LIPPINCOTT SOCIOLOGICAL SERIES
EDITED BY EDWARD CARY HAYES, PH.D., LL.D.
PROFESSOR OF SOCIOLOGY, UNIVERSITY OF ILLINOIS

CRIMINOLOGY

BY
EDWIN H. SUTHERLAND, PH.D.
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EDITOR'S INTRODUCTION

To THE thoughtful it is obvious that the theme of this book is of profound importance. It treats a department of social knowledge in which recent scientific advances have been great. It deals with a field of social organization in which the changes under discussion are numerous and far-reaching, and in which they confront a stubborn and antiquated conservatism. Adequate discussion of the theme of this book requires the assimilation of an extensive body of learning found in widely scattered sources, and a sound and well matured judgment. Doctor Sutherland has performed his task in a manner well fitted to meet the needs of the student and the public. His book is free from exaggeration and radicalism. Its author unites command of the materials with a spirit at once progressive and cautious.

E. C. H.

PREFACE

IN RECENT years great developments have been made in the science of human behavior. These developments have appeared especially in the fields of sociology and psychopathology. Because of them a much better understanding of both the customary and the variant behavior-patterns is possible now than was possible a decade ago.

When this new knowledge is applied to the old problem of crime, it becomes apparent at once that labelling a criminal (as feeble-minded, psychopathic, pervert) is a very slight part of understanding him. It is necessary to become acquainted with the mechanisms and processes involved in the criminality. It becomes apparent, also, that the criminal must be dealt with as a human being rather than as a concept.

This book is intended to be a text-book in Criminology. It contains many brief descriptions of "cases" but should be supplemented for class purposes by a collection of more detailed descriptions or case-records of criminals or delinquents.

EDWIN H. SUTHERLAND.

Urbana, Illinois,
June, 1924.

CONTENTS

CRIMINOLOGY

CHAPTER I

CRIMINOLOGY, LAW, AND CRIME

1. Criminology.—Criminology is the body of knowledge regarding the social problem of crime. It includes information regarding the nature and extent of crime, and the policies used in dealing with crime and criminals. Criminology is sometimes defined more narrowly to include only the information regarding the characteristics of criminals; the policies are then called penology. But the broader definition is justified both in etymology and usage, and is preferable to this narrower definition both because it is desirable to have one term to refer to the whole field of crime and also because the term "penology" is obviously unsatisfactory as a name for the policies, since many of these policies are not penal.

Criminology is concerned with crime as a personal and group phenomenon. As such it is primarily sociological. It draws information, to be sure, from a great variety of specialized investigations—physiological, psychological, legal, chemical, economic, statistical, educational, and sociological. Many of these investigations are not, in themselves, sociological; legal chemistry, for instance, is not criminology, for it is concerned with crime only in one of its impersonal aspects.

2. The Nature of Law: From the Analytic Point of View.—An understanding of the nature of law is necessary in order to secure an understanding of the nature of crime. A complete explanation of the origin and enforcement of laws would be, also, an explanation of the violations of laws. For that reason a brief description is given here of the characteristics of criminal law, some of which are common to other forms of law as well. The necessity and desirability of some

of the conventional elements of the law are doubtful, however, and some of the questions concerning them will be presented with the description.[1]

(a) Human conduct is affected by law. This is called the substantial element of the law, as contrasted with the following elements, which are the ways in which human conduct is affected by law and are known as the formal elements of the law.

(b) Politicality or state power. The law is the body of rules made by the state. This, however, is an arbitrary restriction. Why should not the rules of any other group—church, fraternity, trade union, neighborhood—be regarded as the law and violations of these rules as crimes? From the point of view of social psychology the processes involved in making and breaking rules are practically identical in the state and most of these other groups. Law and crime would be understood better if the recognition of the similarity of the socio-psychological processes involved in the making and breaking of rules in different groups could be made more general.

The law contains the following types of rules: constitutions; treaties; enactments of legislative assemblies of the state or its subdivisions; the common law, which is the body of customs enforced, without legislative enactment, by judicial decisions and dealing characteristically with the principles of decency, public order, and public morals;[2] orders or regulations of certain judicial and administrative bodies, authorized by the legislature to make such rules.

(c) Uniformity or regularity. The law is designed to apply equally to all members of a class; it is no respecter of persons. But the injustice of a rigorous application of this principle of uniformity early became apparent, and a special branch of the courts was established, known as equity courts, to make special provision for exceptional cases. The law cannot divide the class with which it deals; equity is flexible and

[1] J. H. Wigmore, *Problems of Law*, pp. 5–17.

[2] The federal government and some of the states have abrogated the common law in its application to crime by the provision that nothing shall be a crime which is not prohibited by a specific statute.

can make divisions in a class. There is uniformity in equity, but it is uniformity applied to a smaller and more homogeneous class. Thus it can be adjusted to situations and conditions of which the law cannot take cognizance. The juvenile court in many states has been placed entirely under equity jurisdiction and thereby the flexibility of equity has been substituted for the uniformity of law. The same thing, without specific grant of equity powers, is happening in the criminal courts for adults. In addition there is a tendency to place much more discretion in the hands of judicial and administrative bodies, as in the indeterminate sentence and parole systems. Thus the principle of flexibility is being used both as a supplement to and a substitute for the principle of uniformity of law.

(d) Coercion. In the orthodox legal system coercion is one of the elements of law and the method of coercion is threat or application of punishment. A law which does not provide a penalty that will cause suffering is regarded as quite impotent. The law not only assumes that punishment is efficacious, but also that it is the only method that can be generally and uniformly used. But it is evident that there are many individuals whose attitudes and behavior can be changed much more effectively by other methods than by punishment. There is a distinct tendency, therefore, in juvenile courts and in a small way in the criminal courts to use such methods as have been found effective, whether they are coercive or not and whether they produce suffering or not. But such adaptation of methods to individuals can be secured only in so far as the principle of uniformity is not used. Thus the element of coercion is being supplemented by other forms of pressure involving less physical force and less suffering. It is questionable whether the term "coercion" can properly be expanded to include these other methods.

The final agency of enforcement of law is the court. Thus ultimately it is the court, not the legislature, that decides what the law is. If the courts refuse or fail to enforce a statute on the ground of unconstitutionality or for other reason, it is not the law. Between the legislature and the court, however,

intermediate agencies, such as the police, affect the enforcement of the law. And undoubtedly the court is affected by public opinion, but it does not reflect public opinion exactly and is frequently in direct opposition to public opinion. Aside from statutes which have been declared unconstitutional, it is difficult to draw a definite line between statutes which are law and statutes which are not law. Many statutes are never enforced in some places. Many of the Sabbath laws and the revenue law which requires a person to make a true declaration of his property to the assessor are of this sort. Statutes against gambling, lynching, libel, carrying concealed weapons, discrimination against negroes, confining children in jails with adults are enforced so seldom in some places that it is doubtful whether they are law in those places.

(e) Specificity. The criminal law, differing in this respect from civil law, is confined largely to the prohibition of specific acts. It prohibits murder, burglary, arson, speed of more than twenty miles an hour, and similar specific acts, most of which are strictly defined. There are, to be sure, some more general prohibitions, such as conspiracy, disorderly conduct, nuisances, and vagrancy. But there is no blanket prohibition of all acts opposed to social welfare. Consequently it frequently happens that one thing is prohibited by law, while another thing very similar in nature and effect is not prohibited and is therefore not illegal. With reference to this Train says:

"To push a blind man over the edge of a cliff so that he is killed upon the rocks below is murder, but to permit him to walk over it, although by stretching out your hand you might prevent him, is no crime at all. It is a crime to defame a woman's character if you write your accusation upon a slip of paper and pass it to another, but it is no crime in New York State to arise in a crowded lecture hall and ruin her forever by word of mouth. . . . It is a crime to ruin a girl of seventeen years and eleven months, but not to ruin a girl of eighteen."[3]

[3] A. Train, *The Prisoner at the Bar*, 2d ed., p. 7. According to some of the Continental codes it would be illegal to permit a blind man to walk over a cliff if one were in a position to prevent it without serious danger or inconvenience.

Moreover, criminal law, in theory, is not concerned with the character of the law-breaker. Character is taken into account only as it assists in proving that a specific act was or was not committed. In contrast with this the juvenile court law has reference primarily to the character of the juvenile or his circumstances and takes specific acts into account as a means of proving general character or circumstances. It may be admitted that the criminal law, in the "habitual criminal acts," does show an interest in the character of the offender, in that they provide that after a specified number of convictions a criminal may be incarcerated for a very long term even for a slight offense. Such acts, however, have generally not been enforced. In practice, as contrasted with the theory of the law, the character of the offenders is taken into account to some extent.

3. The Nature of Law: From the Genetic Point of View.—The attitudes which produce laws and the situations to which laws are expected to apply have not been studied carefully. Luck was a large element in the primitive customs from which law emerged and it appears to hold its place to the present day. But a few general attitudes and principles that are important in the genesis of law can be observed.

(a) Law represents a desire to promote the orderly functioning of a group. This is the conception of law as "social engineering."[4] But it appears that the principal element in this is the disapproval of acts that are being performed or may be performed in the future. Disapproval by the public or that part of the public which is politically influential is an essential element in the origin of criminal law, but not all acts that meet with this disapproval are prohibited by law. Various efforts have been made to define more clearly the disapprovals that result in law.[5] While the principal wish that gives rise to law is the wish for security for life and property, there seems to be nothing in the whole range of sentiments, interests, and

[4] "Cleveland Foundation Survey of Criminal Justice in Cleveland," Part 7. *Criminal Justice in the American City*, by R. Pound, pp. 5–7.

[5] R. Garofalo, *Criminology*, pp. 33 ff.

attitudes that may not have influence. It seems impossible to define this disapproval more clearly at present.

(b) Another characteristic of law from the genetic point of view is the dependence upon punishment as a means of prohibiting the acts which meet with the disapproval of the public. This "ordering-and-forbidding attitude," according to Thomas and Znaniecki, is "the oldest and most persistent form of social technique." It is "natural" for people to forbid the things which they dislike; they forbid the rain from falling. They order the sea not to rise. With the same attitude they order human beings not to do certain things. In the field of natural science it has now been recognized that the arbitrary act of will is not a good method of control. It is necessary to learn the mechanism of the process, and by means of this knowledge control by dikes, shelters, irrigation, and other devices. Efficient control of the conduct of human beings must similarly be based on a knowledge of the mechanisms of conduct. An example may make this clear. A young child begins to stutter. The anxious parents stop the child every time his stuttering begins with the injunction, "Do not talk that way." But the child gets worse. Finally the child is taken to a specialist in speech defects who, after an investigation, explains that stuttering may be due to different conditions, but in this case is due to uneasiness on the part of the child and uncertainty in the technique of control of the vocal organs. Consequently it is necessary for the parents to stop drawing the attention of the child to his stuttering and to speak very distinctly and slowly in the presence of the child. By this method the parents prevent the stuttering, while by commanding the child not to stutter they make him uneasy and thus aggravate the stuttering. Many people are now realizing the inadequacy of this forbidding method and, while the rush to legislatures for new prohibitions still continues, there is a growing effort to use the less direct but more effective method of control based on an understanding of the conditions and processes. This, of course, does not mean that there is no value in prohibitions or that they should never be used.

(c) The attitude of coercion in law differs from that in a lynching party in that the coercion must be applied decently by the representatives of the state. Justice must be impartial and even-handed. Not only must the undesirable act be punished, but this must be done in such a way as to win the approval of the cool judgment of impartial observers.

From the genetic point of view, therefore, we can conclude that the law is an attempt at social engineering and is the result of an attitude of disapproval of an act which is regarded as injuring the group or that part of the group which is politically influential, plus an attitude of coercion backed by physical force applied decently by the representatives of the state.[6]

4. Civil Law and Criminal Law.—The difference between civil law and criminal law for a long time was stated as follows: civil law is concerned with wrongs against the individual, for which reparation or restitution is the method of treatment; criminal law is concerned with wrongs against the public, for which punishment is the method of treatment. In accordance with this differentiation two systems of law courts were organized, criminal and civil. In the criminal court the state had much more control, bringing the prosecution in its own name, having the power to stop the proceedings at any point and to pardon the offender after conviction; in the civil court the state had no such direct control. But in recent years this historical differentiation is questioned by many people, first, because it is sociologically unsound to make such an opposition between the individual and the public. If a tort (that is, a violation of civil law) injures an individual, it injures the public to some extent. Some torts do more injury to the public than some crimes. Most crimes and most torts injure some particular individual more than other individuals. But it is not necessary that a particular individual be injured either by a tort or a crime, for there are torts, known as "penal actions," in which any individual whatever who will bring suit may recover damages for injuries done to the

[6] G. H. Mead, "Psychology of Punitive Justice," *Amer. Jour. Sociol.*, 23: 577–602, March, 1918.