

*Richard Quinney*

THE PROBLEM OF CRIME



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## PREFACE

We learn much about man and society by studying the problem of crime. Some of the most important issues of ethics and of politics are revealed in our attempts to control the conduct of others by the use of the criminal law. Conformity to this law on the one hand and violation of it on the other illustrate, often in dramatic fashion, some of the difficulties that men experience in living with one another in their societies. Our response to crime reflects in large part the goals and ideals of these societies.

Crime is a problem to all of us. To the student of crime it is a problem in explanation and interpretation. To the legislator it is a problem in definition and articulation. To the police it is a problem in detection and apprehension. To the jury it is a problem of fact. To the judge it is a problem of due process and of punishment. But it is a problem to more than these. It is a problem to the person who is engaged in breaking the law. It is a problem to the victim, who may be deprived by it of life, possessions, and even the pursuit of happiness. And finally, to others, it is a threat to tranquillity and a disturbance in the social order.

In this book I have attempted to treat some of the major issues involved in this ubiquitous problem. My first concern

is with the meaning of crime. In Chapter 1 therefore I discuss the nature of law and the role of law in society, and introduce some definitions that help to illuminate the subsequent discussion. In Chapter 2 I present a brief history of criminology which, like other disciplines, is influenced by wayward tides of time and idea. In Chapter 3 I attend to the substance of criminology, the accuracy of criminal statistics, and the premises of causal explanation. Chapter 4 leaves this more universal level and begins to focus upon crime in American society, in which I have tried to discover some underlying themes. Finally, in Chapter 5, I have offered thoughts on the future of crime, especially in the United States. Crime, like all other affairs of men, is a changing phenomenon. But it is also one of the constants of society.

Writing this book has been a pleasant experience. My conclusions on a number of matters have been reached only in the process of putting the words on paper. I have found, to my own satisfaction at least, that an attention to crime can illuminate many of our other problems. Crime has something to do with the most profound of all sociological problems—the relationship of the individual to his society. In the process of writing I have, not surprisingly, learned a number of things. I hope that I have succeeded in communicating some of them to my readers.

RICHARD QUINNEY

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## THE PROBLEM OF CRIME





# CHAPTER 1

## THE MEANING OF CRIME

There is no crime without some form of declaration. Crime has meaning only when the concept of crime has first been constructed. Likewise, crime exists as a problem only when a number of persons regard the phenomenon of crime as a problem. Crime as both phenomenon and problem thus exists because of the construction of the concept of crime.

But what is the substance of the concept of crime? The answer is that crime has several different meanings. Any concept of crime necessarily depends upon the interests of those who are constructing the concept: thus the many meanings of crime. There are, for instance, the conceptions of crime held by the public. Lawyers and legal agents depend upon still other concepts. And criminologists construct their own concepts of crime. These are diverse concepts of crime which are employed simultaneously for different purposes in our society. Therefore, in order to gain an under-

standing of crime we must first consider the meanings of crime. The objective is to develop concepts that will be of maximum use in a sociological analysis of the problem of crime.

### *The Concept of Crime*

The various conceptions of crime differ from one another primarily according to the extent to which they take cognizance of the criminal law. Some of the "social" definitions of crime ignore the existence of criminal law. For example, a completely subjective definition of crime and the criminal has been suggested in the observation that the criminal is "a person who regards himself as a criminal and is so regarded by society."<sup>1</sup> On other occasions sociologists have argued that because criminal laws change in the course of time, vary from one locality to another, and are sometimes arbitrary, the legal categories of crime do not provide satisfactory units for scientific analysis.<sup>2</sup> Using a different approach, Sellin, in broadening the scope of criminology, suggested that criminology includes the study of the violation of all "conduct norms." But it is important to note that Sellin did not extend the concept of crime beyond violation of the criminal law, stating that "it is wiser to retain that term crime for the offenses made punishable by the criminal law and to use the term abnormal conduct for the violations of norms whether legal or not."<sup>3</sup>

Sutherland proposed a definition of crime which is perhaps the most acceptable to the majority of sociologists.

The essential characteristic of crime is that it is behavior which is prohibited by the State as an injury to the State and against which the State may react, at least as a last resort, by

<sup>1</sup> Footnote references appear at the end of each chapter.

punishment. The two abstract criteria generally regarded by legal scholars as necessary elements in a definition of crime are legal description of an act as socially harmful and legal provision of a penalty for the act.<sup>4</sup>

Following this conception, an act is a crime only when it is in violation of a criminal law.

The importance of the criminal law to a definition of crime was forcefully presented in 1933 by Michael and Adler in their examination of the field of criminology. According to their argument, there would be no crime without criminal law.

If crime is merely an instance of conduct which is proscribed by the criminal code it follows that the criminal law is the formal cause of crime. That does not mean that law produces the behavior which it prohibits, although, as we shall see, the enforcement or administration of the criminal law may be one of the factors which influence human behavior, it means only that the criminal law gives behavior its quality of criminality.<sup>5</sup>

Michael and Adler concluded that "the most precise and least ambiguous definition of crime is that which defines it as behavior which is prohibited by the criminal code" and that "this is the only possible definition of crime." Later Jeffery was to similarly argue: "Where does crime exist, if not in the legal codes?"<sup>6</sup>

The legalistic definition of crime was taken to its extreme in Tappan's suggestion that "only those are criminals who have been adjudicated as such by the courts."<sup>7</sup> But Tappan's conception of crime is not as legalistic as might appear at first glance. In this conception, Tappan recognized the important and essential point that a person is a criminal by the fact that a definition has been imposed on him by others, by the authorities of the state who are charged with the ad-

ministration of the law. The labeling of persons and behaviors as criminal—the imposition of a legal category—is nothing other than a social enterprise. While not necessarily implying that the person must reach the stage of being adjudicated in the courts before he is regarded as criminal, a writer some time ago defined the criminal in terms of the legal action of others:

A criminal is one who acts in such a way that organized society, in the form of the community of which he is a part, is compelled to declare that the act and the actual or potential consequences of that act are a menace or injury to it, and is forced to take steps to suppress further activities of his along similar lines.<sup>8</sup>

In a similar fashion, Korn and McCorkle have offered a definition of crime which indicates that an act is not a crime until the offender is caught, tried, and punished, crime thus being “an act or omission ascribed to a person when he is punished by the authorities in continuous political control over the territory in which he is.”<sup>9</sup> To a number of writers, then, crime is a *legal status* that is assigned to behaviors and persons by authorized others in society.<sup>10</sup>

For the purpose of establishing a working definition of crime at this point, two basic elements of crime can be distinguished. First, crime is a legal category which describes the conduct that is in violation of the criminal law. This is the *legal-categorical* element of the concept of crime. Second, crime consists of conduct related to the categories of crime. This is the *behavioral* element of the concept of crime. According to these two basic elements of the concept of crime, conduct is not regarded as criminal unless three conditions are present: (1) the label of crime has been officially imposed on conduct (2) by authorized persons and agencies (3) of a politically organized society. Crime is,

therefore, a legal category that is assigned to conduct by authorized agents of a politically organized society. The criminal is, it follows, a person who is assigned the status of criminal on the basis of the official judgment that his conduct constitutes a crime.

But in the final analysis, in spite of the above definition of crime, we must recognize that there are actually several concepts of crime. Each concept serves its own legitimate purpose. Analytically, as shown in Table 1, the concepts of crime can be separated into five levels of meaning. The first four levels are incorporated into the concept of crime that has been constructed in the above discussion. Crime, according to these four levels of meaning, refers to the legal category that is assigned to conduct by authorized agents in a politically organized society. Each of the four levels of meaning depends upon the stage of the legal process in which the category of crime is applied—formulation of criminal law, arrest, prosecution, and conviction. The fifth con-

Table 1. THE CONCEPTS OF CRIME

Concepts	Levels of Meaning	
Crime <sub>1</sub> [Violation of Criminal Law Formulations]	Application of the category of crime at the formulation stage	} Crime as a legal category assigned to conduct by authorized agents in a politically organized society
Crime <sub>2</sub> [Arrest]	Application of the category of crime at the arrest stage	
Crime <sub>3</sub> [Prosecution]	Application of the category of crime at the prosecution stage	
Crime <sub>4</sub> [Conviction]	Application of the category of crime at the conviction stage	
Crime <sub>5</sub> [Natural Crime]	Crime as conduct that does not necessarily involve either the violation of a criminal law or the application of the legal category to the conduct	

cept of crime is the one of popular usage employed by the public (and sometimes by criminologists) to refer to conduct that does not necessarily involve either the violation of a criminal law or the application of the legal category to the conduct. While there are undoubtedly several meanings of crime within this last concept of "natural crime," all the meanings can be grouped for present purposes into one level of meaning.

The concept of crime as a legal category assigned to conduct (that is, the first four levels of meaning of crime) will be used throughout this book. Since this composite concept of crime is based on the criminal law and its administration, it is necessary in the remainder of this chapter to investigate various aspects of the law.

### *The Nature of Law*

Always present in any social collectivity is the problem of establishing and maintaining social order. In all social groupings sets of rules develop to regulate the various realms of social life, thus assuring some degree of order in these groups. Several normative systems are likely to operate to control the behavior of the members in any society. Human social conduct is subjected to restraint by a variety of agencies and institutions—families, clans, churches, social clubs, political organizations, labor unions, universities, corporations, and so forth. These normative systems vary considerably from one another in the forms of conduct they regulate. Some sets of rules apply to the incidentals of daily living; others control the behavior that is regarded as basic to the existence of the society. Furthermore, most normative systems provide a means of assuring compliance to the rules. *Informal* means of control, which may be spontaneously em-

ployed by members of society, such as ridicule, gossip, and censure, may serve to assure conformity to some of the rules. The normative systems of other agencies or institutions may, in addition, rely upon *formal* means of social control.

While the legal system in a society is in part dependent upon the operation of informal social controls, legal systems in themselves may be regarded as the prime example of formal social control. The law, as a type of formal social control, consists of (1) explicit rules of conduct, (2) planned use of sanctions to support the rules, and (3) designated officials to interpret and enforce the rules.<sup>11</sup> Roscoe Pound, the legal scholar, observed that as societies have increased in complexity the law as a formal means of control has developed to regulate social life. Regulation of the members of society has tended to shift from the informal controls of the family and religion to the formal control of the state. Pound noted that "in the modern world law has become the paramount agent of social control. Our main reliance is upon force of a politically organized state."<sup>12</sup>

In addition to being regarded as a type of formal social control, virtually all legal scholars and social scientists have defined law in terms of the body of rules created and enforced by a sovereign state. The state is seen as a political community which governs a territory and all the inhabitants within it through the use of authorized power and through the threat or application of punitive sanctions. Yet, certain scholars have departed from this prevailing view of law. Max Weber, for example, conceived of legality as a legitimized pattern of normative rules, whether the rules are of the state or fall outside the province of the state. According to Weber all legal orders are "externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation, will be applied



by a *staff* of people holding themselves specially ready for that purpose.”<sup>13</sup> However, Weber was clear in distinguishing between the law of the state and the law of other bodies:

We shall speak of “state” law, i.e., of law guaranteed by the state, only when, and to the extent that, the guaranty for it, that is, legal coercion, is exercised through the specific, i.e., normally direct and *physical*, means of coercion of the political community. . . . Wherever the means of coercion which constitute the guaranty of a “right” belong to some authority other than the political, for instance, a hierocracy, we shall speak of “extra-state law.”<sup>14</sup>

More recent writers, taking Weber as a point of departure, have argued that “the traditional view of law as an integral part of the state has tended to obscure the fact that law exists in nonstate contexts as well.”<sup>15</sup> They point out that the growth of large-scale organizations is the representative characteristic of modern life and that in industry, government, education, medicine, and so on, the bureaucratic principle—the principle of rational coordination—prevails. Moreover, there is a modern trend toward a convergence of governmental and nongovernmental forms of organization and modes of action, a blurring of the public and private sectors of economy and society. Government today includes many activities not directly related to the functions of the state, and many private organizations tend to be quasipublic in operation. This phenomenon has prompted Selznick to write the following in regard to the concept of legality:

A kind of legality seems to develop within these large enterprises. In both public and private bureaucracies, authority and rule-making tend to take on the impersonality, the objectivity, and the rationality of a legal system.<sup>16</sup>