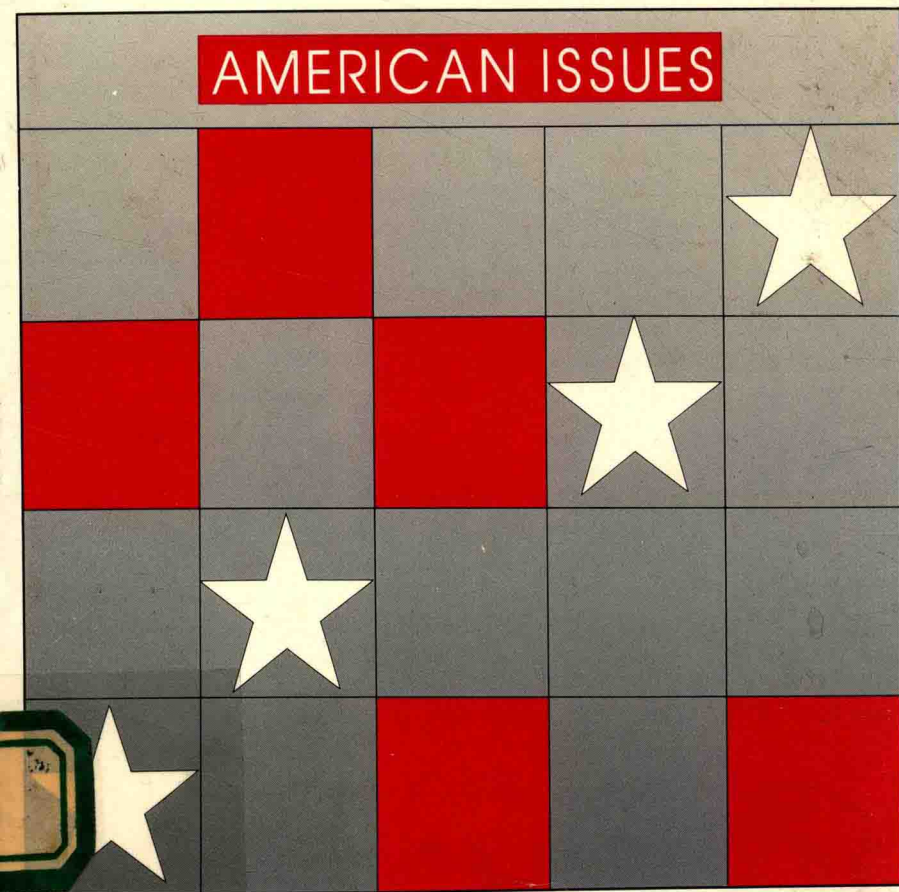


# Crime

MARIANNE LEVERT

AMERICAN ISSUES



GERALD LEINWAND, Ph.D., GENERAL EDITOR

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A M E R I C A N I S S U E S

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# CRIME

*by Marianne LeVert*

Gerald Leinwand, Ph.D., General Editor

Produced by the Philip Lief Group, Inc.

 **Facts On File**  
*New York • Oxford*

American Issues: Crime (American Issues Series)

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New York NY 10016  
USA

#### **Library of Congress Cataloging-in-Publication Data**

LeVert, Marianne.

Crime / by Marianne LeVert; produced by the Philip Lief Group, Inc.

p. cm.—(American issues)

Includes bibliographical references and index.

Summary: Addresses issues and questions relating to crime in the most violent and crime-ridden country in the industrialized world, the United States.

ISBN 0-8160-2102-3

1. Crime—Juvenile literature—United States. [1. Crime.] I. Title. II. Series: American issues (New York, N.Y.)

HV6789.L47 1991

364.973—dc20

Facts On File books are available at special discounts when purchased in bulk quantities for businesses, associations, institutions or sales promotions. Please contact the Special Sales Department of our New York office at 212/683-2244 (dial 800/322-8755 except in NY, AK or HI).

Jacket design by Catherine Hyman

Composition by Facts On File, Inc.

Manufactured by the Maple-Vail Book Manufacturing Group

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1

This book is printed on acid-free paper.

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A M E R I C A N I S S U E S

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CRIME

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# C H A P T E R     O N E

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## Crime and Society

ONE CRIME INDEX OFFENSE EVERY 2 SECONDS

ONE VIOLENT CRIME EVERY 20 SECONDS

ONE PROPERTY CRIME EVERY 3 SECONDS

ONE MURDER EVERY 25 MINUTES

ONE FORCIBLE RAPE EVERY 6 MINUTES

ONE ROBBERY EVERY MINUTE

ONE AGGRAVATED ASSAULT EVERY 35 SECONDS

ONE BURGLARY EVERY 10 SECONDS

ONE LARCENY THEFT EVERY 4 SECONDS

ONE MOTOR VEHICLE THEFT EVERY 22 SECONDS.

These are the Federal Bureau of Investigation's statistics concerning the frequency of various crimes committed in America today. These staggering figures have earned the United States the dubious distinction of being the most violent and crime-ridden country in the industrialized world.

Why is the level of violence so much higher here than in France or Germany, for instance? Are we so very different from other cultures? How do we define the concept of crime and has

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this concept changed during our history? Is there a uniquely American idea of crime and justice?

*Webster's Dictionary* defines crime as "an act that violates the law" and makes an interesting distinction between vice, crime, and sin. "Crime," defines *Webster's*, is a "violation of human laws; vice is a violation of the moral law; and sin is a violation of the divine law." While the dictionary makes clear distinctions between these concepts, societies often must struggle to decide what behaviors—which may include what others define as vice and sin—are considered criminal.

Every society in the world, primitive and modern, has some kind of a code of law that reflects its values, norms, customs, and beliefs. Many anthropologists see the need for law and order as basic to all societies. In many ways, crime is culturally subjective; in other words, what constitutes criminal activity in one group may be perfectly acceptable behavior in another. So then who decides? Marvin E. Wolfgang, professor of sociology and law at the University of Pennsylvania in 1978, defined crime as "an act deemed socially harmful by the group which has power to enforce its beliefs" as well as "an act which offends strong, collective moral sentiment."<sup>1</sup>

In a democracy, these two definitions should not contradict one another. In the United States, an ethnically, racially, and religiously diverse democracy, the group which has the power to enforce its beliefs—the government and its law enforcement agencies—is elected by the majority of the people in society who vote. The laws this body creates should reflect the collective sentiments of the majority. In a dictatorship, the laws may reflect the sentiments of only the few who rule.

This country's code of criminal law originated with the body of English common law that the first settlers brought with them to this country. Common law, originally based on an ancient code of unwritten laws, was established by English jurists and then affirmed by the Parliament, which wrote legislation to

enforce these laws. Those who wrote the laws for the American colonies adopted in large part the traditions of English common law. Although they would later surrender some of their sovereign authority to the federal government when the U.S. Constitution was written, the colonies and later the states maintained control over their own criminal codes. As will be discussed later, there remain differences in criminal codes between states.

## Crimes of Yesteryear

If the definition of crime depends upon the society that makes laws for its people, how do the crimes of yesterday compare to those of modern America? As our society has grown and developed, our definition of crime has also changed. An interesting example of how such evolution occurs is the rise and fall of the Puritan community that founded the Massachusetts Bay Colony in the 1600s.

John Winthrop and his Puritan followers first arrived in Massachusetts Bay in 1630. They came to America after breaking with the Anglican Church of England with the belief that they were chosen by God to "form a covenant amongst themselves to purify the corrupt practices but not the divine nature" of their homeland church.<sup>2</sup> In this society, the church created laws, monitored its citizens' behavior, and meted out punishment.

The Puritans' approach to crime and punishment reflected their view of man and God; society was designed to fulfill the will of God. The community was small and homogeneous, what is called a self-policing society. Rigid social controls existed; for the most part community pressure regulated behavior. Crime and sin were synonymous in this community; a crime against God was a crime against society and a crime against society a crime against God. Crimes of theft, "pickpocketing," and bur-



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glary were minor problems in the community. In fact, there were relatively few crimes against people or property.

In this society, laws were written not so much to protect society against the crimes we know today, but rather to define the boundaries of acceptable moral and public behavior. Though the group brought to the colonies English common law heritage, the Puritans began the process of establishing a justice system by writing their own criminal code. That code differed from England's in several ways. For example, the Puritan's 1648 Book of General Lawes and Libertyes had many more biblical references than either English law or other American colonies' law codes. Indeed, the Old Testament was deeply embedded in the Puritan code of law. For example, an offense might be written in the following manner: "If any man or woman be a witch . . . they will be put to death. Exod. 22 18 Lev."3

Not only were laws deeply religious in nature in this colony, but the society itself was homogeneous—its citizens all had come from the same traditions and backgrounds. If the members of this community were basically in agreement with the general principles and rules of behavior and morality, why would there be any crime at all? Emile Durkheim, a prominent late 19th-century French sociologist, stated that crime is normal, not pathological or abnormal, and is found in all human societies. Even in a utopian community, there would be crime.<sup>4</sup>

Because record-keeping was poor during this period of history, it is difficult to measure accurately the amount of crime being committed, but historians cite drunkenness, challenges to authority (public criticisms of the government, church, or king), fornication, and adultery as some of the more common offenses of the period. The most serious crimes were blasphemy and witchcraft. In fact, rebellion of any sort, including anti-social behavior (as defined by the church) and irreverent talk, were forbidden.

Although fanatical in their religious fervor and tyrannical in their religious intolerance, the Puritan code of punishment was actually somewhat more lenient than that found in England during the same period. By the end of the 1600s, in fact, there were more than 200 crimes that were punishable by death in England; in the Massachusetts Bay Colony, by contrast, there were only about 11 capital offenses. These included murder, rape, adultery, kidnapping, and blasphemy.

Punishment was swift, often brutal, and public. Lesser crimes, like public drunkenness or cursing the governor, were punished by branding and mutilation, whipping, and banishment. Here, as in many societies, not all criminals were treated equally. Material success was equated with dedication to the community, and by 1648 propertied gentlemen were made exempt from whippings. Monetary fines were more common punishment for the upper-class criminal.<sup>5</sup>

These rather barbaric methods of punishment—later to be defined as “cruel and unusual” and considered unconstitutional under the Eighth Amendment—reflected the Puritans’ view that man was essentially depraved, cursed by original sin. Since the Puritans believed there was no hope of rehabilitation, public humiliation was used to identify the deviants to the community and to punish them, not to reform them. Their fate was in God’s hands. When all else failed, banishment from the community was the most common method of ridding society of its undesirables.

Until the mid-1600s, the laws and the crimes prosecuted in the Massachusetts Bay Colony reflected the values and norms of Puritan society. The colonies began to expand rapidly, however, and immigrants arrived from other countries, bringing with them their own religious and cultural backgrounds. As a result, the Puritans’ once firm hold on social and moral order began to slip away.

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The newly diverse population, the changing economic structure, and the new towns established by outside traders threatened both the religious and economic nature of the once homogeneous Puritan community. The Salem witchcraft trials and the persecution of the Quakers are seen by some historians as unsuccessful attempts by the Puritans to retain power in a rapidly changing society.

By the 1670s, Boston was overflowing with frontier adventurers, pirates, English convicts sent to the colonies, and servants who had promised seven years' servitude in exchange for passage to America. These settlers came to America in search of land and wages, not the purity of a strict, religious community. With a marked criminal element living in its growing urban center, the colony experienced increases in the kinds of crimes more familiar to us now: burglary, trafficking in stolen goods, and prostitution.

By the time of the American Revolution, the religious influence of the Puritans had declined and the colonies had a more secular outlook in terms of its criminal codes. In a very short period of time, the laws and crimes in America changed dramatically from infractions of religious codes to the wide-ranging crimes of frontier America. Crimes against God were no longer prosecuted; courts had to make time for the increasing numbers of crimes against property and person. The laws changed, in part, because public sentiment changed. The values of the Puritans were not the same as the new population; the definition of crime therefore changed.

For the next two centuries, crime as we define it today began to flourish due to many complex, interconnected factors: immigration, urbanization, establishment of an entrenched lower class, industrialization, and westward expansion, to name a few. In the early 20th century, our nation experienced several new waves of immigration, further stratification of classes, and the rise of organized crime.

## Defining Crime Today

There are many ways our criminal justice system classifies modern crime. One distinction our legal system makes is through the use of the terms *mala in se* ("wrong in themselves") and *mala prohibita* ("wrong because prohibited"). Although we can see from our early history that a community's social norms and values strongly influence what laws are enacted and for which crimes nonconformists are punished, certain offenses are seen as serious crimes by almost every society. Even if the line between criminal and noncriminal shifts according to public opinion, some offenses such as murder, rape, and theft, which are present in every society, universally are viewed as criminal.<sup>6</sup> The legal term for these most serious crimes is *mala in se*, offenses seen as inherently evil.

*Mala prohibita* refers to those offenses which are criminal because some societies have chosen to regulate them. These include drug abuse, prostitution, gambling, and homosexuality, among others. While the Puritans most strongly equated sin and crime, changes in public opinion have resulted in a change in status of certain criminal activities.

In just the last few decades, for instance, our ideas about criminal behavior as well as the ways in which crimes are prosecuted have been dramatically altered. Decriminalizing abortion and adult pornography (as opposed to obscenity, which remains subject to criminal sanctions) are two modern examples of how radical shifts in public opinion can affect the degree to which a certain behavior is viewed as criminal. Another example is possession of the narcotic heroin. In England, heroin addicts may register with clinics or physicians, and the drug is then available to them through prescription; therefore, heroin possession is not a crime for registered addicts. In the United States, however, it is a felony, the most serious offense for all users.

The basic legal distinction our criminal justice system makes between crimes is the classification of felonies and misdemeanors. A felony is a serious criminal offense punishable by death or imprisonment in a state or federal prison. In the United States, murder, armed robbery, and kidnapping are examples of felonies. A misdemeanor is a less serious act that carries a punishment of a fine or imprisonment for less than one year. Public drunkenness, loitering, or disorderly conduct are examples of misdemeanors.

Another classification of crime, established by the Federal Bureau of Investigation (FBI), distinguishes between violent crimes, such as murder, rape, robbery, aggravated assault, and property crimes, which include burglary, larceny-theft, motor vehicle theft, and arson. These two classifications refer to crimes against the person and crimes against property.

There are many types of criminal behavior that are organized according to the group (government, business, corporation, syndicate) to which the offender belongs. White-collar crime is a term first used by Edwin H. Sutherland in 1940 to describe violations of criminal law by people of upper economic status committed during the course of their occupation. While these crimes were long considered less serious than others, recent studies have shown that the amount of money lost through white-collar crime exceeds that of any other crime. In the last few years, cases against stock market executive Michael Milken and the brokerage house Drexel Burnham Lambert have brought white-collar crime to the front pages of international news. Tax evasion, price fixing, embezzlement, swindling, computer tampering, consumer fraud, and inside-trading scams are but a few of the crimes committed by professionals in the hope of personal, professional, or political gain.

Organized crime is defined as criminal activity by a group of individuals, usually bound by ethnic ties, who create and maintain a crime syndicate based on a corporate business structure—with executives, salaries and promotions, and a highly

organized political structure. American crime syndicates, which first flourished here during the 19th century, continue to operate at all levels of society, from ownership of nightclubs and gambling casinos to the maintenance of the underground economy of the inner cities—gambling, loansharking, drug trafficking, and prostitution. Extortion, corruption of government and police officials, and murder are but a few of the methods used to maintain power and carry on organized crime activities.

Since the 1920s, when Prohibition gave rise to the organization of a national crime syndicate, organized crime groups have continued to broaden their investments through the enormous capital they have amassed and the national contacts they maintain. Though deeply entrenched and sometimes protected in many areas of business, labor, and government as well as inner city underground economies, law enforcement agencies are having some success in their investigations and prosecutions of leading organized crime figures. From 1984 to 1986, convictions were obtained in three out of four major organized crime trials in New York.

Violation of safety regulations designed to protect public health is another type of modern crime that leads to thousands of deaths each year. Types of violations include building violations, sanitary codes of restaurants, and fire ordinances. An absentee landlord whose apartments provide inadequate heating or unsafe wiring is just one example of a businessperson who can be found criminally negligent if an accident resulting in injury or death occurs on his or her property.

Corruption occurs in every branch of government. Bribes, payoffs, and conflicts of interest continue to plague our government. Charles Silberman, a renowned criminologist and sociologist, stated, "If street crime threatens the social fabric of American life, governmental crime destroys the political fabric by undermining the trust and belief in the government on which our entire political system is based".<sup>7</sup>

## Measuring Crime

Although the American public has become more aware of and impatient with the amount of corruption and fraud in its businesses and institutions, our primary concern appears to remain with crimes that we perceive as threats to our personal safety and property.

Public opinion polls taken in 1989 show that the majority of Americans believe that crime is increasing and are now taking measures to protect themselves and their homes.<sup>8</sup> To some extent, the perception that crime is increasing and that our personal safety is in danger is reinforced by the amount of time the media devotes to the subject of violent crime. Still, a recent poll conducted by *Boston* magazine revealed that over half of those polled believe that crime is more serious than the newspapers and television report.<sup>9</sup> Is there more crime today or are we just hearing more about it? How can we be sure that we are not being influenced by those who might use the issue of law and order for their own purposes, such as politicians and newspaper publishers?

Many professionals, including criminologists, researchers, sociologists, and journalists, look to the FBI for current crime statistics. In the 1920s, the International Association of Chiefs of Police formed the Committee on Uniform Crime Records to develop a system of consistent police statistics. To choose which crimes to include, they first established the various offenses known to law enforcement agencies and then evaluated the various crimes on the basis of their seriousness, frequency and region of occurrence, and likelihood of being reported to police. They developed standardized offense definitions to insure nationwide uniformity in crime reporting. Agencies could therefore submit statistics based on these definitions rather than on the criminal codes of their particular state. Then, in 1930, the Attorney General of the United States designated the Federal Bureau of Investigation (FBI) as the federal agency responsible

for collecting, disseminating, and releasing annual reports—based on these definitions—to the nation regarding national crime statistics.

The Uniform Crime Report (UCR) of the FBI, a 355-page document in 1988, is the result of a nationwide effort of about 16,000 city, county, and state law enforcement agencies. Reporting data on crimes organized according to 29 categories of offenses, this report is one of the most complex and fascinating documents of crime in America.

The report creates two crime divisions. Murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson are known as Part I or Crime Index offenses. Data collection for most Part I offenses is quite extensive; included are statistics regarding total volume of offense by geographical region; percentage increase or decrease from previous years; rate of offense per 100,000 inhabitants; total number of persons arrested for the offense; and the clearance rate (or solution rate) for the crime.

To determine who is committing crime in America today, law enforcement officials also include the age, sex, and race of the offender in their reports to the FBI. For murder cases, data on the age, race, and sex of both the victim and offender, victim/offender relationship, type of weapon used, murder circumstance by relationship (felony type, romantic triangle, argument, etc.) are included as well.

Part II crimes are all other offenses, except traffic violations, not included in Part I. These include: fraud, forgery, embezzlement, vandalism, weapons, prostitution, drug abuse violations, gambling, offenses against family and children, disorderly conduct, curfew and loitering, and driving while under the influence. When newscasters refer to the Crime Index, they are referring to the eight crimes in Part I of the Report; when they speak of the total number of arrests, they include both Part I and Part II offenses.



While the UCR is a useful tool for determining general levels of crime in the nation and aiding in the prediction of present and future trends, it is not a perfectly accurate reporting procedure. First, readers may make erroneous generalizations or assumptions about a geographical area, a race of people, or an economic group on the basis of the statistics of this report.

In addition, because crime statistics can only measure how citizens and police are responding to crime—not how many crimes are actually committed—it may well be impossible to measure accurately the total number of crimes committed. It is estimated that only one-third of all crime is reported to the police.

Seasonal changes in population, temporary economic circumstances, and periodic crackdowns of specific offenses can influence the amount of crime in any time period. And simple human error can lead to false data and interpretation. It is also difficult to assess how an individual police officer's personal bias may affect arrest rates.

The recent proliferation of drug-related and gang-related crime dramatically demonstrates the shortcomings of the UCR, for no one is able to determine from the Report the actual correlation between drugs, gangs and crime in our communities. As a result, the FBI is in the process of implementing a new reporting method called the National Incident-Based Reporting System, which will not be in use until the mid-1990s.

In the meantime, another report, issued twice a year by the United States Department of Justice, helps fill in some of the gaps left by the Uniform Crime Report. The Bureau of Justice Statistics' National Crime Survey includes interviews of more than 100,000 people in about 50,000 households. Through these interviews, the survey is able to extract vital information about both reported and unreported crimes, such as wife or child abuse, as well as in-depth characteristics of offenders as perceived by the victims. Combined with the UCR, this survey