

y has emerged as a discipline in its own right. The earliest U.S. textbooks in the field were by Maurice Parmelee, John Gillin, Philip Parsons, and Fred Hayes, but it was the text and later writings of Edwin H. Sutherland, the acknowledged “dean of criminology,” that received the most deserved recognition.

LEARNING CHECK 1.1

Determine if the following statements are true or false. Answers can be found on page 474.

1. Criminology is primarily concerned with investigating crime scenes.
2. Criminology as a discipline had its beginnings in Europe in the late 1970s.

CRIME AND DEVIANCE

Deviance or *deviant behavior* may refer to a broad range of activities that the majority in society may view as eccentric, dangerous, annoying, bizarre, outlandish, gross, abhorrent, and the like. It refers to behavior that is outside the range of normal societal toleration.

Deviance

behavior that is outside the limits of societal toleration.

Definitions of deviance are relative to the time, the place, and the person(s) making the evaluation, and some acts are more universally defined than others. For instance, in the mid-19th century in the United States, bathing in a tub was considered immoral as well as unhealthy.

All societies have *cultural values*—practices and beliefs that are prized by or believed to be of benefit to the group. For instance, despite cultural relativity in defining deviance, anthropologists have identified a number of cultural universals—practices or customs that in general form exist in all known cultures. All cultures that have been studied look dimly on indiscriminate lying, cheating, stealing, and killing. Societies protect their values by creating norms, which are basically rules or prescribed modes of conduct.

Sumner’s Types of Norms

Early American sociologist William Graham Sumner, in his classic work *Folkways* (1906), identifies three types of **norms**: folkways, mores, and laws. These norms reflect the values of a given culture; some norms are regarded by its members as more important than others.

Folkways are the least serious norms and refer to usages, traditions, customs, or niceties that are preferred but are not subject to serious sanctions: manners, etiquette, and dress styles, for example. The character Reb Tevye in the musical *Fiddler on the Roof*, when learning that his daughter has rejected the marriage mate chosen by the matchmaker, wails, "Tradition—without our traditions, our lives would be as shaky as . . . a fiddler on the roof." Recognizing changing times or folkways, however, he ultimately accepts his daughter's decision to choose her own mate. **Mores** refer to more serious customs that involve moral judgments as well as sanctions (rewards or punishments). The mores cover prohibitions against behaviors that are felt to be seriously threatening to a group's way of life. Our previous examples of lying, cheating, stealing, and killing are most certainly included in the mores. Both folkways and mores are examples of informal modes of social control and are characteristic of small, homogeneous cultures that feature simple technology and widescale consensus.

Norms

prescribed rules of conduct.

Folkways

nice customs, traditions, or less serious norms.

Mores

more serious informal social controls.

Laws represent formal modes of control, codified rules of behavior. If one accepts the consensus model of law (to be discussed shortly), laws represent an institutionalization or crystallization of the mores.

Laws

codified (written) rules that are more serious norms and contain sanctions.

Mala in Se and Mala Prohibita

We have already identified deviant acts as those that violate group expectations and crime as any act that violates criminal law. Crime and its definition are social products. Society (human groups) decides what is a crime and what is not.

Criminologists make the distinction between acts *mala prohibita* and acts *mala in se*. Acts that are defined as *mala prohibita* refer to those that are bad because they have been prohibited. That is, such acts are not viewed as bad in themselves but are violations because the law defines them as such. Traffic violations, gambling, and infractions of various municipal ordinances might serve as examples. Such laws are viewed as assisting human groups in making life more predictable and orderly, but disobedience carries little stigma other than (usually) fines. The criminalization of such acts might be viewed as institutionalization of folkways. On the other hand, acts *mala in se* are acts that are bad in themselves, forbidden behaviors for which there is widescale consensus on the mores for prohibition. The universality of laws against murder, rape, assault, and the like, irrespective of political or economic systems, bears witness to the lack of societal conflict in institutionalizing such laws. One can note that not all deviant acts are criminal, nor are all criminal acts necessarily deviant, assuming that laws against many acts *mala prohibita* are commonly violated.

Mala prohibita

acts that are bad due to being prohibited.

Mala in se

acts that are bad in themselves.

Definitions of criminal activity may exhibit both undercriminalization and overcriminalization. Undercriminalization refers to the fact that the criminal law fails to prohibit acts that many feel are *mala in se*. Elements of corporate violence, racism, structured inequality, and systematic wrongdoing by political officials are examples. Overcriminalization involves the overextension of criminal law to cover acts that are inappropriately or not responsibly enforced by such measures. Examples are the legislation of morality and attempts to regulate personal conduct that does not involve a clear victim (drug abuse, sexual conduct, and the like).

Undercriminalization

the underuse of the criminal law to control deviant activity.

Overcriminalization

the overuse of the criminal law as an attempt to control deviant activity.

SOCIAL CHANGE AND THE EMERGENCE OF LAW

Western societies have undergone a long-term evolutionary development from sacred or *Gemeinschaft* societies to secular or *Gesellschaft* societies (H. Becker, 1950; Toennies, 1957). **Gemeinschaft** societies are simple, communal, relatively homogeneous societies that lack an extensive division of labor and are also characterized by normative consensus. Social control is ensured by the family, extended kinship groups, and the community through informal modes of control: the folkways and mores. Such societies lack and do not need formally codified laws because sacred tradition, the lack of change, and cultural similarity and isolation ensure a degree of understanding and control. **Gesellschaft** societies are complex, associational, more individualistic, and heterogeneous (pluralistic). They are characterized by secularity, an extensive division of labor, and (in free societies) a variety of moral views and political pressure groups. Social control is attempted by formal means—codified laws administered by bureaucratic agencies of the state. Complex societies must rely more and more on such formal controls. As the mores or informal modes of control become weaker, the need for laws becomes greater. For example, as the family as an agent of social control becomes weaker, much of its responsibility is passed on to the state.

Gemeinschaft

a communal or folk society.

Gesellschaft

an associational or heterogeneous society.



Photo 1.2 Police raiding the Stonewall Inn on Christopher Street in Greenwich Village on June 28, 1969, illustrates the overcriminalization of sexual conduct prevalent at the time.

New York Daily News Archive/Getty Images

Sumner (1906) suggested a general maxim: If laws do not have the support of, or are not in agreement with, the mores of a particular culture, they will be ineffective. The introduction of

changes or new laws in society can be explored using Merton's (1961) concepts of manifest and latent functions. The classic example is what has been described as "the noble experiment," the Prohibition era in the United States. **Manifest functions** are intended, planned, or anticipated consequences of introduced changes or of existing social arrangements. In perhaps the last gasp of rural Protestant religious power in the United States, one group managed to pressure Congress into passing the Eighteenth Amendment prohibiting alcohol in 1919. Alcohol abuse was (and still is) a major problem, and the well-intended goal was for it to be stamped out by totally forbidding alcohol consumption by law. **Latent functions** entail unintended or unanticipated consequences, ones that may have either positive or negative outcomes. The latent functions of Prohibition included increased corruption, disobedience, and public disrespect for the law. By eliminating legitimate suppliers of a commodity in high public demand, the state in effect created a monopoly for illegitimate entrepreneurs. It was Prohibition that converted small, localized gangs into large, powerful, and wealthy regional and even national organized criminal syndicates.

Manifest functions

intended or planned consequences of social arrangements.

Latent functions

unexplained, unanticipated (hidden) consequences of social activity.

Laws are by no means the most efficient means of social control; the passage of more and more laws may indicate that social solidarity and informal modes of control in the society are weakening. The police and the criminal justice system become the agents or agencies of last resort. Many people view crime as an evil intrusion into an otherwise healthy society, whereas increased crime levels may be latent functions of increased freedom, affluence, competition, and other desirable manifest functions in society. Sociologist Émile Durkheim (1950) suggested that crime may be a normality, a positive product, a functional necessity in a healthy society. As reflected in the quotation with which we began this chapter, Durkheim's theory of the **functional necessity of crime** proposes that wrongdoing or crime serves to force societal members to react, condemn, and thus establish the borders of society and reconfirm its values. It is this organized resentment that upholds social solidarity.

Functional necessity of crime

Durkheim's theory that society defines itself by reacting to crime and wrongdoing.

The phrase "crime of the century" seems to be perennially used to refer to the latest dramatic crime. [Crime File 1.2](#) explores crimes to which this label was attached over this past century.

LEARNING CHECK 1.2

Answer the following questions to check your learning thus far. Answers can be found on page 474.

1. What are three types of norms?
2. **True or False?** *Mala prohibita* acts are prohibited because they are bad, while *mala in se* acts are prohibited because they are inherently wrong.
3. **Fill in the Blank:** _____ societies are complex, associational, more individualistic, and heterogeneous.

Consensus Versus Conflict Versus Interactionist Model of Law

The **consensus model** of the origin of criminal law envisions it as arising from agreement among the members of a society as to what constitutes wrongdoing. Reflecting the *social contract theory* of Locke, Hobbes, and Rousseau, criminal law is viewed, as in our previous discussion of Sumner, as a “crystallization of the mores,” reflecting social values that are commonly held within the society. The **conflict model**, on the other hand, sees the criminal law as originating in the conflict of interests of different groups. In this view, the definition of crime is assumed to reflect the wishes of the most powerful interest groups, who gain the assistance of the state in opposing rival groups. The criminal law, then, is used primarily to control the behavior of the “defective, dependent, and delinquent,” the dangerous classes (Skolnick & Currie, 1988, p. 2); the crimes of the wealthy are very often not even covered. The consensus model views criminal law as a mechanism of social control, and the conflict approach sees the law as a means of preserving the status quo on behalf of the powerful.

A third model of law is the **interactionist model**, which takes its name from the symbolic interactionist school of criminology. This school of thought views humans as responding to abstract meanings and symbols as well as to concrete meanings. According to George Herbert Mead (1934), even the mind and self-consciousness are social creations. Reflected in *labeling theory* (see [Chapter 8](#)), criminality is viewed as a label or stigma attached by a societal reaction that is subject to shifting standards. Laws are viewed as reflecting moral entrepreneurship on the part of labelers.

Consensus model

the belief that criminal law originates in the will of the majority.

Conflict model

the belief that criminal law reflects the conflicts of interest of groups and that the more powerful groups define the law.

Interactionist model

says that crime is defined by abstract meanings and symbols and is a label assigned by society.

Crime and Criminal Law

A purist *legal view* of crime would define it as violation of criminal law. No matter how morally outrageous or unacceptable an act, it is not a crime unless defined as such by criminal law. Vernon Fox (1985) indicates, "Crime is a sociopolitical event rather than a clinical condition. . . . It is not a clinical or medical condition which can be diagnosed and specifically treated" (p. 28). In this view, which is technically correct, unless an act is specifically prohibited by criminal law, it is not a crime. There are four characteristics of criminal law:

1. It is assumed by political authority. The state assumes the role of plaintiff, or the party bringing charges. Murder, for example, is no longer just an offense against a person but is also a crime against the state. In fact, the state prohibits individual revenge in such matters; perpetrators must pay their debt to society, not to the individual wronged.
2. It must be specific, defining both the offense and the prescribed punishment.
3. The law is uniformly applied. That is, equal punishment and fairness for all, irrespective of social position, are intended.
4. The law contains penal sanctions enforced by punishments administered by the state (Sutherland & Cressey, 1974, pp. 4–7).

Criminal law has very specific criteria: "Crime is an intentional act or omission in violation of criminal law (statutory and case law), committed without defense or justification, and sanctioned by the state as a felony or misdemeanor" (Tappan, 1960, p. 10). **Felonies** generally refer to offenses punishable by a year or more in a state or federal prison, whereas **misdemeanors** are less serious offenses punished by less than a year in jail. Some specific criteria that must be met in the U.S. criminal law in order for an act to be considered a crime include the following:

1. The act is prohibited by law and contains legally prescribed punishments. *Nullum crimen sine lege* (no crime without law) is the Latin expression, which can be expanded to include the notion that *ex post facto* (after-the-fact) laws are inappropriate. The act must be forbidden by law in advance of the act.
2. A criminal act, *actus reus* (the act itself, or the physical element), must have taken place.
3. Social harm of a conscious, voluntary nature is required. There must be injury to the state or to people.
4. The act is performed intentionally (although cases of negligence and omission may be exceptions). *Mens rea* (criminal intent or "guilty mind") is important in establishing guilt. A person who may have committed a criminal act (e.g., John Hinckley, who shot former president Ronald Reagan) may be found not guilty under certain conditions, such as insanity or a history of mental disturbance.

5. The voluntary misconduct must be causally related to the harm. It must be shown that the decision or act directly or indirectly caused harm.

Criminal law

violations of law that are enforced by the state in order to protect victims.

Felonies

more serious crimes generally punished by at least a year in jail.

Misdemeanors

less serious crimes that result in less than 1 year in jail.



Crime File 1.2

Crimes of the 20th Century

Every year, it seems some particularly notorious or atrocious crime occurs that is described by the media as “the crime of the century.” The 21st century is still too young to determine what might or might not be the crime of the century, but now that the 20th century is over, we might take stock of some that have been candidates. APBnews.com, an Internet service specializing in crime news, chose the “Ten Crimes of the Century” based on input from its editors, historians, criminal justice experts, and users who voted in its poll, as well as those answering its telephone survey. The Ten Crimes of the Century from the APBnews.com survey, listed chronologically, were as follows:

President McKinley’s assassination

The St. Valentine’s Day Massacre

The Lindbergh baby kidnapping

The Rosenbergs’ spy trial

President Kennedy’s assassination

Martin Luther King Jr.’s assassination

The Watergate break-in

The Ted Bundy serial killings

The O. J. Simpson trial

The Oklahoma City bombing

The assassination of President William McKinley in 1901 by Leon Czolgosz was a political crime in support of a hoped-for class revolt, while the St. Valentine's Day Massacre by the Capone mob in the 1920s illustrated the ascendancy of ruthless organized crime groups during Prohibition. The tragic kidnapping and murder of the Lindbergh baby led to legislation designating kidnapping as a federal offense. The trial and subsequent execution of Julius and Ethel Rosenberg, native-born Americans who betrayed their country by giving America's atomic secrets to the Soviets, solidified the Cold War. The assassinations of President John F. Kennedy in 1963 and 5 years later of civil rights leader Dr. Martin Luther King Jr. gave rise to numerous conspiracy theories that secret, sinister forces were responsible.

The Watergate affair in the 1970s would lead to the first forced resignation of an elected president in disgrace in American history, and it remains the benchmark against which all political scandals are compared. Ted Bundy, the serial killer, represents just one of a number of bizarre multiple killers who seemed to proliferate in post-World War II America. The O. J. Simpson murder trial, in which a former National Football League star was found not guilty of murdering his ex-wife and her friend, despite considerable evidence to the contrary, exemplifies the numbers of celebrity cases t