may be a victim of a child predator. Our sometimes strict understanding of what a “good girl” ought to do turns into an obsession with women who kill or teens who have sex. Our anxiety about our inability to be completely secure in our lives turns into an obsession with serial killers who could pop up out of nowhere. Public attitudes toward crime say more about the public than they do about crime.

Many scholars have examined how race, violence, sex, and other issues have been used by the media to boost its ratings and how a prolonged exposure to these stories can affect a viewer’s perception of crime and justice. Other scholars have examined how a single newspaper will depict similar crimes in very different ways depending on factors such as the race of the victim or the race of the person who committed an offense. Stories are not simply “there” to be reported in a neutral and objective way, but rather, the reporters frame the story in a particular way, picking out certain facts as important while downplaying others. These choices are often the result of unconscious assumptions and prejudices on the part of the reporters, and in turn, they are seen by an audience that similarly has their own set of unconscious prejudices. Thus, the media’s portrayal of crime is not simply an effort to get viewers but is also the result of a great deal of filtering and shaping during the reporting process. This means that we should be careful about separating the sensationalism about crime reporting with the realities of crime in modern America.

## THE RHETORIC OF “CRIME”

### LEARNING OBJECTIVE

**1.2** Recognize the symbolic power of labeling someone a criminal.

While we all can easily conjure up an image of what we think a criminal looks like without much effort, the word itself is not as simple as it may first appear and can mean a lot of different things in different contexts. “Criminal” is *not* necessarily synonymous with a lawbreaker or with a “bad guy.” People like Martin Luther King Jr. and Mohandas Gandhi were arrested and prosecuted as criminals for violating unjust laws, and few people would describe them as criminals today. Other people have done horrendous acts that were completely legal when they did them. What is a crime and what is a criminal is in many ways very complicated, both legally and socially.

It is also helpful to remember that the terms *crime* and *criminal* are not merely descriptive but are also *normative*. Calling an action a crime or calling a person a criminal does not simply

describe what she is or the act she does; it is also making a judgment about the act or the person.<sup>1</sup> We are not just describing them; we are also saying that they are bad and deserve to be condemned by decent people. In this way, *crime* and *criminal* are a lot like the term *evil* or *ugly*: When you use these words to describe something, you're also rendering a verdict on it and casting it in a negative light. When you call somebody a criminal, you are saying something derogatory about her.

It is because of this normative quality that the term *criminal* has so much power. It draws a moral line and puts a person, group, idea, or party on the wrong side of that line. This is why many different political groups try to use these terms to their advantage in public debate. Antiabortion activists want to label doctors who provide abortions as criminals, both liberal and conservative politicians paint the other side as criminal, and animal rights activists claim that “meat is murder.” Each of these groups is using the language of crime rhetorically to try to get people to think about abortion providers, the president, or carnivores in the way that they think about murderers, rapists, and serial killers. They are using the terms of crime and justice to win a war of ideas, usually without having to prove that their own ideas are the best ones. (The term *rhetoric* refers to the skillful manipulation of language to convince another to see the world the way you do.)

Of course, the rhetoric of crime is not just for antiabortion protestors or political extremists. It is used by and against all kinds of people trying to push all sorts of political agendas. Sometimes the language has been used so effectively that public opinion has changed, and acts that were once perfectly legal became criminal. Similarly, acts that were once criminal became legitimate because of similar rhetorical techniques—people convinced others that acts that were considered criminal weren't really so bad. Some things we are glad to see criminalized have only been criminalized because groups were able to convince others that they should be considered a crime. Dogfighting, for example, was outlawed because people were convinced that cruelty toward animals should be a crime, even though millions of animals are raised in miserable conditions and killed for food every day and dogfighting was once a cherished tradition in the West (Villavicencio, 2007). Same-sex relationships were once considered criminal (and in some cases punishable by death) but are now considered socially acceptable by much of American society. Crime shifts over time as different groups have changed public opinion about what behaviors we should accept and what we should condemn.

All of this is to say that we should use a critical eye when looking at the concept of crime. It's not a neutral term and means different things in different contexts. *Crime* is what linguists call a *contested concept*—it is never a simple matter to determine what is or what should be a crime and who should be considered a criminal. Often, uses of this term are almost always open to debate. A lot of people who use the term are pretending that they're describing an act as a crime when really what they're saying is that these acts are bad and should be punished. They are further saying that the government should intervene to forcibly prevent people from engaging in these acts. Therefore, we need to carefully examine our ideas about *crimes* and *criminals* before reaching any conclusion about the best way to define them.

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<sup>1</sup> As I mentioned in the introduction, I will use the feminine pronoun as the generic pronoun throughout the book.

## DEFINING CRIME

### LEARNING OBJECTIVE

1.3 Identify different approaches to defining crime.

### Legal Definitions of Crime

The simplest approach to defining a crime is to say that a crime is a violation of the law. These laws are passed by governments and set out on paper, and all we need to do is consult them to figure out which acts are criminal and which aren't. After all, police officers won't arrest someone for doing something that doesn't violate the law (in theory), and (again, in theory) they will probably arrest you if you do something that violates the law. Thus, a crime is any act that violates criminal law, and individuals that commit such acts are criminals. Enough said.

Of course, there's obviously something compelling about this approach, and if you asked somebody who hadn't thought very carefully about it, she would probably give this as her answer. It makes sense: In many ways, the law is a useful guide for understanding the contours of the criminal justice system as a whole. The **criminal justice system** is the connected set of institutions that respond to crime, including criminal law, the police, the courts, and the correctional system. Usually, a person cannot be arrested unless she violates a criminal law, so an illegal act is usually an individual's entry point into the criminal justice system. The courts apply criminal law when they determine whether a person is guilty, and the law usually spells out the appropriate punishment for an individual. This means, obviously, that the law has a great deal to say about crime and criminal justice more generally.

However, there are some important problems with such a narrow way of understanding crime, and there are a lot of important aspects of crime that are overlooked if we focus solely on law. For example, the odds are that you have *never* actually looked at your state's criminal code or the federal criminal code. You may not even know what these are, much less where to find them. We all know that murder and robbery are crimes, but could you give the definition of murder in your state or explain the difference between murder in the first degree, murder in the second degree, and manslaughter in your state? That, of course, is assuming that your state makes these distinctions, as not every state has different degrees of murder in its criminal code. While we may think that we know what the law says, legal definitions ("constructions" to be more precise) of individual crimes are often strange—they are the products of legislative processes that can be confusing to somebody who doesn't closely follow them.

In addition to the fact that we usually don't know our local criminal laws, the law varies dramatically from state to state. There are 50 different criminal codes in different states, along with a federal code, and each state's constructions of crime are reflections of local politics, local history, and local values. Some acts might be a crime in Virginia but not in California (such as the use of marijuana—which is still a federal crime but is legal in several states). The same crime might have very different definitions in different states. This means that, technically speaking, one could commit the same act in one state and it would be a crime, and yet it would be perfectly

legal in another. While this doesn't disqualify this legal definition, it does show that it is limited: It is difficult to study crime across the various legal jurisdictions that make up the United States.

Finally, just because a person violated a criminal law doesn't mean that the state will enforce that law. The police, prosecutors, and judges may choose to ignore lawbreaking behavior for a host of reasons. The offense might be too small to be worth their time, the police might have other priorities, or the person who committed an offense may not be somebody who criminal justice professionals are interested in pursuing. This means that in some cases, determining whether an act violated the law is not a good guide to determining whether a person will be arrested or punished. Sometimes, the police will ignore your conduct or let you off with a warning. Other times, the officer may choose to intervene in behavior that is not really criminal. For example, being a nuisance may not always be a crime, but the police will intervene if they wish. The police don't strictly enforce many laws—they are just too busy to do that. Rather they will usually enforce laws only when the laws that are broken are serious ones (robbery, murder) or when they have a good reason to want to enforce the law.

As was already mentioned, there are many cases where there is a big difference between our beliefs about crime and what the law tells us is criminal. Martin Luther King Jr. was arrested and imprisoned for breaking laws in the South during his fight against segregation. So was Gandhi in his fight against British colonialism in India (and Jesus, for that matter). Few of us would leap to call them criminals. Hitler's genocidal murder of Jewish people, Roma people, gay men, and others was perfectly legal under German law at the time he ordered them. History is full of cases where good people trying to fight clear injustice are arrested and imprisoned, and people who commit great evils are shielded by the law. The law is clearly an important lens through which to look at crime, but it cannot be the only one. The legal definition of crime is technically accurate, but it is only technically accurate, which is its biggest weakness.

## Moral Definitions of Crime

The reality is that the law has very little to do with our everyday thinking about crime or our interest in the subject. We don't find crime fascinating or upsetting because we care about what the law says. When we get worked up about crime, we're usually angry about something deeper than mere lawbreaking—our blood boils when we see somebody do something horribly wrong, regardless of what the law says about it. We consider crimes to be acts that are profoundly wrong, and we believe that criminals are bad people. Killers, rapists, and robbers are not just people who violate a rule—they are people who commit evil. We could go so far as to say that a moral definition of crime is something like, "Crime is an act of great immorality."

Criminal justice scholars distinguish between acts that are *malum prohibitum* and those that are *malum in se*. These Latin terms refer to two types of crimes that we can commit. *Malum prohibitum* describes acts that are wrong because they are prohibited, while *malum in se* refers to acts that are bad in themselves. Some acts may be criminal without necessarily being wrong. For example, it is illegal to drive the wrong way down a one-way street, and you can get in big trouble for doing it. However, it is not inherently wrong to drive this way—if nobody is harmed or inconvenienced, it doesn't make a difference where you drive. (In England, it's normal to drive on the left side of the road.) Acts that are *malum in se* are more classical crimes like murder

and rape—murder is never okay. These terms point to the basic insight of the moral approach to crime—we believe that criminal acts are *wrong* because they are *wrong*, not because they are merely against the law.

This sense of wrongness explains why we get so worked up about crime in a way that we don't about other types of lawbreaking. It offends us to see somebody hurt an innocent person or steal money, and it gives us a great deal of satisfaction to see these people brought to justice. When we see a criminal “get away with it,” that is, commit a crime without paying any price for it, many people are outraged and upset. The satisfaction we feel when we see justice done, the person who committed an offense caught and punished, is one of the reasons why we are glued to many TV crime dramas and the resolution where the bad guy is inevitably caught. (There's a whole genre of self-described “justice porn” videos that are meant to provoke pleasure by seeing bad people get their just deserts.) The resolution gives us a certain kind of satisfaction—we can't wait to see the criminal get what is coming to her.

Some have even gone so far as to assert that moral principles constitute a “higher law” that we should all obey even if it means violating the laws that are on the books. Theologians call this theory *natural law*, and this idea has been used to justify all kinds of acts of *civil disobedience*—deliberate lawbreaking based on a moral objection to the law. As the Catholic philosopher St. Augustine put it, “An unjust law is no law at all.” In American history, Martin Luther King Jr. used natural law to justify his protests against segregation. In his famous “Letter From Birmingham Jail,” King argued that any law that doesn't uphold human dignity isn't really law and should be ignored by all decent people, regardless of whether or not a legislature passed it.

Thus, the moral approach has some advantages over the legal definition of crime: It feels more like what we mean when we talk about crime. It gets to the core of crime in a way that mere lawbreaking doesn't—violating the law by itself doesn't usually rile people up; hurting innocent people does. However, it shouldn't surprise you to learn that moral definitions of crime have problems, too. While we might agree that crimes can be defined as serious moral wrongs, this doesn't mean that we can agree on what these “serious wrongs” are. The world is full of vastly different moral codes with their own lists of right and wrong conduct, and people who live under these codes subscribe to very different moral views. This view is known as *moral relativism*—people have different views about right or wrong, and judging between them is often very difficult.

Even if we could find a few basic moral principles that we could agree upon, something like “murder is wrong” or “stealing is wrong,” we still run into problems. While we can agree on a principle, when we try to apply it to actual cases, we often run into difficulties. Some people would find abortion to be completely acceptable, while others would call it murder. They might even disagree about whether abortion is “killing” in the first place—some arguing that destroying a “clump of cells” doesn't amount to killing and others arguing that a fetus gets a soul at conception. Many of you illegally download movies from the Internet but may not consider it stealing. We can all agree that Martin Luther King Jr. was correct to oppose segregation laws, but we might find other uses of natural law somewhat more objectionable. (It's been used by people who murdered abortion doctors, for example.) Many cultures have very different ideas about killing: “Honor killings” (the killing of a family member who has shamed the rest of the



family) are considered noble by many people who live in some societies, but they would surely be considered murder elsewhere. The belief that some things are just plain wrong is fine, but that only leads to a whole new series of problems.

None of this is to say that relativism is right and that morality is simply a matter of opinion or a product of one's culture. (Philosophers and theologians have been debating this question for thousands of years.) Rather, it's just to point out that there are a lot of problems with simply accepting the moral definition of crime at face value. Thinking about the moral aspect of crime requires thinking about the nature of morality and its relation to culture, history, and the broader society. While theft may be immoral, stealing to feed one's family is clearly different from stealing purely out of greed. In addition, many acts of stealing are legal but perhaps shouldn't be. As the folk singer Woody Guthrie once sang, "Yes, as through this world I've wandered, I've seen lots of funny men. Some will rob you with a six-gun, and some with a fountain pen." Some of the biggest crimes can be committed with the blessing of the government, and the worst of all (the Holocaust, the genocide of the Native Americans, the killing of millions of Africans by the King of Belgium in the 19th century) have been committed by governments themselves.

## Sociological Definitions of Crime

Émile Durkheim, one of the founders of modern sociology, was fascinated with how people reacted to crime in their societies. Durkheim observed that crime and punishment are features of every society, even in places where there is no formal law or government, such as in the remote corners of the world. However, he noticed that acts that were considered "criminal" in one society would not necessarily be crimes in another—they might even be considered honorable. Within a single society, an act that would be considered a horrible crime in one context could be considered noble in another—killing a stranger in a bar fight is murder; killing him on a battlefield can be heroism. In addition, acts that cause a great deal of harm can be perfectly legal (such as certain banking practices), and acts that produce no harm whatsoever can be a crime. An infraction may seem trivial in our society but in another could be a shocking violation of social norms requiring serious punishment. Crime is everywhere, but criminal acts are dramatically different from place to place and even within the same society.

From these insights about crime, Durkheim reached two primary conclusions: Because they are universal phenomena, crime and punishment must serve a purpose for society beyond simply protecting the public from evildoers, and any real understanding of crime cannot be found in the acts that a society believes to be criminal—they are just too varied to fall under a single definition. Relativists are right in that there is no single notion of crime, and moralists are right in believing that crime produces an emotional reaction from the public. However, neither definition looks at the question in the right way according to Durkheim.

Durkheim believed that the key to understanding crime is not to look at the criminal act itself but instead to look at a society's response to that act. What defines a crime is that society determines an act should be punished, regardless of whether the act is harmful in itself. The primary element of *all* crime is that people in a society think that these acts deserve punishment.



Law is secondary. The criminal law only follows a society's beliefs about what acts should be punished but does not really define criminality. When an outrageous act occurs that is not yet illegal, governments will race to follow popular opinion and quickly amend the criminal code so that it better matches society's values. If a government failed to criminalize acts that the public thought should be criminalized, it would quickly lose popular support. Similarly, if an act was considered a crime by the law but not considered something that should be punished by society, the law would be ignored by the public and thus be ineffective. Neither the nature of the act nor the law matter in defining crime for Durkheim: It is the response by the larger society, and sociologists, as people who study the society, can help understand this phenomenon.

In Durkheim's view, the fact that crime exists in some form or another in all societies shows that society *needs* crime—that crime serves a function for the broader social order. He believed that a society must develop a very strong set of rules to maintain its social bonds. When somebody breaches these rules, these social bonds (what Durkheim calls its “collective consciousness”) are threatened, and our connection to others in our community is harmed. The way to deal with this weakness is to punish the individual who broke the rules, not because she “deserves it” but because this punishment serves to reinforce the community's bonds. As Durkheim puts it, “Punishment constitutes essentially a reaction of passionate feeling ... which society exerts through the mediation of an organized body [the government] over those of its members who have violated certain rules of conduct” (Durkheim & Halls, 1997, p. 52). The point of punishment for Durkheim is not to stop bad things from happening but rather to reinforce a community's values and its sense of solidarity. This allows the society to remain intact, and if there were no crimes, it is likely that society would disintegrate.

These three approaches to defining crime, the legal, the moral, and the sociological, are all very useful for understanding crime in different contexts, and each has its own uses. The point is not to say that one is “correct” but rather to understand that each definition highlights one aspect of a very complex phenomenon. There are other ways we could also define crime if we were so inclined: We could also discuss religious conceptions of crime (most religious texts have a set of activities that should be punished, for example), economic definitions of crime (that define crime in terms of its harm on economic activity), or other approaches. All of these are useful, and none is absolutely correct: They each provide different insights into what crime is and suggest ways to study it.

## CRIMINAL (IN)JUSTICE

### MARIJUANA LAWS

No drug illustrates the changing nature of crime better than marijuana. Originally criminalized at the beginning of the 20th century, it is now listed as a “Schedule I” drug alongside heroin, methamphetamine, and cocaine under federal law, meaning that it has a high abuse potential and no medical use. When Bill Clinton ran for president in 1990, he admitted that he has smoked marijuana but claimed that he did not inhale it. The use of marijuana and its

criminality was linked closely to race: In earlier generations, it was considered a “ghetto drug” and a danger to white Americans. Harry Anslinger, head of the Federal Bureau of Narcotics in the 1930s, linked cannabis to Mexican immigrants, popularizing the term *marijuana* to make the drug sound like a foreign import. Anslinger also mercilessly targeted Black jazz musicians, most notably singer Billie Holiday, for their recreational use of the drug (Hari, 2015). Behind these attacks was a fear of the corruption of white America, and in particular white women, but they were largely small-time efforts compared to the later “war on drugs.”

Now marijuana is mainstream. According to the Gallup polling company, 12% of Americans use marijuana, and 45% of Americans have tried it (Swift, 2017). Many states have legalized the drug, either for medicinal uses or, in the case of nine states, recreational use. Even though it remains illegal under federal law, Congress passed the Rohrabacher-Farr Amendment in 2003 that prevents the FBI or other federal law enforcement bodies from enforcing federal marijuana laws in states where it is legal for medical use. It’s likely that the walls of at least one dorm room at your college have posters glorifying the use of marijuana. It’s barely even cool to smoke pot in a lot of places.

There is still an active antimarijuana movement in the United States that has sought to get rid of the Rohrabacher-Farr Amendment and push the United States back on the path of criminalization. According to the American Civil Liberties Union, marijuana still counts for 52% of all arrests in the United States. Marijuana arrests are also still linked to race: Despite the fact that Black and white people use marijuana in roughly the same numbers, Black people were 3.64 times more likely to be arrested for possession of the drug (American Civil Liberties Union, 2020). Even though many people use the drug, with few serious side effects stemming from casual usage, it remains heavily policed, mostly for people of color.

*Should marijuana be criminalized in your view? Why or why not? How could law enforcement prevent the uneven enforcement of marijuana laws?*

## CLASSIFYING CRIME

### LEARNING OBJECTIVE

**1.4** List different criteria for classifying crime.

We can break down the concept of crime into different categories in different ways. Not all crime is the same, and we should distinguish between crimes so that we don’t treat things that are fundamentally different as though they were the same. Both football and bowling are sports, but beyond this, they don’t share a lot in common. If we tried to find connections between these two sports, we would find some (they both use teams, for example), but we’ll probably get in trouble if we make too many connections or treat them too similarly. The same goes for crime. And just as for sports, we can break crimes down in different ways (pro sports versus amateur sports, sports that use a ball versus those that don’t, sports that are competitive versus sports that are recreational, etc.). We can do the same thing with crime. Here are a few ways to break down crime:

## Severity of the Offense

One way that crimes are divided up, for example, is based on the severity of the offense—how much harm is done by the crime. For example, most states in the United States distinguish between **misdemeanors** (relatively minor infractions) and **felonies** (major infractions that can lead to imprisonment for one year or more). Some legal systems, however, don't use this system or have more fine-grained distinctions, such as Class A, B, and C felonies (each with different punishments) and a similar structure for misdemeanors.

## Classification Based on the Victim

More useful than distinctions based on the severity of the criminal act are classifications based on the type of victim. This can be useful because different types of crime may have different features. In many cases, different kinds of crimes are committed by different kinds of people for different kinds of reasons, and they should probably be separated. For example, a robber who steals property but hurts nobody is probably going to be a different type than a person who commits cold-blooded murder. A drug dealer is probably different from a drunk harassing people on a street corner. This means that distinctions need to be made. While there are a lot of different ways to break down crime, the most commonly used categories are **crimes against persons**, **crimes against property**, **crimes against public order**, and **crimes against the state**.

### Crimes Against the Person

This is probably the most serious category of crimes, but it is also the easiest to define. Crimes against persons are crimes that directly target individuals, usually by causing them bodily harm. These are crimes like rape, murder, and assault. (They are usually described as crimes against “the person” and not “against people” because it is only specific harms done to specific people that count.)

### Crimes Against Property

These are crimes where individuals are not bodily harmed by criminal activity, but their possessions or finances are affected. These can include burglary, arson, embezzlement, and so on. Of course, these crimes could lead an individual to be harmed (a person could be killed in a fire, or a person whose medications are stolen by a burglar could die), but then, if the prosecutor believed that the crime caused bodily harm, the person could be convicted for murder, and hence a crime against property would become a crime against the person.

### Crimes Against Public Order

These are acts where nobody specific is hurt and property is not damaged or taken, but the behavior is nonetheless harmful to society. These offenses typically make a place a less pleasant place to live even if there is no single victim that one can point to. For example, public drunkenness, loitering, or panhandling (asking strangers for change) are behaviors where no individual person is often harmed, but they still affect everyone's quality of life.

Crimes against public order raise difficult questions about the role of criminal justice in a society. While it is obvious that the police should protect people, and almost as obvious that they should protect private property, it is not quite as clear why they should protect public order. Sometimes loitering laws are used to harass people who are considered undesirable by society at large. A group of young men hanging out on a corner are often considered to be loitering, while a group of professionally dressed people engaged in the same activity would probably not. Antirioting laws have been used to suppress lawful forms of protest, and antinuisance legislation can be used to harass innocent people. What might seem like loitering to one person might be socializing to somebody else, and a group of young people, particularly people of color hanging out on a corner, is apt to be seen very differently from a group of white people. While we all like public order, enlisting the police in protecting *our* definition of such order is tricky business and can lead to the mistreatment of people who are doing nothing worse than being “the wrong kind of person.”

### Crimes Against the State

There is only one crime specifically defined in the US Constitution: treason. Article III, Section 3, reads,

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

In such cases, the victim is the government (or more technically “the state”) itself. Other crimes that often fall under this category are *espionage* (spying), sedition (attempting to stir up rebellion against the government), counterfeiting, and tax evasion. In each of these cases, the offense undermines the power and authority of the government to run public affairs.

The founding fathers cared a great deal about this, because they themselves were considered traitors by Great Britain. The Declaration of Independence was, to the British at least, an act of treason, and were an American group to declare independence now, they would be prosecuted as criminals if they acted on it. Nonetheless, other countries define treason much more broadly and use crimes against the state as the basis for arresting and punishing critics of the government. The term *treason* is often thrown around in political debate, and the line between legitimate dissent and treason is a tough one to draw in a country with passionate political disagreements like ours. Sedition, on the other hand, involves attempting to “destroy, by force, the Federal Government of the United States” and related activities (18 US Code § 2384). Dissent, essential to democracy, is often seen by critics as a form of criminal insubordination.

Even though America has a long tradition of tolerating criticism, at different times, the government has criminalized public disagreement with the government. Under the Adams administration, Congress passed the Alien and Sedition Acts in 1798. These laws made it a crime (essentially) to criticize the government, and these were used to arrest numerous critics of his administration. The government passed similar laws in 1918 during the First World War and used them to target critics of American participation in the war. When countries get swept

away by events, their citizens can often consider dissent to be a form of treason and wish to use the organs of the state to stifle people who disagree with the strongly held views of the majority. Even in a country that cherishes its freedom, there are always those who want to suppress dissenting opinions, particularly radical ones.

## Other Ways to Classify Crime

There are a lot of other ways to distinguish between different types of crime. For example, we can distinguish between *street crime* and **white collar crime**. Street crime is crime that happens in a public place and usually is done for financial gain, such as mugging, but could also include so-called stranger rape (where a man attacks a woman whom he doesn't know) or even murder. White collar crimes are crimes committed in a business context, such as insider trading, price fixing, or embezzlement. When they're being clever, criminologists describe the split between the two types as one between "street crime" and "suite crime." Again, it's not too difficult to imagine that different kinds of people do these different kinds of crimes, and they probably shouldn't be examined in the same ways.

The concept of white collar crime is a relatively new one. The term was invented by the criminologist Edwin Sutherland, who stirred up controversy when he coined the term (Sutherland, 1983). According to Sutherland, criminologists have overlooked white collar criminality because the people who commit corporate fraud and other types of corporate criminal activity don't look or act like what we think of as a "criminal." They are often considered upstanding members of society and are given a great deal of respect by judges, politicians, and police officers. Simply because white collar criminals are usually not physically dangerous does not mean that they are not criminals capable of causing great harm. By focusing on street crime and violent crime, we often miss out on a category of crime that can hurt millions of people.

There are also several other types of crime that should be mentioned. Environmental crimes are offenses that are committed against nature directly and secondarily against people. These include things like dumping toxic waste, destruction of natural resources, illegal poaching of endangered animals, and so on. **Corporate crimes** are crimes committed by corporations. Corporate crimes are like white collar crimes insofar as they both take place in a business setting, but corporate crimes are done for the benefit of the corporation and not for private, personal gain. Corporate crime can include issues such as misrepresenting a company's fiscal status or bribing a public official to secure a lucrative contract. **Hate crimes** are crimes that are committed against a person because of the victim's race, religion, gender, sexual orientation, or disability. Racist attacks are hate crimes, as are attacks on gays and lesbians, and the perpetrators can face very stiff prison sentences under federal law. *Sex crimes* are crimes of a sexual nature. *War crimes* are crimes committed during armed conflicts, such as killing unarmed civilians, torturing people in prison, or using banned weapons like poison gas and biological weapons. *Cybercrimes* such as identity theft, fraud, or distributing child pornography take place over the Internet. Each of these crimes has its own characteristics, including its own type of person who committed an offense, and criminologists usually study them separately. There are a vast number of overlapping categories of offenses, and one criminal act could be a combination of any number of them.

## REALITY CHECK

### Crime Versus Fear of Crime

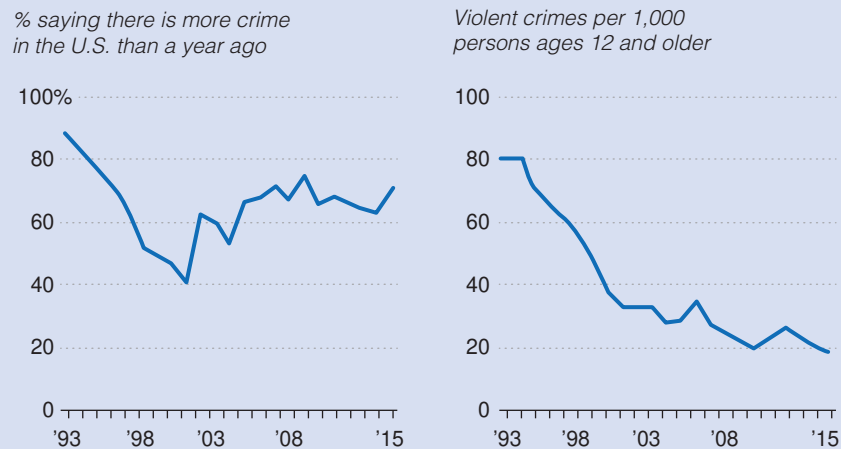
Violent crime has dropped substantially over the past two decades. However, you may be surprised to learn that the American public's fear of crime has *increased* over this same period. Studies suggest that the public either does not know or does not believe the numbers, as Figure 1.1 shows.

The *General Social Survey* (GSS), a nationwide survey of public attitudes (including attitudes about crime), supports these numbers. Despite being safer than ever, the American public is more anxious than ever about crime—a fear that politicians have been eager to exploit for their own benefits.

The fear of crime varies among different sectors of the population in ways that are particularly telling. As one social scientist observed, “There is seemingly no identifiable statistical relationship between those who are the most at risk of becoming victims of crime and those who report being the most fearful” (Lee, 2007, p. 3). For example, older Americans are more often afraid of criminal behavior but are less likely to be victimized by violent crime than are younger people. While white people are less afraid of crime than Black people, social scientists have discovered that living near Black people increases the fear of crime among white people (Skogan, 1995). Despite a prevalent fear in the United States of immigrants, they are less likely as a population to engage in criminal activities than native-born Americans (Jiang & Erez, 2018). The fear of crime, then, is the product of a complex network of social factors, only some of which are linked to the actual chance that a person will be a victim of a crime.

There are many possible explanations for this disconnect between crime and the fear of crime. Politicians and private security companies have a lot to gain by you believing that your safety is in danger at all times. Politicians can get tough on people who commit crimes

**FIGURE 1.1 ■ Public Perception About Violent Crime, 1993–2015**



Source: “Public perception of crime rate at odds with reality.” Pew Research Center, Washington, D.C. (2018). <http://pewrsr.ch/2fxLhfk>.

[always a convenient tactic in a political campaign] and target them with tougher laws, and security companies can sell you an array of home and personal security equipment to keep you safe—but only if you’re first scared. Of course, the news media can increase its viewership by highlighting the most sensational crimes and concocting bogus crime trends (Romer et al., 2003). Finally, many of us don’t think about crime until it affects our lives, that is, when we or people we know are victimized, meaning that we are inclined to focus on our negative experiences rather than on our relative safety. Our fear of crime is stoked and manipulated by a number of different groups and factors, each of which has its own interest in making sure we feel unsafe. In his inaugural address, President Trump bemoaned “the crime and gangs and drugs that have stolen too many lives and robbed our country of so much unrealized potential” and declared it an era of “American carnage.”

Given these realities, it is unsurprising that criminal justice policies, that is, the government’s approaches to preventing crime, are often driven by a public that is unaware of the facts about crime in America. Voters often cast their ballots based upon what they think is going on, independent of facts. This means that, for politicians, “getting tough on crime” is almost always a safe bet when campaigning, regardless of whether or not getting tough actually reduces crime. In many parts of the criminal justice system, the influence of the fear of crime and the need to “get tough” has sometimes led to policies that are counterproductive but are profitable for businesses that work in the criminal justice field, such as private security companies or prison construction companies. While it is too simplistic to describe manipulation of fear of crime by the media and the proposal of “solutions” provided by the various businesses in the criminal justice world (prison construction, private security, etc.) as a conspiracy, it can often feel that way.

*Why do you think young people underestimate their likelihood of being victimized? Why do older people overestimate their chance of being victimized? How often do you think about being victimized?*

## MEASURING CRIME

### LEARNING OBJECTIVE

#### 1.5 Compare and contrast different ways of measuring crime.

Newspapers, TV, and radio often talk about the *crime rate*: It’s going up, it’s going down, it’s leveled off, it’s remained steady, and so on. But what do we mean by “the crime rate”? Where do we get these numbers from? Since so much crime happens in the shadows and a lot of crime goes unreported, how can we know whether crime is increasing or decreasing?

There isn’t a “crime rate” in the sense of a single definitive measure of how much crime has occurred or whether crime is increasing or decreasing. There are many reasons for this, one of which we’ve already discussed: There is no consensus on how to define it. Additionally, it is often difficult to determine how to measure a crime. For example, a thief breaks into a house carrying a sack full of cocaine, steals some money, and then punches one of the homeowners when she tries to stop the thief. Did four crimes happen here or just one? If we count all four separately, then it looks like there’s a massive, sudden crime spree going on in the poor woman’s

living room. If we count only one or two of these as significant, then we are overlooking important crimes that might affect how people think of their neighborhood. If a person is initially charged with attempted murder but then accepts a plea bargain for a lesser crime, which offense actually took place on the night in question? There are different measures of crime, that is, different ways of determining the crime rate, each of which has its strengths and weaknesses and its own blind spots, that is, crimes that it is likely to miss. Each measurement of the crime rate provides only a partial view of what is happening in American society today. We can add them together and develop a rough picture of what is happening, but we will never really know with complete accuracy what is happening in the world of crime at any moment.

Further, there are many different crime studies. Some are done at the national level, some at the state level, and some at the local level. There are even international crime surveys taken by the United Nations. You could do a crime analysis of your own by polling your classmates, seeing who had been a crime victim in the past year, or, if you're bolder, asking them who has committed a crime in the past year. All of these are useful, and all tell us different things about what crimes are happening and what people are doing and not doing about it. Typically, however, crime is measured in three ways: police reports, victimization surveys, and perpetrator surveys. In the section that follows, we will discuss each means for measuring crime, covering their respective strengths and weaknesses.

## Police Reports

The simplest way to get crime data is to consult the people who most often deal crime: the police. Police reports tap into data that officers collect at the time of arrest to give us an idea of the crime rate. The best known of these is the **Uniform Crime Report** (UCR). This data is gathered by officers on site and then sent to the FBI, where it is compared with other arrest data around the country to give Americans a sense of the crime rate. Recently, the approach to organizing this crime data has undergone some changes, which affects how crime is reported by the police and can affect “the crime rate” as we know it.

The UCR was originally developed in the 1920s by the International Association of Chiefs of Police in order to have a single, nationwide resource for understanding and studying criminality in America. Material from the UCR is collected by the Justice Department and released in a series of publications, culminating in an annual study titled *Crime in the United States*. In this report, the department breaks crime down into seven major categories: felonious homicide, rape, robbery, aggravated assault, burglary (breaking or entering), larceny-theft, and auto theft. The National Incident-Based Reporting System (NIBRS) was created in the 1970s and goes into more detail about the crimes that police respond to. In both systems, however, when the individual is arrested, the police enter the appropriate data into a database, and the data is then sent on to federal officials. However, not every crime is treated the same: The UCR has traditionally used what it calls the **hierarchy rule**—only the most serious crimes are recorded in the report, while lesser offenses are not (see Table 1.1). Thus, if an individual assaults another person and steals her car, the police will not report both crimes to the UCR; rather, only the more serious offense (assault) will appear. A lot of lesser offenses will not show up in the crime data reported to the FBI.



**TABLE 1.1 ■ Crime Reported by UCR**

Part I Offenses	
1. Criminal Homicide	5. Burglary
2. Forcible Rape	6. Larceny-Theft (except motor vehicle theft)
3. Robbery	7. Motor Vehicle Theft
4. Aggravated Assault	8. Arson
Part II Offenses	
9. Other Assaults	20. Offenses Against the Family and Children
10. Forgery and Counterfeiting	21. Driving Under the Influence
11. Fraud	22. Liquor Laws
12. Embezzlement	23. Drunkenness
13. Stolen Property: Buying, Receiving, Possessing	24. Disorderly Conduct
14. Vandalism	25. Vagrancy
15. Weapons: Carrying, Possessing, etc.	26. All Other Offenses
16. Prostitution and Commercialized Vice	27. Suspicion
17. Sex Offenses	28. Curfew and Loitering Laws (persons under 18)
18. Drug Abuse Violations	29. Runaways (persons under 18)
19. Gambling	

The UCR only studies a selection of crimes and breaks them down into two different categories (or “Parts”).

The NIBRS was developed in part to avoid the problems created by the reporting of multiple crimes under the traditional UCR approach. By focusing on “incidents” rather than “crimes,” the NIBRS gives a fuller understanding of criminality. Beyond the fact that a particular incident occurred, the NIBRS includes information regarding victims, known persons who committed an offense, any relationships between persons who committed an offenses and their victims, and arrestees, as well as information on any property involved in the crime. Most of this information does not appear in the traditional approach of the UCR. This newer method provides a more nuanced and thorough understanding of a particular criminal incident. While this provides researchers with a better understanding of the reality of crime, fewer police departments participate in the NIBRS, leaving significant gaps in the data that it provides. As of January 1, 2021, the Justice Department stopped using the traditional approach and switched completely over to the NIBRS, which could lead to an artificial increase in the number of crimes that appear in the UCR (Asher, 2021).

Of course, there are some pretty significant problems with using police reports to determine the crime rate. For one thing, not every crime is reported to the police, and unreported crimes would not appear in either the UCR regardless of which system they use. Many victims have committed crimes themselves or have other reasons to be wary of the police and thus are disinclined to call 911 when they are victimized. Sex workers, drug dealers, and undocumented immigrants all tend to avoid calling the police, as would people who were already wanted for other crimes. (This makes people living outside the law such as undocumented aliens or people with outstanding warrants particularly vulnerable to criminals who can rip them off with little danger of being caught.) Also, some victims do not call the police because they think it would be futile to do so or would lead to other negative consequences. A great number of domestic violence cases go unreported because victims fear revenge from their abusive partner or losing the family's primary breadwinner to prison. Further, many crimes go *unnoticed* by their victims: If your wallet is stolen, you may mistakenly believe that you simply left it somewhere and think nothing further of it. In the perfect crime, the victim doesn't even know that she has been victimized. This means that there are a number of offenses that go unnoticed by the police and therefore do not appear on the UCR or NIBRS.

### Victimization Surveys

The second way to learn about crime rates is to study crime victims. **Victimization surveys** do this through numerous methods, including anonymous surveys, phone interviews, and visiting households to ask people if they have been a victim of a crime over the past year or so. The most well-known victimization survey is the **National Crime Victimization Survey (NCVS)**. Created in 1972 by the Department of Justice as a supplement to the UCR, the NCVS is meant to provide a second window into crime in America. A random selection of homes is contacted every six months and asked about their experiences with crime. If an interviewee reports being victimized, then the interviewer asks follow-up questions about the crime itself, determining different aspects of the crime, the victim, and the perpetrator. The NCVS only focuses on more serious crimes like rape, assault, and theft, ignoring lesser offenses. This allows researchers to develop crime data alongside the UCR and figure out which crimes are underreported to the police and what factors make it more likely that a victim will turn to the police after a crime.

Like police reports, victimization surveys have weaknesses that may distort their findings. Of course, some crimes are perceived as “victimless,” such as prostitution, buying and selling drugs, and so on, and these would probably not be reported by those involved in them. Not only does the NCVS ignore these and other minor crimes, but it is also limited in its research to people who are the heads of their households, meaning that the homeless are ignored, and minors are not interviewed. This can lead to the underreporting of domestic violence and other household crimes. In addition, respondents may misinterpret what happened, believing that they simply lost their MP3 player, when in fact it was stolen (or vice versa). Likewise, victims who do not own a phone, such as many homeless people, will not appear in the NCVS.

## WHERE DO I FIT IN?

### Accessing Crime Data Online

Because it contains personal information, a lot of crime data is protected, but some of it is not. You can easily access information from the two largest sources of crime data (the UCR and the NCVS) by going online. The UCR and NIBRS can be found at <https://ucr.fbi.gov/>, which includes raw data as well as summaries and reports based on this data. The NCVS can be found at the Bureau of Justice Statistics (BJS) website (<https://www.bjs.gov/>), which also includes raw data and various reports. Many other reports are available online from different state and local police departments as well as private and academic research centers. If you hunt around the Internet, you can probably do some of your own research into crime statistics.

A lot of criminal justice students wind up doing research on crime, both gathering and analyzing data to look for broader trends in criminal activity. The BJS hires a variety of people, usually with graduate degrees, to examine crime data to help policymakers. The National Institute of Justice (NIJ) is a part of the federal Department of Justice that works to analyze crime data and present it to government officials and to the public. Other, smaller programs exist in different states and throughout the country. If you're interested in this kind of work, a strong background in statistics and methods for gathering crime data (commonly called "methods") is necessary.

### Perpetrator Self-Report Studies

The final means by which we can learn about crime data is through what are known as **perpetrator self-report studies**. In these cases, people voluntarily, though anonymously, report the crimes that they have committed. This can be done via a written or phone survey or through interviews where subjects are guaranteed anonymity. For example, many states conduct surveys in their schools about drug use among teens and preteens in order to understand the scope of the drug problem in their own states. These studies can create ethical grey areas, as researchers may have knowledge about illegal behavior that the police do not know about. Many of these studies are *longitudinal*, meaning that they examine behavior over time to determine which periods of a person's life are most vulnerable to criminal activity. Others can test how widespread a certain criminal activity is; thus, we can learn about stealing from a workplace, a minor crime that is probably very widespread in the working world. Self-report studies can provide another important way to understand the prevalence of crime and criminality, particularly in its most minor but widespread forms.

Obviously, self-report studies function on the honor system and, as a result, they can easily be misleading. A person may not trust her interviewer and not admit her crimes. A person may want to exaggerate her criminal behavior in order to impress somebody, or just because it's fun to make things up. It's not difficult to imagine a bunch of teenagers in a class making up wild stories about sex and drugs when they're filling out a survey, and it's also not hard to imagine earnest crime researchers and the media falling for outlandish tales of teen misbehavior—just as they've done many times in the past. Nonetheless, despite their weaknesses, self-report studies

can provide information that victimization surveys or police reports can't: For example, small-time white collar crimes such as stealing from work would probably not appear in other crime studies. Small-scale drug abuse is similar: Many crimes are undiscovered by the police, and victims sometimes won't come forward about the crimes that they have endured but might own up to them in a situation of anonymity.

## The Crime Rate

Added together, these different ways of measuring crime provide a series of accounts of crime in the United States and, in some cases, around the world. While each approach provides only a partial understanding of the frequency of crime and the types of offenses that are committed, we can arrive at a few conclusions about the overall crime rate. For example, if the UCR and the NCVS both show an increase in crime over a certain period, we can conclude that there probably really was an increase in crime over that time. Though it is not a certainty, overlapping data can be a reliable guide to what is going on out there in terms of crime. Nonetheless, there is still what social scientists refer to as the **dark figure of crime**, that is, crime that does not appear in these data collection methods. This dark figure lurks behind all talk of crime rates. We can never know the true crime rate and can only make informed, educated guesses about it with the data from these various sources.

## SOME STATISTICS...

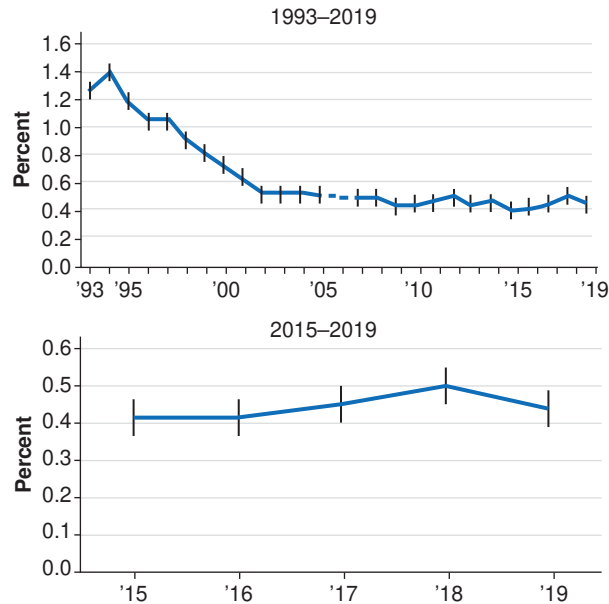
### THE CRIME DROP

According to virtually all measures (the UCR, the NCVS, etc.), violent crime has significantly decreased throughout the country as murders, rapes, robberies, and other behaviors have decreased almost universally (see Figure 1.2). These numbers are reflected in the homicide rate in particular. We can further compare these crime trends with trends for property crime where, again, the decline is similar. Theft, burglary, and car theft follow remarkably similar paths.

It is also interesting to note that the crime drop is not only an American experience. In most of the industrialized world, crime has decreased. Though the numbers are hard to measure, as each country measures its crime rate in different ways using different standards and measuring tools, "There has been a significant and prolonged 'crime drop' in many industrialized nations" (Farrell et al., 2014, p. 436). While homicide rates have often been lower in Western Europe than in North America, there remains a similar *trend* in homicide in both countries: It increased dramatically and then sharply dropped in the 1990s. The only exception to this trend is in Latin America, where an increase in violent crime has helped contribute to the immigration crisis in North America.

Figure 1.3 can be misleading—keep in mind that we are looking at homicides per 100,000 people, not the total homicide rate.

It is important to note that preliminary statistics show an increase in homicides in 2020 and 2021. The reasons for this increase are unclear as the causes of the crime drop

**FIGURE 1.2** ■ Violent Victimization, 1993–2019

Source: Morgan and Truman (2020).

Note: Estimates for 2006 should not be compared to other years and are excluded from the 1993–2019 figure.

**FIGURE 1.3** ■ Homicide Trends Around the World, 1990–2015

Region	Change, 1990 to 2015	Homicide rate, 1990 to 2015
World	–20%	6.1 4.9
Northern America	–46%	8.6 4.6
Latin America	–9%	20.6 22.6
Western Europe	–46%	1.9 1.1
Eastern Europe	–18%	8.6 7.1
Asia	–38%	3.8 2.4
Oceania	–22%	3.4 2.7

Source: Santos, M. R., & Testa, A. [2019, November 4]. *Homicide is declining around the world—but why?* The Conversation. <https://theconversation.com/homicide-is-declining-around-the-world-but-why-125365> licensed under CC-BY-ND <https://creativecommons.org/licenses/by-nd/2.0/>.

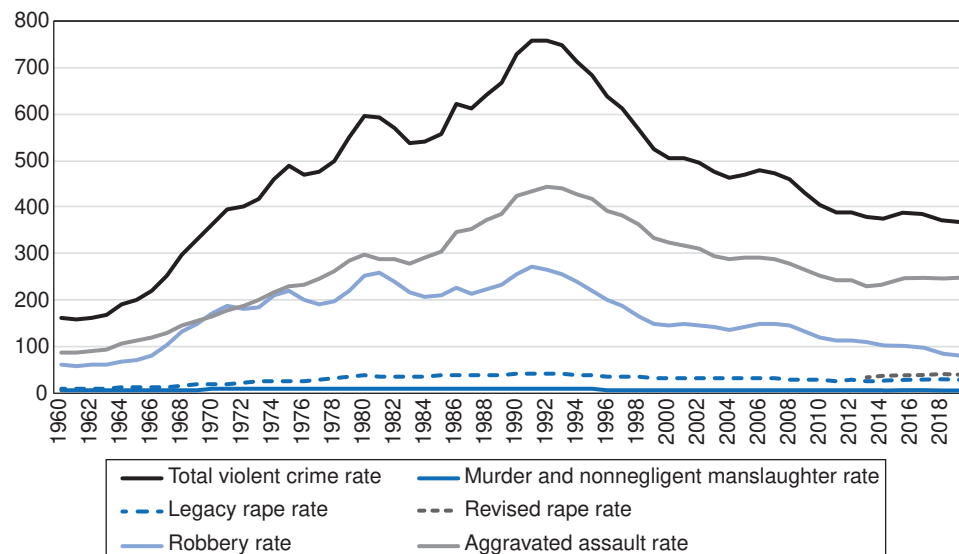
Note: Africa is not shown due to lack of data. "World" includes the 234 countries that had at least one year of available data between 1990 and 2015. Missing data were interpolated using an exponential weighted moving average.

were. Some have pointed to the fear generated by the COVID-19 pandemic, and others have pointed to unrest after the murder of George Floyd by Minneapolis police officer Derek Chauvin. Whether or not this increase is a “blip” or marks a return to higher crime rates will only be clear in the ensuing years. Even with this increase, however, violent crime is still very low when placed against the backdrop of American history. Despite the fact that many Americans still consider crime to be a serious problem, for the most part, Americans are safer than they have ever been.

As we have seen so far, there is good reason to be skeptical about our ability to have a completely accurate picture of the crime rate in the United States. There are a lot of unknowns about the world of crime, and any generalizations about it must be carefully qualified. Nonetheless, there are some things we can say about crime rates in the United States with some confidence. Most notably, there has been a marked decrease in violent crime over the past two decades according to almost all measurements. This *crime drop* as it is known among social scientists seems to be a reliable phenomenon, and it follows a steep rise in the crime rate in the several decades that preceded it (see Figure 1.4).

The crime drop has presented a challenge for criminologists who seek to discover the causes of crime and explain variations in the crime rate. Essentially, none of the commonly available theories predicted such a precipitous decline in criminality, and as a result, novel theories have been proposed to address the issue.

**FIGURE 1.4** ■ Estimated Violent Crime Rate in the United States, 1960–2019



Source: Federal Bureau of Investigation (2020).

## THE POLITICS OF CRIME DATA

### LEARNING OBJECTIVE

#### 1.6 Describe the political incentives for manipulating crime data.

While resources like the UCR and the NCVS seem to provide a neutral way to determine what's going on in the world of criminality, crime data can be very political. Police officials and politicians often distort or misrepresent their crime data for a variety of reasons. Obviously, a low crime rate could reflect well on a police force—showing that they have crime under control in their jurisdiction. It could also help politicians, real estate developers, and others who want to portray a city or neighborhood as a safe place to do business, live, and raise a family. Surprisingly, however, there can also be a strong incentive to *inflate* crime statistics, that is, to make crime seem worse than it probably is. If crime rates are low, there isn't a pressing demand for additional funds for police officers, vehicles, training, weapons, and other tools of policing. A high crime rate can provide justification for additional funding and provides politicians with a chance to talk tough.

There are many examples of crime statistics being manipulated for financial gain or for good public relations. In 2014, Dekalb County, Georgia, was found to have inflated its crime rates in order to secure \$2.3 million in federal funding (“DeKalb County,” 2014). The police department in Phoenix, Arizona, was investigated in 2011 for misreporting kidnapping statistics in order to get over a million dollars in federal stimulus money (Hermann, 2011). In 2011, the 77th Precinct in New York City was accused of manipulating its crime statistics by falsely stating that a crime had not happened (Yakas, 2011). A study by the magazine *Chicago* showed that a series of murders were classified as less serious crimes by the police or converted into non-criminal cases in 2013 (Bernstein & Isackson, 2014). A former police chief in Biscayne Park, Florida, was sentenced to three years in prison for ordering officers to arrest innocent Black people in order to give the impression that his department was solving crimes (Hauser, 2018). During the Trump administration, federal officials frequently inflated the number of crimes committed by immigrants in order to justify funding for a border wall (Bump, 2019). Similar cases have occurred in many other cities in the United States as police departments and politicians manipulate the data to serve their own political or financial interests.

Hate crimes are particularly difficult to measure, because they are widely underreported by local law enforcement officials (see Figure 1.5). A hate crime is a crime where the victim is targeted because of her race, religion, gender, and so on. The Department of Justice collects information submitted by local law enforcement regarding hate crimes, but the data that local law enforcement provides has been terrible in many cases. Simply put, no local government wants its area to be associated with hate crimes, and so these jurisdictions do not provide accurate information to federal officials about it (Bjork-James, 2019).