In 1996, Iraqi refugees Majed Al-Timimy, 28, and Latif Al-Husani, 34, married the daughters, aged 13 and 14, of a fellow Iraqi refugee in Lincoln, Nebraska. The marriages took place according to Muslim custom and everything seemed to be going well for awhile until one of the girls ran away and the concerned father and her husband reported it to the police. It was at this point that American and Iraqi norms of legality and morality clashed head-on. Under Nebraska law, people under 17 years old cannot marry, so both grooms and the father and mother of the girls were arrested and charged with a variety of crimes from child endangerment to rape.

According to an Iraqi woman interviewed by the police (herself married at 12 in Iraq), both girls were excited and happy about the wedding. The Iraqi community was shocked that the parents of the brides faced up to 50 years in prison for their actions, as would have been earlier generations of Americans who were legally permitted to marry girls of this age. The grooms were sentenced to 4 to 6 years in prison and paroled in 2000 on the condition that they have no contact with their “wives.”

Thus, something that is legally and morally permissible in one culture can be severely punished in another. Did the actions of these men constitute child sex abuse or simply unremarkable marital sex? Which culture is right? Can we really ask such a question? Is Iraqi culture “more right” than American culture given that marrying girls of that age was permissible in the United States, too, at one time? Most importantly, how can criminologists hope to study crime scientifically if what constitutes a crime is relative to time and place?
What Is Criminology?

**Criminology** is an interdisciplinary science that gathers and analyzes data on various aspects of criminal, delinquent, and general antisocial behavior. It is different from the discipline of criminal justice. Criminal justice is concerned with how the criminal justice system investigates, prosecutes, and controls/supervises individuals who have committed crime, while criminology wants to know why those individuals committed crimes. As with all scientific disciplines, the goal of criminology is to understand its subject matter and to determine how that understanding can benefit humankind. In pursuit of this understanding, criminologists ask questions such as

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

By a scientific study of crime and criminal behavior, we mean that criminologists use the scientific method to try to answer the questions they ask rather than just philosophizing about them from their armchairs. The scientific method is a tool for separating truth from error by demanding evidence for any conclusions. Evidence is obtained by formulating hypotheses derived from theory that are rigorously tested with data. How this is accomplished will be addressed after we discuss the nature of crime.

What Is Crime?

The term *criminal* can and has been applied to many types of behavior, some of which nearly all of us have been guilty of at some time in our lives. We can all think of acts that we feel ought to be criminal but are not, or acts that should not be criminal but are. The list of things that someone or another at different times and at different places may consider to be crimes is very large, with only a few being defined as criminal by the law in the United States at this time. Despite these difficulties, we need a definition of crime in order to proceed. The most often quoted definition is that of Paul Tappan (1947), who defined *crime* as “an intentional act in violation of the criminal law committed without defense or excuse, and penalized by the state” (p. 100). A crime is thus an act in violation of a *criminal law* for which a *punishment* is prescribed; the person committing it must have *intended* to do so and must have done so without legally acceptable *defense* or *justification*.

Tappan’s definition is strictly a legal one that reminds us that the state, and only the state, has the power to define crime. Hypothetically, a society could eradicate crime tomorrow simply by canceling all of its criminal statutes. Of course, this would not eliminate the behavior specified by the laws; in fact, the behavior would doubtless increase since the behavior could no longer be officially punished. While it is absurd to think that any society would try to solve its crime problem by eliminating its criminal statutes, legislative bodies are continually revising, adding to, and deleting from their criminal statutes.

Crime as a Moving Target

Every vice is somewhere and at some times a virtue. There are numerous examples, such as the vignette at the beginning of this chapter, of acts defined as crimes in one country being tolerated and even expected
behavior in another. We might congratulate ourselves for protecting young girls from the kind of “fate” that befell the 13- and 14-year-old girls in the vignette, but in 1885, no state in the union had an age of consent above 12 (Friedman, 2005). Laws also vary within the same culture across time as well as across different cultures. Until the Harrison Narcotics Act of 1914, there were few legal restrictions in the United States on the sale, possession, or use of most drugs such as heroine and cocaine. Following the Harrison Act, many drugs became controlled substances, their possession became a crime, and a brand new class of criminals was created overnight.

Crimes pass out of existence also, even acts that had been considered crimes for centuries. Until the United States Supreme Court invalidated sodomy (anal or oral sex) statutes in Lawrence v. Texas (2003), it was legally punishable in many states. Likewise, burning the American flag had serious legal consequences until 1989 when the Supreme Court ruled anti-flag-burning statutes unconstitutional in Texas v. Johnson (1989).

What constitutes a crime, then, can be defined into or out of existence by the courts or by legislators. As long as human societies remain diverse and dynamic, there will always be a moving target of activities with the potential for nomination as crimes, as well as illegal activities nominated for decriminalization.

If what constitutes crime differs across time and place, how can criminologists hope to agree upon a scientific explanation for crime and criminal behavior? Science is about making universal statement about stable or homogeneous phenomena. Atoms, the gas laws, the laws of thermodynamics, photosynthesis, and so on, are not defined or evaluated differently by scientists around the globe according to local customs or ideological preferences. But what we call “crime” keeps moving around, and because it does, some criminologists have declared it impossible to generalize about what is and is not “real” crime.

What these criminologists are saying is that crime is a socially constructed phenomenon that lacks any “real” objective essence and is defined into existence rather than discovered. In a trivial sense, everything is socially constructed. Nature does not reveal herself to us sorted into ready-labeled packages, so humans must do it for her. Social construction means nothing more than humans having perceived a phenomenon, named it, and categorized it according to some classificatory rule that makes note of the similarities and differences among the things being classified. Most classification schemes are not arbitrary; if they were, we would not be able to make sense of anything. Categories have empirically meaningful referents and are used to impose order on the diversity of human experience, although arguments exist about just how coherent that order is.

**Crime as a Subcategory of Social Harms**

So, what can we say about crime? How can we conceive of it in ways that at least most people would agree are logical, consistent, and correspond with their view of reality? When all is said and done, crime is a subcategory of all harmful acts that range from simple things like smoking to very serious things like murder. Some harmful acts such as smoking tobacco and drinking to excess are not considered anyone’s business
other than the actor’s if they take place in private or even in public if the person indulging in those things creates no annoyance to others.

Socially (as opposed to private) harmful acts are acts deemed to be in need of regulation (health standards, air pollution, etc.), but not by the criminal law except under exceptional circumstances. Private wrongs (such as someone reneging on a contract) are socially harmful, but not sufficiently so to require the heavy hand of the criminal law. Such wrongs are regulated by the civil law in which the wronged party (the plaintiff) rather than the state initiates legal action, and the defendant does not risk deprivation of his or her liberty if the plaintiff prevails.

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

The harm caused by criminal activity is financially and emotionally very costly. The emotional pain and suffering borne by crime victims is obviously impossible to quantify, but many estimates of the financial harm are available. Most estimates focus on the costs of running the criminal justice system, which includes the salaries and benefits of personnel and the maintenance costs of buildings (offices, jails, prisons, stations) and equipment (vehicles, weapons, uniforms, etc.). Added to these costs are those associated with each crime (the average cost per incident multiplied by the number of incidents as reported to the police). All these costs combined are estimates of the direct costs of crime.

The indirect costs of crime must also be considered as part of the burden. These costs include all manner of surveillance and security devices, protective devices (guns, alarms, security guards) and insurance costs, medical services, and the productivity and tax loss of incarcerated individuals. Economist David Anderson (1999) lists numerous direct and indirect costs of crime and concludes that the aggregate burden of crime in the United States (in 1997 dollars) is about $1,102 billion, or a per capita burden of $4,118 ($5,480 in 2009 dollars). Crime thus places a huge financial burden on everyone’s shoulders, as well as a deep psychological burden on its specific victims.

**Beyond Social Construction: The Stationary Core Crimes**

Few people would argue that an act is not arbitrarily categorized or is not seriously harmful if it is universally condemned. That is, there is a core of offenses defined as wrong at almost all times and in almost all cultures. Some of the strongest evidence in support of the stationary core perspective comes from the International Criminal Police Organization (INTERPOL) (1992), headquartered in Lyon, France. INTERPOL serves as a repository for crime statistics from each of its 188 member nations. INTERPOL’s data show that such acts as murder, assault, rape, and theft are considered serious crimes in every single country.

Criminologists call these universally condemned crimes *mala in se* (“inherently bad”). Crimes that are time and culture bound are described as *mala prohibita* (“bad because they are prohibited”). But how can we be sure that an act is inherently bad? The litmus test for determining a mala in se crime is that no one except under the most bizarre of circumstances would want to be victimized by one. While millions of people seek to be “victimized” by prostitutes, drug dealers, or bookies, no one wants to be murdered, raped, robbed, or have their property stolen. Being victimized by such actions evokes physiological reactions (anger, helplessness, sadness, depression, a desire for revenge) in all cultures, and would do so even if the
acts were not punishable by law or custom. Mala in se crimes engage these emotions not because some legislative body has defined them as wrong, but because they hammer at our deepest instincts. Evolutionists propose that these built-in emotional mechanisms exist because mala in se crimes threatened the survival and reproductive success of our distant ancestors, and that they function to strongly motivate people to try to prevent such acts from occurring and punishing them if they do (O’Manique, 2003; Walsh, 2000).

Figure 1.1 illustrates the relationship of core crimes (mala in se) to acts that have been arbitrarily defined (mala prohibita) as crimes and all harmful acts that may potentially be criminalized. The figure is inspired by John Hagan’s (1985) effort to distinguish between “real” crimes and “socially constructed” arbitrary crimes by examining the three highly interrelated concepts of consensus (the degree of public agreement on the seriousness of an act), the severity of penalties attached to an act, and the level of harm attached to an act.

**Figure 1.1 Mala in Se and Mala Prohibita Crimes as Subsets of All Harms**

<table>
<thead>
<tr>
<th>Core Offenses</th>
<th>High consensus, severe penalties, high level of harm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mala in se</td>
<td></td>
</tr>
<tr>
<td>All Crimes</td>
<td>Low/moderate consensus, low/moderate penalties, low to moderate harm</td>
</tr>
<tr>
<td>Mala in se and mala prohibita</td>
<td></td>
</tr>
<tr>
<td>All Social Harms</td>
<td>State regulated but not by criminal law</td>
</tr>
<tr>
<td>All Harms</td>
<td>Harms outside the purview of the criminal justice system</td>
</tr>
<tr>
<td>Mostly private matters, rare state intervention</td>
<td></td>
</tr>
</tbody>
</table>

---

**Criminality**

Perhaps we can avoid altogether the problem of defining crimes by studying individuals who commit predatory harmful acts, regardless of the legal status of the acts. Criminologists do this when they study criminality. Criminality is a clinical or scientific term rather than a legal one, and one that can be defined independently of legal definitions of crimes. Crime is an intentional act of commission or omission contrary to the law and is a property of society; criminality is a property of individuals that signals the willingness to commit crimes and other harmful acts. Criminality is a trait that lies on a continuum ranging from saint to sociopath, and is composed of other traits such as callousness and impulsiveness that also vary greatly among people. People can use and abuse others for personal gain regardless of whether the means used have
been defined as criminal; it is the propensity to do this that defines criminality independent of the labeling of an act as a crime or of the person being legally defined as a criminal.

Defining criminality as a continuous trait acknowledges that there is no sharp line separating individuals with respect to this trait—it is not a trait that one has or does not have. Just about everyone at some point in life has committed an act or two in violation of the law. But that doesn’t make us all criminals; if it did, the term would become virtually synonymous with the word human. The point is, we are all situated somewhere on the criminality continuum, just as our heights range from the truly short to the truly tall. Some are so extreme in height that any reasonable person would call them “tall.” Likewise, a small number of individuals have violated so many criminal statutes over such a long period of time that few would question the appropriateness of calling them “criminals.” Thus, both height and criminality can be thought of as existing along a continuum, even though the words we use often imply that people’s heights and criminal tendencies come in more or less discrete categories (tall/short, criminal/noncriminal). In other words, just as height varies in fine gradations, so too does involvement in crime.

The Legal Making of a Criminal

No one is a criminal until he or she has been defined as such by the law, which makes it necessary to briefly discuss the process of arriving at that definition. The legal answer to the question “What is a criminal?” is that he or she is someone who has committed a crime and has been judged guilty of having done so. Before the law can properly call a person a criminal, it must go through a series of actions governed by well-defined legal rules guiding the serious business of officially labeling a person a criminal. In this section, I introduce the American criminal justice system by following the processing of felony cases from arrest to trial and beyond.

What Constitutes a Crime?

Corpus delicti is a Latin term meaning “body of the crime” and refers to the elements of an act that must be present in order to legally define it as a crime. All crimes have their own specific elements, which are the essential constituent parts that define the act as criminal. In addition, all crimes share a set of general elements or principles underlying and supporting the specific elements. There are five principles to be satisfied in order for a person to be “officially” labeled a criminal, but in actuality it is only necessary for the state to prove actus reus and mens rea to satisfy corpus delicti. The other principles are typically automatically proven in the course of proving actus reus and mens rea.

Actus reus means guilty act and refers to the principle that a person must commit some forbidden act or neglect some mandatory act before he or she can be subjected to criminal sanctions. In effect, this principle of law means that people cannot be criminally prosecuted for thinking something or being something, only for doing something. This prevents governments from passing laws criminalizing statuses and systems of thought they don’t like. For instance, although drunken behavior may be a punishable crime, being an alcoholic cannot be punished because “being” something is a status, not an act.

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

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

**Causation** refers to the necessity to establish a causal link between the criminal act and the harm suffered. This causal link must be proximate, not ultimate. Suppose Tony wounds Frank in a knife fight. Being macho, Frank attends to the wound himself. Three weeks later, the wound becomes severely infected and results in his death. Can Tony be charged with murder? Although the wounding led to Frank’s death (the ultimate cause), Frank’s disregard for the seriousness of his injury was the most proximate (or direct) cause of his death. The question the law asks in cases like this is, “What would any reasonable person do?” Most people would agree that the reasonable person would have sought medical treatment. This being the case, Tony cannot be charged with homicide; the most he could be charged with is aggravated assault.

**Harm** refers to the negative impact a crime has either on the victim or on the general values of the community. Although the harm caused by the criminal act is often obvious, the harm caused by many so-called victimless crimes is often less obvious. Yet some victimless crimes can cause more social harm in the long run than many crimes with obvious victims.
conclude that the arrested person had committed a crime. Although a person can be stopped on the basis of an officer’s suspicion and frisked for a weapon, he or she cannot be arrested on the basis of suspicion alone. It is only after an arrest that the Fifth Amendment right to protection against self-incrimination comes into play.

**Preliminary hearing.** After arrest and booking into the county jail, the suspect must be presented in court for the preliminary hearing before a magistrate or judge at the earliest opportunity. The preliminary hearing has two purposes: (1) to advise suspects of their constitutional rights and of the charges against them and (2) to set bail. The suspect may be released on monetary bail on his or her “own recognizance.” If bail is denied, it is usually because of the gravity of the crime, the risk the suspect poses to the community, or the risk that the suspect might flee the court’s jurisdiction. There is no constitutional right to bail. The Eighth Amendment only states that “excessive bail shall not be required.” The traditional assumption has been that bail is only designed to assure the suspect’s appearance at the next court hearing, and that “excessive” means that the amount set should be within the suspect’s means.

**Preliminary arraignment.** The preliminary arraignment is a proceeding before a magistrate or judge in which three major matters must be decided: (1) whether or not a crime has actually been committed, (2) whether or not there are reasonable grounds to believe that the person before the bench committed it, and (3) whether or not the crime was committed in the jurisdiction of the court. These matters determine if the suspect’s arrest and detention are legal. The onus of proving the legality of the suspect’s arrest and detention is on the prosecutor, who must establish probable cause and present the court with evidence pertinent to the suspect’s probable guilt. This is usually a relatively easy matter for the prosecutor since defense attorneys rarely cross-examine witnesses or introduce their own evidence at this point, their primary use of the preliminary hearing being only to discover the strength of the prosecutor’s case.

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

**Arraignment.** Armed with an indictment (or an information in states not requiring grand jury proceedings), the prosecutor files the case against the accused in felony court (variably called a district, superior, or
common pleas court), which sets a date for arraignment. The arraignment proceeding is the first time defendants will have had the opportunity to respond to the charges against them. After the charges are read to the defendant, he or she must then enter a formal response to them, known as a plea. The plea alternatives are guilty, not guilty, or no contest. A guilty plea is usually the result of a plea bargain agreement concluded before the arraignment. About 90% of all felony cases in the United States are settled by plea bargains in which the state extends some benefit to defendants, such as reduced charges, in exchange for their cooperation. By pleading guilty, defendants give up their right to be proven guilty “beyond a reasonable doubt,” their right of protection against self-incrimination, and the right to appeal.

A “not guilty” plea results in a date being set for trial; a “guilty” or “no contest” plea results in a date being set for sentencing. A “no contest” plea is one in which defendants do not admit guilt (usually to prevent that admission of guilt being used against them in a civil suit) but will not contest the matter, and the prosecutor “wins” by default.

The trial. A trial by a jury of one’s peers is a Sixth Amendment right, and is an examination of the facts of a case by a judge (if the defendant elects to be tried by a judge alone) or by a jury for the purpose of reaching a judgment. The trial is an adversarial process pitting the prosecutor against the defense attorney, with each side trying to “vanquish” the other. There is no sense that each side is interested in seeking truth or justice in this totally partisan process. It is the task of the judge to ensure that both sides play by the rules. The prosecution’s job is a little more difficult than the defense’s since it must “prove beyond a reasonable doubt” that the accused is indeed guilty. Except in states that allow for non-unanimous jury decisions, the defense need only plant the seed of reasonable doubt in the mind of one juror to upset the prosecution’s case.

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

Probation. Presentence investigation reports (PSI’s) are prepared by probation officers and contain a variety of information about the crime and the offender’s background (criminal record, education and work history, marital status, substance abuse history, and attitude). On the basis of this information, the probation officer offers a sentencing recommendation. The most important factors influencing these recommendations are crime seriousness and the defendant’s criminal history. A judge may place the offender on probation, the most common sentence in the United States today. A probation sentence is a suspended commitment to prison, and if at any time during their probationary period offenders do not abide by the imposed probation conditions (consisting of a variety of general and offender-specific conditions), they may face revocation of probation and the imposition of the original prison sentence. Probation officers supervise and monitor offenders’ behavior and assure that all conditions of probation are adhered to. Probation officers thus function as both social workers and law enforcement officers, sometimes conflicting roles that officers may find difficult to reconcile.

Incarceration. If the sentence imposed for a felony conviction is some form of incarceration, the judge has the option of sentencing the offender to a state penitentiary, a county jail, or a county work release program. The latter two options are almost invariably imposed as supplements to probation orders.
Parole. Parole is a conditional release from prison granted to inmates prior to the completion of their sentences. An inmate is granted parole by an administrative body called a parole board, which decides for or against parole based on such factors as inmate behavior while incarcerated and the urgency of the need for cell space. Once released on parole, parole officers, whose job is almost identical to that of probation officers, supervise parolees. In many states, probation and parole officers are one and the same. The primary difference between probation and parole is that probationers are under the supervision of the courts and parolees are under the supervision of the state Department of Corrections. Revocation of probation is a judicial function; revocation of parole is an executive administrative function.

A Short History of Criminology

Criminology is a young discipline, although humans have probably been theorizing about crime and its causes ever since they first made rules and observed others breaking them. What and how people thought about crime and criminals (as well as all other things) in the past was strongly influenced by the social and intellectual currents of their time. This is no less true of what and how modern criminologists think about crime and criminals. In pre-scientific days, explanations for bad behavior were often of a religious or spiritual nature such as demonic possession or the abuse of free will. From the Christian perspective, because of the legacy of Original Sin, all human beings were considered born sinners. The gift of the grace of God kept men and women on the straight and narrow, and if they deviated from this line, it was because God was no longer their guide and compass.

Others believed that the human character and personality are transparent in physical appearance. Such folk wisdom was systematized by an Italian physician named Giambattista della Porta, who developed a theory of human personality called *physiognomy* in 1558. Porta claimed that the study of physical appearance, particularly of the face, could reveal much about a person’s personality and character. Thieves, for instance, were said to have large lips and sharp vision. Porta was writing during the Renaissance, a period between approximately 1450 and 1600 that saw a shift in thinking away from the pure God-centered supernaturalism of the Middle Ages and toward a more human-centered naturalism. *Renaissance* literally means “rebirth” and refers to the rediscovery of the thinking traditions of the ancient Greeks. The sciences and arts were becoming important, the printing press was invented, and Christopher Columbus “discovered” America during this period. In short, the Renaissance began to mold human thinking away from the absolute authority of received opinion and toward a way that would eventually lead to the modern scientific method.

Another major thrust toward the emergence of the modern world was the Enlightenment, a period approximately between 1650 and 1800. It might be said that the Renaissance provided a key to the human mind and the Enlightenment opened the door. Whereas the Renaissance is associated with advances in art, literature, music, and philosophy, the Enlightenment is associated with advances in mathematics, science, and the dignity and worth of the individual as exemplified by a concern for human rights. This concern led to reforms in criminal justice systems throughout Europe, a process given a major push by Cesare Beccaria’s work *On Crime and Punishment*, which ushered in the Classical School. The *Classical School* emphasized human rationality and free will in its explanations for criminal behavior.

Modern criminology really began to take shape with the increasing faith that science could provide answers for everything. This period saw the harnessing of the forces of nature to build and operate the great machines that drove the Industrial Revolution, and the strides made in biology by Charles Darwin’s works on the evolution of the species. Criminology saw the beginning of the *positivist school* during this period.
Theories of character, such as phrenology, abounded. The basic idea behind phrenology was that cognitive and personality functions are localized in the brain, and that the parts regulating the most dominant functions were bigger than parts regulating the less dominant ones. Criminals were said to have large bumps on parts of the skull thought to regulate craftiness, brutishness, moral insensibility, and so forth, and small bumps in such “localities” as intelligence, honor, and piety.

The biggest impact during this period, however, was made by Cesare Lombroso’s theory of atavism, or the born criminal. Criminologists from this point on were obsessed with measuring, sorting, and sifting all kinds of data about criminal behavior. The main stumbling block to criminological advancement during this period was the inadequacy of its research. The intricacies of scientifically valid research design and measurement were not appreciated, and statistical techniques were truly primitive by today’s standards. The early classical and positivist thinkers will be discussed at length in Chapter 3.

The so-called Progressive Era (about 1890 to 1920) ushered in new social ideologies and new ways of thinking about crime. It was an era of liberal efforts to bring about social reform as unions, women, and other disadvantaged groups struggled for recognition. Criminology largely turned away from what was disparaged as “biological determinism,” which implied that nothing could be done to reform criminals, and toward cultural determinism. If behavior is caused by what people experience in their environments, so the optimistic argument went, then we can change their behavior by changing their environment. It was during this period that sociology became the disciplinary home of criminology. Criminology became less interested in why individuals commit crime from biological or psychological points of view and more concerned with aggregate-level data (social structures, neighborhoods, subcultures, etc.); that is, where is crime most prevalent and among what groups? It was during this period that the structural theories of crime (discussed in Chapter 4), such as the Chicago School of social ecology, were formulated. Anomie strain theory was another structural/cultural theory that emerged somewhat later (1938). This theory was doubtless influenced strongly by the American experience of the Great Depression and of the exclusion of African Americans from many areas of American society.

The period from the 1950s through the early 1970s saw considerable dissatisfaction with the strong structural approach, which many viewed as proceeding as if individuals were almost irrelevant to explaining criminal behavior. Criminological theory moved toward integrating psychology and sociology during this period and strongly emphasized the importance of socialization. Control theories were highly popular at this time, as was labeling theory; these are addressed in Chapter 5.

Because the latter part of this period was a time of great civil unrest in the United States (the anti-Vietnam War, civil rights, women’s, and gay rights movements), it also saw the emergence of several theories, such as conflict theory, that were highly critical of American society. These theories extended to earlier works of Marxist criminologists, who tended to believe that the only real cause of crime was capitalism. These theories provided little that was new in terms of our understanding of “street” criminal behavior, but
they did spark an interest in white-collar crime and how laws were made by the powerful and applied against the powerless. These theories are addressed in Chapter 6.

Perhaps because of a new conservative mood in the United States, theories with the classical taste for free will and rationality embedded in them reemerged in the 1980s. These were rational choice, deterrence, and routine activities theories, all of which had strong implications for criminal justice policy, and in the late 1990s/early 2000s, we witnessed a resurgence of biosocial theories. These theories view behavior as the result of biological factors interacting with the past and present environments of the actors involved. Biosocial theories have been on the periphery of criminology since its beginning but have been hampered by perceptions of being driven by an illiberal agenda and by the inability to “get inside” the mysteries of heredity and the workings of the brain. The truly spectacular advances in the observational techniques (brain scan methods, $10 cheek swabs to test DNA, etc.) in the genetic- and neurosciences over the past three decades have made these things less mysterious, and social scientists are increasingly realizing that there is nothing illiberal about recognizing the biology of human nature.

Lilly, Cullen, and Ball (2007) note that the sciences’ most dramatic developments come most often from new observational techniques rather than new developments in theory. No science advances without the technology at its disposal to plumb its depths. For instance, physicists and chemists argued for centuries about the existence of atoms, and the issue was only settled when they were finally able to see them with the scanning tunneling microscope in 1981. Criminology is in a similar position today to the one chemists were in 150 years ago. The concepts, methods, and measuring devices available to us today may do for the progress of criminology what physics did for chemistry, what chemistry did for biology, and what biology is doing for psychology. Exceptionally ambitious longitudinal studies carried out over decades in concert with medical and biological scientists, such as the Dunedin Multidisciplinary Health and Development Study (Moffitt, 1993), the National Longitudinal Study of Adolescent Health (Udry, 2003), and the National Youth Survey (Menard, Mihalic, & Huizinga, 2001), are able to gather a wealth of genetic, neurological, and physiological data as well as psychological and sociological data. Integrating these hard data into criminology will no more rob it of its autonomy than physics robbed chemistry or chemistry robbed biology. For those who agree with this assessment, this is an exciting time to study criminology!

The Role of Theory in Criminology

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

Just as medical scientists want to find out what causes disease, criminologists are interested in finding out factors that cause criminal behavior. As is the case with disease, there are a variety of risk factors that may lead to criminal behavior. The first step in detecting causes is to discover correlates, which are factors that are related to the phenomenon of interest. To discover if two factors are correlated, we must see if they vary together; i.e., if one variable goes up or down, the other goes up or down as well, either in the same direction (a positive correlation) or in the opposite direction (a negative correlation).
Establishing causality requires more than simply establishing a correlation. Take gender, the most thoroughly documented correlate of criminal behavior ever identified. Literally thousands of studies throughout the world, some European studies going back five or six centuries, consistently reported strong gender differences in criminal behavior, and the more serious the crime the greater the difference (Ellis & Walsh, 2000). However, establishing why gender is such a strong correlate of crime is the real challenge, as it is with any other correlate. Trying to establish causes is the business of theory.

What Is Theory?

A theory is a set of logically interconnected propositions explaining how phenomena are related, and from which a number of hypotheses can be derived and tested. Theories should provide logical explanations of the phenomena they address, they should correspond with the relevant empirical facts, and they should provide practical guidance for researchers looking for further facts. This guidance takes the form of a series of statements that can be logically deduced from the assertions of the theory called hypotheses, which are statements about relationships between and among factors we expect to find based on the logic of our theories. Theories provide the raw material (the ideas) for generating hypotheses, and hypotheses support or fail to support theories by exposing them to empirical (based on experiment and observation) testing.

Theories are devised to explain how a number of different correlates may actually be causally related to criminal behavior rather than simply associated with it. When we talk of causes, we do not mean that when \( X \) is present \( Y \) will occur in a completely prescribed way. We mean that when \( X \) is present, \( Y \) has a certain probability of occurring, and perhaps only if \( X \) is present along with factors \( A, B, \) and \( C \). Criminologists have never uncovered a necessary cause (a factor that must be present for criminal behavior to occur, and in the absence of which criminal behavior has never occurred) or a sufficient cause (a factor that is able to produce criminal behavior without being augmented by some other factor).

Theories help us to make sense of a diversity of seemingly unrelated facts, and even tell us where to look for more facts. We all use theory every day to fit facts together. A detective confronted with a number of facts about a mysterious murder must fit them together, even though their meaning and relatedness to one another are ambiguous and perhaps even contradictory. Using years of experience, training, and good common sense, the detective constructs a theory linking those facts together so that they begin to make some sense, to begin to tell their story. An initial theory derived from the available facts then guides the detective in the search for additional facts in a series of “if this is true, then this should be true” statements. There may be many false starts as our detective misinterprets some facts, fails to uncover others, and considers some to be relevant when they are not. Good detectives, like good scientists, will adjust their theory as new facts warrant; poor detectives and poor scientists will stand
by their favored theory by not looking for more facts, or by ignoring, downplaying, or hiding contrary facts that come to their attention.

How to Think About Theories

You will be a lot less concerned about the numerous theories in criminology if you realize that different theories deal with different levels of analysis. A **level of analysis** is that segment of the phenomenon of interest that is measured and analyzed. We can ask about causes of crime at the levels of whole societies, subcultures, neighborhoods, families, or individuals. If the question asks about crime rates in societies, the answers must address sociocultural differences among different societies or in the same society at different times. Conversely, if crime rates are found to be related to the degree of industrialization or racial/ethnic diversity in societies, this tells us nothing about why some people in an industrialized, heterogeneous society commit crimes and others in the same society do not. To answer questions about individuals, we need theories about individuals. Generally speaking, questions of cause and effect must be answered at the same level of analysis at which they were posed; thus, different theories are required at different levels.

Interpreting research findings is not as simple as documenting correlates of crime. There is little room for error when contrasting rates of crime between and among the various demographic variables such as age, gender, and race/ethnicity. However, theory testing looks for causal explanations rather than simple descriptions, and that's where our problems begin. For example, when we consistently find positive correlations between criminal behavior and some other factor, it is tempting to assume that something causal is going on, but as we have said previously, correlations merely **suggest** causes; they do not demonstrate them. Resisting the tendency to jump to causal conclusions from correlations is the first lesson of statistics.

Ideology in Criminological Theory

In addition to criminological theorizing being linked to the social and intellectual climate of the times, it is also strongly linked to ideology. **Ideology** is a way of looking at the world, a general emotional picture of “how things should be.” It is often so strongly held that it narrows the mind and inflames the passions, leading to a selective interpretation and understanding of evidence rather than an objective and rational evaluation of it. Ideology forms, shapes, and colors our concepts of crime and its causes in ways that lead to a tendency to accept or reject new evidence according to how well or poorly it fits our ideology.

According to Thomas Sowell (1987), two contrasting visions have shaped thoughts about human nature throughout history, and these visions are in constant conflict with each other. The first of these is the **constrained vision**, so called because believers in this vision view human activities as constrained by an innate human nature that is self-centered and largely unalterable. The **unconstrained vision** denies an innate human nature, viewing it as formed anew in each different culture. Believers in the unconstrained vision see human nature is perfectible, a view scoffed at by those who profess the constrained vision. A major difference between the two visions is that the constrained vision says, “This is how the world **is**,” and the unconstrained vision says, “This is how the world **should be**.” For instance, unconstrained visionaries might ask what causes crime or poverty, but constrained visionaries would ask the opposite question: What causes a well-ordered society and wealth? Note that this implies that unconstrained visionaries believe that crime and poverty are deviations from the norm that must be explained, while constrained visionaries see them as historically normal and inevitable, and believe that what has to be understood are the conditions that prevent them. We will see the tension between visions constantly as we discuss the various theories in this book.
A criminological theory is at least partly shaped by ideology, and those who feel drawn to a particular theory owe a great deal of their attraction to it to the fact that they share the theory’s vision (Cullen, 2005). This observation reminds us of the Indian parable of the six blind men feeling different parts of an elephant. Each man described the elephant according to the part of its anatomy he had felt, but each failed to appreciate the descriptions of the others who had felt different parts. The men fell into dispute and departed in anger, each convinced of the utter stupidity of the others. The point is that ideology often leads criminologists to “feel” only part of the criminological elephant and then to confuse the parts with the whole, and even to question the intelligence and motives (e.g., having some kind of political agenda) of others who have examined different parts of the criminological elephant.

The evidence that ideology is linked to what theories criminologists favor is strong. Cooper, Walsh, and Ellis (2010) asked a number of criminologists which theory best explained criminal behavior. As you see from Table 1.1, a total of 24 different theories are represented. Obviously, they cannot all “best explain criminal behavior,” so something other than evidence led the respondents to their choices, and the best predictor was criminologists’ self-reported ideology—conservative, moderate, liberal, or radical. The “$X^2 = 134.6, p < 0.001$” notation means that such a result could be found by chance less than 1 time in 1,000 similar samplings, so we can be quite confident in the finding. When reading this text, try to understand where the originators, supporters, and detractors of any particular theory being discussed are “coming from” ideologically as well as theoretically.

### Table 1.1  Favored Theory Cross-Tabulated by Self-Reported Political Ideology

<table>
<thead>
<tr>
<th>Theory favored</th>
<th>Conservative</th>
<th>Moderate</th>
<th>Liberal</th>
<th>Radical</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social learning (2,6)</td>
<td>1</td>
<td>22</td>
<td>22</td>
<td>5</td>
<td>50</td>
</tr>
<tr>
<td>Life course/developmental (n/a,11)</td>
<td>3</td>
<td>8</td>
<td>28</td>
<td>3</td>
<td>42</td>
</tr>
<tr>
<td>Social control (1,1)</td>
<td>0</td>
<td>14</td>
<td>27</td>
<td>1</td>
<td>42</td>
</tr>
<tr>
<td>Social disorganization (7,14)</td>
<td>0</td>
<td>11</td>
<td>26</td>
<td>3</td>
<td>40</td>
</tr>
<tr>
<td>Self-control (n/a,2)</td>
<td>3</td>
<td>6</td>
<td>15</td>
<td>0</td>
<td>24</td>
</tr>
<tr>
<td>Biosocial (4,12)</td>
<td>5</td>
<td>5</td>
<td>11</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>Rational choice</td>
<td>2</td>
<td>7</td>
<td>11</td>
<td>1</td>
<td>21</td>
</tr>
<tr>
<td>Conflict (n/a,4)</td>
<td>0</td>
<td>2</td>
<td>8</td>
<td>6</td>
<td>16</td>
</tr>
<tr>
<td>Critical (10,18)</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>Differential association (4,3)</td>
<td>1</td>
<td>4</td>
<td>10</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>Age-graded developmental</td>
<td>1</td>
<td>5</td>
<td>7</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td>Strain (n/a,8)</td>
<td>0</td>
<td>3</td>
<td>9</td>
<td>0</td>
<td>12</td>
</tr>
</tbody>
</table>
Theories of crime imply that changing the conditions the theory holds responsible for causing crime can reduce it and even prevent it. I say “imply” because few theorists are explicit about the public policy implications of their work. Scientists are primarily concerned with gaining knowledge for its own sake; they are only secondarily concerned with how useful that knowledge may be to practitioners and policy makers. Conversely, policy makers are less concerned with hypothesized “causes” of a problem and more concerned with what can be done about the problem that is both politically and financially feasible.

**Policy** is simply a course of action designed to solve some problem that has been selected from among alternative courses of action. Solving a social problem means attempting to reduce the level of the problem currently being experienced or to enact strategies that try to prevent it from occurring in the first place. Social science findings can and have been used to help policy makers determine which course of action to follow to “do something” about the crime problem, but there are many other concerns that policy makers must consider that go beyond maintaining consistency with social science theory and data. The question of
“what to do about crime” involves political and financial considerations, the urgency of other problems competing for scarce financial resources (schools, highways, environmental protection, public housing, national defense), and a host of other major and minor considerations.

Policy choices are, at bottom, value choices, and as such, only those policy recommendations that are ideologically palatable are likely to be implemented. Given all of these extra theoretical considerations, it would be unfair to base our judgment of a theory’s power solely by its impact on public policy. Even if some aspects of policy are theory-based, unless all recommendations of the theory are fully implemented, the success or failure of the policy cannot be considered evidence of theoretical failure any more than a recipe can be blamed for a lousy cake if the baker neglected to include all the ingredients it calls for.

Connecting problems with solutions is a tricky business in all areas of government policy making, but nowhere is it more difficult than in the area of criminal justice. No single strategy can be expected to produce significant results, and it may sometimes make matters worse. For example, President Johnson’s “War on Poverty” was supposed to have a significant impact on the crime problem by attacking what informed opinion of the time considered its “root cause.” Programs and policies developed to reduce poverty did so, but reducing poverty had no effect on reducing crime; in fact, crime rose to record levels as poverty was falling (Walsh & Ellis, 2007). Another high-profile example of failed policy is the Volstead Act of 1919 that prohibited the manufacture and sale of alcohol in the United States. Although based on a true premise (that alcohol is a major factor in facilitating violent crime), it failed because it ushered in a wild period of crime as gangs fought over control of the illegal alcohol market. Policies often have effects that are unanticipated by policy makers, and these effects can be positive or negative.

Nevertheless, every theory has policy implications deducible from its primary assumptions and propositions. The deep and lasting effects of the classical theories on legal systems around the world have long been noted, but the broad generalities about human nature contained in those theories offer little specific advice on ways to change criminals or to reduce their numbers. Although I would caution against using the performance of a theory’s public policy recommendations as a major criterion to evaluate its power, the fact remains that a good theory should offer useful practical recommendations, and we will discuss a theory’s policy implications where appropriate.

**SUMMARY**

- Criminology is the scientific study of crime and criminals. It is an interdisciplinary/multidisciplinary study, although criminology has yet to integrate these disciplines in any comprehensive way.
- The definition of crime is problematic because acts that are defined as criminal vary across time and cultures. Many criminologists believe that because crimes are defined into existence, we cannot determine what real crimes are and what criminals are. However, there is a stationary core of crimes that are universally condemned and always have been. These are predatory crimes that cause serious harm and are defined as *mala in se*, or “inherently bad” crimes, as opposed to *mala prohibita*—“bad because they are forbidden” crimes.
- A person is not “officially” a criminal until such time as he or she has been found guilty beyond a reasonable doubt of having committed a crime. In order to prove that he or she did, the state has to prove *corpus delicti* (“the body of the crime”), which essentially means that the person committed a criminal act (*actus reus*) with full awareness that the act was wrong (*mens rea*—guilty mind). Other basic principles—concurrence, harm, and causation—are proven in the process of proving *corpus delicti*. 
• The history of criminology shows that the cultural and intellectual climate of the time strongly influences how scholars think about and study crime and criminality. The Renaissance brought more secular thinking, the Enlightenment inspired more humane and rational thinking, the Industrial Revolution brought with it more scientific thinking, and the Progressive Era saw a reform-oriented criminology reminiscent of the Classical School.

• Advances in any science are also constrained by the tools available to test theories. The ever-improving concepts, methods, and techniques available from modern genetics, neuroscience, and other biological sciences should add immeasurably to criminology’s knowledge base in the near future.

• Theory is the “bread and butter” of any science, including criminology. There are many contending theories seeking to explain crime and criminality. Although we do not observe such theoretical disagreement in the more established sciences, the social/behavioral sciences are young, and human behavior is extremely difficult to study.

• When judging among the various theories, we have to keep certain things in mind, including the theory’s predictive accuracy, scope, simplicity, and falsifiability. We must also remember that crime and criminality can be discussed at many levels (societywide, subcultural, family, or individual), and that one theory that may do a good job of predicting crime at one level may do a poor job at another level.

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

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

• All theories have explicit or implicit recommendation for policy since they posit causes of crime or criminality. Removing those alleged causes should reduce crime if the theory is correct, but the complex nature of crime and criminality make basing policy decisions on them very risky indeed. Policy makers must consider many other issues demanding scarce resources, so the policy content of a theory should never be used to pass judgment on the usefulness of theory for criminologists.

**DISCUSSION QUESTIONS**

1. Which of the following 10 acts do you consider mala in se crimes, mala prohibita crimes, or no crime at all? Defend your choices.
   (a) drug possession, (b) vandalism, (c) drunk driving, (d) collaborating with the enemy, (e) sale of alcohol to minors, (f) fraud, (g) spouse abuse, (h) adult male having consensual sex with underage person, (i) prostitution, (j) homosexual behavior, (k) pornography.

2. Why is it important to consider ideology when evaluating criminologists’ work? Is it possible for them to divorce their ideology from their work?
3. Policies aimed at reducing crime (think of Prohibition and the War on Poverty) rarely have the desired effect. Can you think of any good reasons why this should be so?

4. Locate the online journal *Quarterly Journal of Ideology*. Click on *archive* and find and read “Ideology: Criminology’s Achilles’ Heel.” What does this article say about the “conflict of visions” in criminology?

### USEFUL WEBSITES

- Classical School vs. Conflict Criminology. See the useful YouTube discussion at [www.youtube.com/watch?v=FVbjzND9kDg](http://www.youtube.com/watch?v=FVbjzND9kDg)
- Conflict Criminology. [http://faculty.ncwc.edu/toconnor/301/301lect13.htm](http://faculty.ncwc.edu/toconnor/301/301lect13.htm)
- Critical Criminology. [www.critcrim.org](http://www.critcrim.org)

### CHAPTER TERMS

- Actus reus
- Causation
- Concurrence
- Constrained vision
- Corpus delicti
- Correlates
- Crime
- Criminality
- Criminology
- Hypotheses
- Ideology
- Incarceration
- Level of analysis
- Mala in se
- Mala prohibita
- Mens rea
- Parole
- Preliminary arraignment
- Preliminary hearing
- Probation
- Theory
- Unconstrained vision