

Order, Law, and Crime

**An Introduction
to Criminology**

Raymond J. Michalowski

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San Francisco, California St. Louis, Missouri

McGraw-Hill

A Division of The McGraw-Hill Companies

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First Edition

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Printed and bound by Book-mart Press, Inc.

7 8 9 10 BKM BKM 9 9 8 7

ISBN 0-07-554450-5

Library of Congress Cataloging in Publication Data

Michalowski, Raymond J.
Order, law, and crime.

Includes index.

1. Crime and criminals—United States. 2. Criminal
justice, Administration of—United States. I. Title.
HV6789.M49 1984 364'.973 84-11736
ISBN 0-07-554450-4

PHOTO CREDITS:

Page 43, Histroical Pictures Service; page 135, Charles Gupton/Stock, Boston;
page 257, Barbara Alper/Stock, Boston.

ORDER, LAW, AND CRIME
An Introduction to Criminology

*To my parents,
Raymond and Angela Michalowski*

Preface

This book was born in irony. Ten years ago while completing my doctoral studies, I began to sense that I had learned considerably more about crime and criminals than about the relationship between crime and *society*. The irony was that I was completing formal education in the central traditions of *sociological* criminology. Part of this irony is reflected in the fact that both then and now the majority of sociologically oriented books in criminology take as unproblematic the proposition that crime creates the need for law, and law in turn creates order. Questions regarding the interrelationships between social organization, the perception of social harm, and the dynamics of social control are often unexplored or given brief treatment. This creates the impression that the only relevant issues in criminology are what causes people to become common criminals and how they can be controlled.

Order, Law, and Crime: An Introduction to Criminology takes a different approach, reflecting a decade of research, teaching, and writing aimed at creating a sociological framework for the study of crime and justice. Its purpose is to introduce the student of criminology or criminal justice to the sociological questions regarding the relationship between social organization and the social control of harmful behaviors in America. To do this it begins with the proposition that the underlying elements of social organization—particularly the production and distribution of economic, political, and cultural resources—largely shape the perception of what constitutes unacceptable social injury. It is this social construction of harm which gives form and character to the processes of law and justice. That is, the nature of the social order in any society lies at the roots of both the concept of trouble and the options available for its control. My aim is to bring to the forefront for students of crime and society questions that until relatively recently have been submerged beneath a relatively unsociological sociology of crime. The roots of this un-sociology of crime are found in the peculiar history of sociology as discipline.

Nearly a century and a half ago the social philosopher August Comte held that, because of its ability to synthesize the knowledge of more nar-

rowly focused academic pursuits into an overall understanding of human society, sociology would emerge as the "queen of the sciences." Not only has this grandiose promise remained unfulfilled, but in America particularly sociology moved in precisely the opposite direction, toward narrowness and specialization. Struggling to carve out a distinct and independent academic niche in the middle years of the twentieth century, American sociology came to rely heavily on concepts of voluntaristic action and the tools of opinion survey. In its attempt to achieve independent validation American *sociology* ironically came to be dominated by the theories and methods of aggregate *psychology*. There was relatively little integration of macrosocial processes in history, economy, and politics into the overall theory and methods of the discipline. Such topics were overlooked or examined only in terms of the specific social problems they generated, such as poverty and crime.

Nowhere has this trend been more obvious than in the sociological study of crime. Until the 1960s, and the rise of government funding for criminal justice research and criminal justice education, the study of crime in America was largely conducted as a subdiscipline of sociology. Within this subdiscipline the primary endeavors were to explain why certain *individuals* commit common crimes against persons or property, and to identify the most effective methods to control and/or rehabilitate them. Much less attention was given to fundamentally sociological questions regarding the relationships between social organization, social control, and criminal activity.

In order to integrate these topics into the study of crime I have followed a path somewhat different than that found in more traditional criminological writings. Considerably more attention is given to historic, economic, and political forces than is normally the case, and crimes of the powerful, such as corporate and political wrongdoing, are treated as topics equal in importance to those everyday offenses that constitute the popular image of the "crime problem." Correspondingly less attention is given to traditional, individualistically oriented theories of crime causation. Anyone familiar with criminology texts will notice the absence of a chapter devoted specifically to "theories of crime." There is both a theoretical and a pedagogical reason for this. First, since most theories of crime deal with the behavioral etiology of common crime, they are more appropriately considered theories of *criminality* rather than theories about crime as a sociologically constructed phenomenon. To devote an early chapter to theories of individual criminality creates the misapprehension that the sociological study of crime should be understood primarily in terms of the social-psychology of criminals—contradictory to the approach taken in this volume. Pedagogically, since most criminological theories seek to explain the behavioral causes of *common crimes* rather than crime in general, it is more appropriate to address them in chapters devoted to common crime rather than to isolate them in a "theories" chapter. This is particularly important here since common crime is treated not as the totality of crime, but rather as only *one* of the sub-sets of lawbreaking.

If the study of society tells us anything, it is that individuals accomplish very little “on their own.” This book, like most social endeavors, has been shaped by the contributions and help of far more people than could ever be individually acknowledged. There are, however, some to whom my debt deserves more than an anonymous and general nod. My sincere gratitude is extended to Simon Dinitz and Paul Friday for pointing out the road; to Tony Platt, Paul Takagi, Richard Quinney, and William Chambliss whose own works, and criticisms of mine, served as important guideposts on the journey; to Walter Kossman, the first editor to believe; to Stephen Pfohl, Kenneth Robertsen, and Ronald Kramer for critiques, support, and friendship; to my colleague Michael Pearson for friendship, dialogue at many critical moments, and open access to his library; to Jill Dubisch, the anthropologist in my life who taught me so much, suffered through the entire process, and never failed to be the gentle sun on my back as I followed my way; and finally to Sam, my son, who was understanding of a father who was often busier than he should have been.

Raymond J. Michalowski

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PART I

A Sociological Basis for the Study of Crime

BEAUTY FOUND **STIFIES HE NEVER**
COAT SLASHED **RECEIVED PAYOFFS**

EX-CON RAPIST CHARGED
COED'S MURDER

Cops bust up numbers ring

SIX COPS NAMED IN
BURGLAR ROUNDUP

guilty in sex case

Ex-Police Inspector Charged With Extortion in Philadelphia

CHAPTER 1

Crime, Criminology, and the Crime Problem: An Introduction

CRIME AND CRIMINOLOGY

We are about to begin an intellectual journey into the field of criminology—a journey that I hope will lead us to a sociological understanding of crime. Our starting point is the question, “What is criminology?”

The simplest and most common answer to this question is that *criminology is the scientific study of crime*. Since it is a simple answer, however, this statement tells us very little about the actual content and conduct of criminology. While it is often said that criminology is the study of crime, in actuality criminology has traditionally focused more on the *crime problem* than on crime in general. Thus our first question leads us to another: “What is the difference between “crime” and the “crime problem”?”

The Crime Problem versus the Problem of Crime

Crime is most often defined as any behavior *designated as criminal by law*, or as criminologist Paul Tappan wrote some years ago:

Crime is an intentional act or omission in violation of criminal law . . . committed without defense or justification, and sanctioned by the state as a felony or misdemeanor.¹

This definition encompasses a wide variety of behaviors. Many of these behaviors are not what either criminologists or people in general mean when they talk about “crime.” That is, many things that fit the general definition of crime are not included within the “crime problem.” Consider the following examples:

In May 1978, David Berkowitz pleaded guilty to the murder of six women in New York City, bringing to an end the “Son of Sam” killings that had terrorized that city for nearly a year. Berkowitz was given a sentence of twenty-five years to life in prison.²

On April 27, 1978, fifty-one workers were killed in Willow Island, West Virginia, when the generating plant cooling tower on which they were working collapsed. Subsequent investigation by the Occupational Safety and Health Administration

(OHSA) revealed that “the disaster was the direct result of illegal corner-cutting on the part of Research-Cottrel Inc., a New Jersey firm that was building the tower.” OHSA proposed fining the company \$10,000 for each of the ten willful violations of Federal safety rules.³

On April 6, 1979, a lone gunman entered a branch bank in Charlotte, North Carolina, approached a teller, demanded that she fill a bag with cash, and escaped with an undisclosed amount of money.⁴

In May, 1978, a Federal grand jury indicted Rep. Charles Diggs of Michigan on charges of diverting \$110,000 in government funds for his own personal use. The thirty-five-count indictment alleged that Diggs had given salary increases to associates with the understanding that they would return the money to him, presumably to pay off mounting personal debts.⁵

In 1978 the National Highway Traffic Safety Administration (NHTSA) began an investigation into the growing number of consumer complaints about the failure of Firestone Radial 500 tires. Early in 1979 NHTSA reported that for three years after Firestone first became aware of the tire's defect, it had continued to produce this brand of tires, which were subsequently responsible for forty-one deaths and at least seventy injuries.⁶

The president of an Oklahoma meat firm was fined \$2,000 and placed on six months probation in April, 1978, after being convicted of adding soy-protein extender to 40,000 pounds of meat labeled “ground beef.”⁷

Each of these examples describes a behavior that is prohibited by law and potentially punishable by fines, imprisonment, or both. That is, each one fits the definition of crime. Yet for most Americans the term “crime” is largely limited to images of rapists hiding in shadowy places, masked burglars sneaking into homes under the cover of night, muggers lurking in apartment lobbies, and similar traditional threats to the security of our person and property. Many other criminal acts—like the examples of consumer fraud, violation of worker safety regulations, political corruption, and sale of known hazardous products described above—figure much less prominently in the everyday conception of crime. This is true despite the fact that (1) such acts fit the standard definition of crime and (2) the death, injury, and monetary loss caused by corporate and political crimes *substantially exceeds* that caused by more commonly acknowledged criminal offenses.⁸

Generally when people talk about crime they are really talking about the *crime problem*. That is, they are talking about a *social phenomenon about which they share a common concern and about which they feel action should be taken*. Some time ago the sociologist Herbert Blumer noted that social phenomena become social problems only when individuals take collective action to do something about them.⁹ It is in this sense, *and this sense alone*, that the ordinary crimes of murder, rape, robbery, burglary, and theft constitute a greater crime problem than do deadly and costly acts of corporate and political crime. Because something is generally recognized as a social problem does not necessarily mean that it is more serious for individual and social well-being than something that is less clearly a part of everyday concern—only that it is more recognized.

It is important that a sociology of crime include an understanding of

how some forms of injury come to be part of the common perceptions about crime while others, often equally grave in their consequences, remain outside our conception of crime. This book focuses on the *problem of crime*, not just the “crime problem.” That is, we will examine closely the process by which societies choose to regard some forms of harm as criminal while leaving many others effectively beyond the reach of the law.

Criminology and the Crime Problem

Like the general public, criminologists have tended to define the problem of crime primarily in terms of traditional offenses against persons and property. In 1959 criminologist Albert Cohen observed that the question most commonly asked by criminologists was “How do people become the kinds of individuals who commit [common] criminal acts?”¹⁰ While this question has dominated criminological inquiry for most of its history, there have been several changes in recent years.

One key change was an increasing concern with studying the criminal justice system. This development was fueled in no small part by a growing Federal role in the control of crime and the subsequent availability of support for research into the justice system. In 1967 the National Institute of Law Enforcement and Administration of Justice, the research arm of the newly created Law Enforcement Assistance Administration (LEAA), began dispersing millions of dollars to finance criminological research. The Institute, however, was more interested in funding studies of “what to do about the ‘crime problem’ than in financing studies about why there was a crime ‘problem.’”¹¹ As a result the field of criminology became

“... more and more concerned with increasing the efficiency of the punitive legal apparatus and less and less concerned with trying to discover the processes generating the criminals to be punished and the laws and personnel doing the punishing.”¹²

This focus on common crimes and the criminal justice system is clearly reflected in the contemporary content of criminological writings. Between 1979 and 1981, for example, three major criminology journals—*Criminology* (the official journal of the American Society of Criminology), *Crime and Delinquency* (the journal of the National Council on Crime and Delinquency), and the *Journal of Criminal Law and Criminology* (one of the oldest journals in the field)—published a total of 288 articles. Of these, 29 percent were devoted to the patterns or causes of common crime and 49 percent were devoted to how various components of the justice system handle common crimes. Thus 78 percent—228 of the 292 articles published—focused on the behavior and/or control of common offenders. Less than 5 percent of the articles were concerned with white-collar or corporate offenses.¹³

What then is criminology? Criminology for the most part is a patchwork quilt of theory and research from a variety of academic disciplines (e.g.,

sociology, political science, economics, history, psychology, etc.) focused primarily on the causes and control of the "crime problem." Its guiding questions have been predominately "What are the characteristics of the common criminal?" and "How can the crime problem be alleviated through advances or improvements in the areas of crime control and rehabilitation?" Questions about the relationship of law to economic and political elements of social organization and investigations of the crimes and social injuries committed by the more powerful members of society have figured much less prominently in the history of criminological inquiry. At times these latter questions have been addressed with considerable vigor, but those who have done so have always been a minority. This has been true despite the fact that "a compelling case can be made that the discovery of answers to questions such as these ought to be the first order of business."¹⁴

Our own examination of criminology will not be limited to the "crime problem" as defined by everyday discussions about crime. Instead, basic questions about the nature of social organization, the relationship of social organization to state power and state law, and the relationship of state law to the definition and conception of crime will be examined as the "first order of business." We will then turn to an examination of specific patterns of crime and social injury in America.

CRIMINALIZATION AND THE VARIETIES OF CRIMINOLOGY

Criminalization is the process by which behaviors and individuals are transformed into crime and criminals. From a sociological standpoint this process has three components. The first and most basic component involves the processes by which *social order* is created. These include (1) the fundamental ordering of social relations so that those things necessary for social survival can be produced and distributed in some predictable fashion and (2) the development of values, beliefs, and ideas related to the concrete tasks of production and distribution. These can be called respectively *socioeconomic processes* and *ideological processes*. These processes determine what kind of behaviors will be considered "trouble" by a society, thereby providing the raw material out of which the legal definition of crime will be constructed.

The second component of the criminalization process involves the *legal order*. The term "legal order" refers to (1) the process by which power becomes centralized within the institutions of the political state, (2) the character and content of these institutions, and (3) the process by which specific political entities such as legislatures and judges come to define certain behaviors as crimes, that is, targets for state control.

The final component of the criminalization process is the actual outputs of the legal order. These are the individuals who have been defined as criminal and processed through one or more of the institutions of the justice system.

Criminology can be divided into three general branches, or "paradigms." These are (1) positivist criminology/criminal justice, (2) interactionist crim-