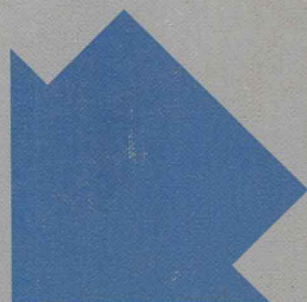
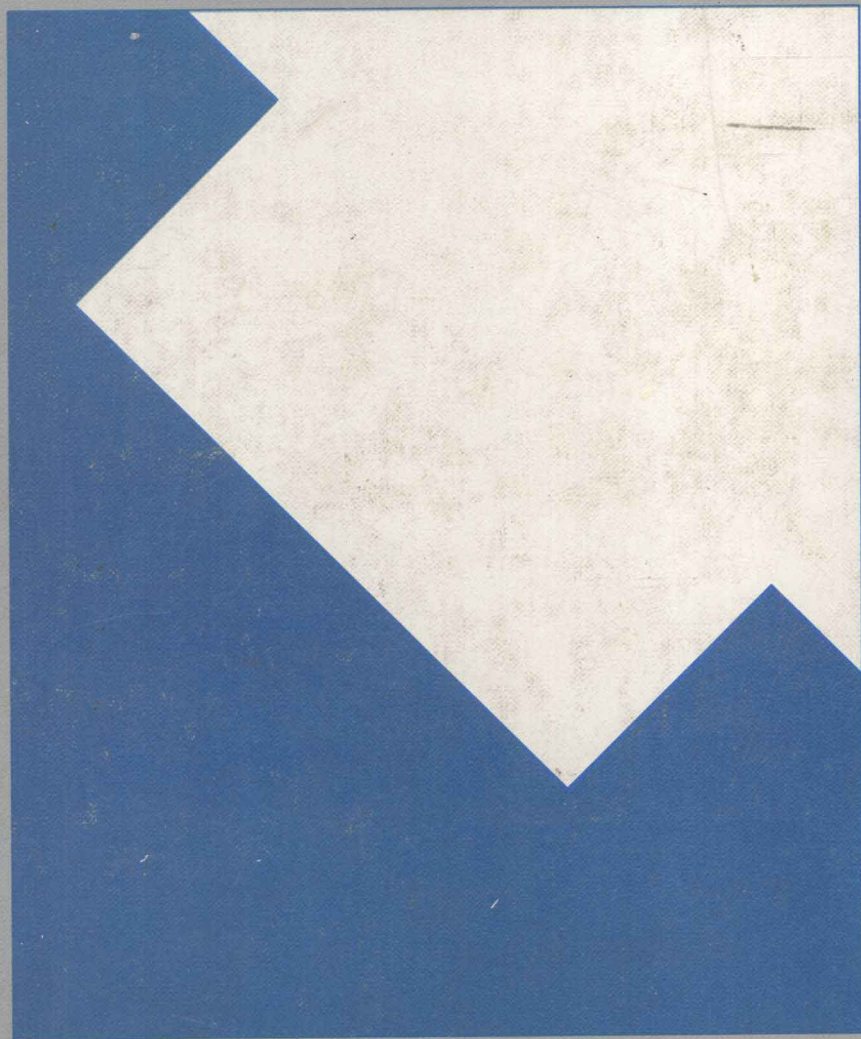


John E. Conklin

CRIMI



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CRIMINOLOGY

JOHN E. CONKLIN

Tufts University

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For Annie and Chris

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PREFACE

Criminology has undergone a number of changes in recent years. These changes are reflected in the choice of topics and the organization of this book.

The first chapter introduces the reader to the field of criminology by providing a number of specific examples of what criminologists study and how they go about studying it. This approach both introduces the reader to the alternative research strategies and illustrates the nature of the criminological enterprise. Chapter 2 encourages the reader to see crime as a social problem by pointing out the financial, physical, and social costs of crime.

Chapter 3 introduces the reader to the measurement of crime with a brief history of criminology which is oriented toward the emergence of a modern empirical criminology. The reader is then presented with the concept of a crime rate and the various ways in which rates are measured. The advantages and disadvantages of measuring crime with official statistics, victimization surveys and self-report questionnaires are considered. In Chapter 4 this material on the measurement of crime is applied to the study of the social distribution of crime rates; this chapter examines variations in crime rates by geographic region, size of a community, time, sex, age, race, and social class.

Chapter 5 looks at biological and psychological explanations of criminal behavior. In Chapter 6 the economic and social causes of white-collar crime, organized crime and conventional crime are explored. This chapter includes a discussion of Merton's theory of anomie, Cloward and Ohlin's theory of differential opportunity, and Wolfgang and Ferracuti's theory of the subculture of violence.

Chapters 7, 8, and 9 provide an integrated approach to crime causation which is applicable to conventional crime and to such nonconventional crimes as white-collar offenses. Chapter 7 looks at the neutralization of the law by criminals and at Hirschi's control theory of delinquency. The role of the family, the school, and other social institutions in crime causation are considered here. People who can neutralize the law or who lack conventional ties to the social order may turn to crime if they learn to commit crime. Chapter 8 considers such aspects of the learning process as Sutherland's theory of differential association, the labeling perspective, and the rewards-risks model of criminal behavior. Chapter 9 looks at opportunities for crime, including the selection of targets and the role of victim-offender relationships in crime causation. This chapter also deals with the planning and execution of crime. These three chapters

place a greater emphasis than other criminology texts on the question of *why* people commit crime.

Chapter 10 discusses recent studies of criminal careers and the commonly neglected problem of why offenders “retire” from crime.

Chapter 11 focuses on the ways in which people react to crime. The importance of public support for the law and the informal control of crime by the community are examined. Bystander response to crime and such collective responses to crime as vigilante groups are also treated in this chapter. This material is rarely included in criminology texts but is important in understanding why society deals with crime as it does.

Chapters 12, 13, and 14 present a somewhat unusual approach to the study of the criminal justice system. Much of the current debate over criminal justice reform and crime prevention is based on differing ideas about what function the criminal justice system should serve for society: Should it deter people from crime, punish offenders because they deserve to suffer, or try to rehabilitate offenders? These three chapters look at the criminal justice system from the perspective of the goals of punishment; they also examine the criminal justice system in light of the ideas of crime causation discussed in earlier chapters. Chapter 12 considers the nature of deterrence, recent research on deterrence, and the ways in which the deterrence perspective affects the police, courts, and prisons. This chapter also considers incapacitation, the idea that crime can be prevented by taking offenders off the street for a period of time. Chapter 13 considers retribution or just deserts, the idea that convicted criminals should be made to suffer in proportion to the harm they have inflicted on others. The problem of creating a just system of penalties is considered; the relationship between retribution and the police, courts, and prisons is also explored. This chapter also looks at restitution, the idea that victims deserve to be repaid for their losses. Chapter 14 examines the use of the rehabilitation model by the police, courts, and prisons. It also introduces the reader to the problem of evaluating the effectiveness of rehabilitation programs and considers recent research on the treatment of offenders.

Chapter 15 delineates three alternative models of reducing crime by looking at the recent political use of the crime issue. This chapter weighs the possibility of reducing crime by reforming the criminal justice system and by attacking the social causes of criminal behavior.

This book treats the traditional topics of criminology courses, plus a number of important topics often neglected in such courses. The book is organized around concepts rather than around specific types of crime; thus chapters are entitled “Social Control and Commitment to the Law” and “Learning to Commit Crime” rather than “Property Crimes” and “White-Collar Crime.” Concepts are illustrated with examples from conventional crime as well as examples of such nonconventional offenses as white-collar crime. This produces a better-integrated and more general approach to the study of crime and provides the reader with the tools to analyze a variety of crimes.

I would like to thank Professor David A. Ward and Professor Harwin L. Voss for their constructive suggestions for the revision of an earlier draft of

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John E. Conklin

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The Study of Crime

All societies have rules that govern the behavior of their members. These rules or *social norms* state expectations about what will be considered appropriate behavior for particular people in specific situations. These norms reflect people's *values*, those things that they consider worthy, desirable, or proper. The violation of social norms constitutes *deviance*, which may be approved, as with heroism, or disapproved, as with cowardice. In other words, it is possible to deviate by "overconforming" to a norm (for example, turning in a fifty-page seminar paper) or by "underconforming" to a norm (for example, turning in a two-page seminar paper). Deviance in a disapproved direction is often met with a *sanction*, an effort to ensure future conformity to the social norm and to punish past nonconformity to the norm; an example would be a failing grade given to a student who turned in a two-page paper when the course requirement was for a twenty-page paper. Sanctions may be informal, such as a critical look or a spanking, or formal, such as a military trial of a deserter or a criminal trial of an accused murderer.

Some of society's social norms become legal norms. Through the political and judicial process, *laws* are passed and interpreted; in this way, informal social norms sometimes become formal legal norms. Laws are thus a subset of social norms; they are those norms that are written down and formalized by the political institutions of a society. Over the last one hundred and fifty years problems that were once seen as private have increasingly been redefined as public matters which warrant the

intervention of such official agencies of the state as the police, the courts, and the prisons.¹

A *tort* is a civil wrong, for which a plaintiff can sue a defendant who is alleged to have caused him damages by the commission of the tort. The usual outcome of such a civil case is monetary restitution, in which money damages are paid by the losing defendant to the victorious plaintiff. In contrast to a tort is a *crime*, an act that violates the criminal law and is punishable by the state. A crime is considered an offense against the state rather than an act against a specific victim. Thus, a crime of robbery will be dealt with by the courts as *State v. Jones* rather than as *Smith v. Jones*, the form a civil case would take. Although Smith as the victim of a robbery could sue Jones, the alleged robber, in a civil court to recover money for damages caused by Jones during the robbery, such as loss of property or bodily injury, this occurs infrequently, in part because Smith's legal costs would probably outweigh his financial gain if he won the civil case against Jones. In the criminal case of *State v. Jones*, a district attorney prosecutes Jones for the offense of robbery and seeks a conviction and criminal punishment such as probation, a monetary fine (which is paid to the state rather than the victim), or imprisonment.

The criminal law is ideally specific in nature, uniform in application, dispassionate in enforcement, and reflective of informal social norms.² Criminal law is a means of social control over the behavior of society's members. It allows or prohibits behavior for particular individuals in specific situations; thus, a police officer is allowed to use lethal force to stop an escaping felon, but a private citizen generally is not permitted to kill an escaping felon. The same act is treated differently because of each individual's *social role* at the time of the event. The law is also specific to the *situation*; thus, a person who fears for his life during a crime in which he is victimized may use lethal force to protect himself and may have his action considered justifiable homicide, but generally people may not use lethal force to prevent simple thefts without facing charges of murder or manslaughter.

Crime is behavior that is subject to legally defined punishment. Indeed, some sociologists have claimed that it is the punishability of an act which defines a given behavior as a crime.³ The French sociologist Emile Durkheim asserted in the late nineteenth century that punishment is the defining characteristic of crime and that other characteristics of crime, such as the social harm it produces, are corollaries rather than defining traits of crime.⁴ Indeed, "victimless crimes" such as gambling and homosexuality lack participants who feel victimized and often involve no obvious harm to anyone.⁵

Crime usually involves criminal intent, the willed desire to commit

an act that violates the criminal law. Before the twelfth century, there was no idea in the law of a guilty mind that formed criminal intent; guilt was then based on the causing of injury. Over time, the idea of intent was gradually introduced into the law, in part as a result of the influence of Christian teachings on sin and moral blame.⁶ Still, not all acts that are designated as crimes today involve criminal intent. Some crimes arise from negligence or recklessness, whereas other crimes are strict liability offenses, meaning that there is no need to prove criminal intent in order to convict a person of these crimes. For example, having sexual intercourse with a female under the legal age of consent constitutes the crime of statutory rape, whether or not the male knows the age of the female or intends to break the law when the sexual act is performed.

However, in most cases crime does require a causal connection among criminal intent, criminal conduct, and harm; thus, an act that violates the law and causes harm may not be treated as a crime by the legal system if criminal intent is absent. In part this is based on the idea that punishment only makes sense if the violator of the law is responsible for his behavior. For intent to exist, an individual must have criminal capacity; that is, he must be in control of his own behavior.⁷ Capacity is lacking if the person acts under duress, is legally insane, is under the age required by the law for having criminal capacity (usually about seven years old), or is not legally an adult (between the ages of eight and eighteen, in most cases). Those who violate the law and who fall in the last category may be found to be juvenile delinquents by the courts. The status of *juvenile delinquency* is applied to those who violate the law or commit a series of "juvenile status offenses," acts such as drinking alcoholic beverages when below the legal age and truancy, which are violations only because the offender is not an adult. The label "delinquent" is applied to youthful offenders under the age of eighteen in thirty-two states and the District of Columbia, to those under the age of seventeen in twelve states, and to those under the age of sixteen in the remaining six states.⁸ The emphasis of the juvenile justice system is on the offender rather than on the specific act he has committed; the offender's juvenile status is thought to confer a type of diminished criminal capacity on him. Thus, when a thirteen-year-old boy in Texas shot and killed his English teacher in the classroom, the youth did not legally commit a crime, but instead became the subject of a juvenile delinquency proceeding; criminal capacity was absent.⁹ However, in many states offenders who have not reached adulthood may be treated as if they were adults if the offense they are accused of having committed fits certain legally defined criteria. In general, criminal responsibility is treated as being nearly synonymous with punishability, which is a function of the situation of the crime and the characteristics of the offender.¹⁰

If the offender is criminally responsible for his violation of the law, the criminal justice system may impose formal sanctions against him. The consequences of formal sanctions differ from those of such informal sanctions as social embarrassment and ostracism from a group. Informal sanctions often have devastating effects on the offender because of the importance to him of social relationships and the good opinion of others. Formal sanctions meted out by the criminal justice system include the loss of property through a fine, the restriction of certain freedoms through probation, the loss of liberty through imprisonment, and even the loss of life through the death penalty. Whereas informal social norms are commonly cast in terms of a positive goal of how one should behave (for example, completing a term paper for a course), legal norms are more often stated in terms of what types of behavior one should avoid (for example, committing a robbery).

Critical to the functioning of the criminal law is the consistency between the formal laws of a society and the informal social norms of that society. In a society such as the United States, which includes many social groups that have different social norms, it is inevitable that certain laws will not be supported by some groups. Thus a significant proportion of the American public favors the legalization of the use of marijuana, although most people still support the laws that now exist to punish those who possess, sell, or use the drug. Many Americans also disapprove of laws that limit or prohibit off-track gambling. Laws of this type create what have been referred to as "victimless crimes"; because no one considers himself to be a victim of such offenses, most violations are not reported to the police. However, even punishment for crimes that clearly do have a victim is sometimes not fully supported by informal social norms. For example, a few decades ago an immigrant to the United States from Italy killed a young man who had seduced his daughter; the father acted in the name of protecting his family's honor and was surprised to be arrested for killing the young man.¹¹ Here the law was in conflict with an informal social norm about when it was acceptable to kill.

In simple societies such as tribal groups, informal social norms often overlap to a great extent with the law. In these societies there is general agreement between the popular attitudes toward right and wrong and the legal definitions of crime. This reflects a stable society, although it may be one that is also characterized by stagnation and unresponsiveness to external change. In such a society the rights of individuals may be jeopardized by "the tyranny of the majority"; the few may be forced to conform to the will of the many.¹² In complex, industrialized societies such as the United States, there will be less overlap between the law and informal social norms. If this lack of consistency between the law

and informal social norms becomes too great, the government may have to resort to harsh sanctions to enforce the law against those whose social norms and social behavior conflict with the law. This may eventually undermine popular support for the government. However, some conflict between the law and informal social norms may keep a society flexible and responsive to change.

The law is most likely to reflect informal social norms in societies with a “rule of law,” a system in which the law is made through specified channels, announced to the public, and enforced in a consistent fashion.¹³ This usually involves popular participation in government, which often occurs through the election of representatives who make the law. The opposite situation exists when a dictator takes power by force and does not respond to the popular will. Institutions and organizations that permit or encourage effective popular communication with lawmakers increase the consistency between informal social norms and the law. Consistency is also greater if laws are effectively communicated to the public by lawmakers; this educates the public so that their behavior and their social norms may change to conform more closely with legal norms.

Social Origins of the Criminal Law

The criminal law has a long history and is the product of many forces. An examination of all these factors would require a massive book. In this section we look at some of the primary social sources of the criminal law, although the history of the law is much more complex than this brief overview can indicate.

The fact that different societies have different definitions of crime and different processes for dealing with violators of the criminal law suggests that the criminal law is a social phenomenon. Because the criminal law is a social creation, crime itself is a social creation. Behavior that is defined as crime in one society may exist in a different society but not be defined as crime there. This can be seen by the variations in the legal definition of the theft of property in various societies. Although the theft of property is defined as a crime in most societies, there are noticeable differences in the ways in which such behavior is treated in different societies. For example, in Norway petty theft from a relative with whom the thief lives is not prosecuted as a crime. In Colombia, a thief is exempted from criminal sanctions if he can show a pressing need for food or clothing for himself or his family, the absence of legal means to satisfy those needs, that he used no violence to perpetrate the theft, and that he took no more than was necessary to meet

his needs.¹⁴ Even within the United States there are variations in the definition of theft and in the punishment for the crime. Some states define the cutoff point between petty larceny and grand larceny, for which there are significantly different sanctions, as \$50, whereas other states draw the line at \$75 or \$100. In industrialized societies such as the United States, taking a neighbor's property for personal use generally will be regarded as a crime, but in certain tribal societies one actually may be expected to take and use a neighbor's property because of a norm of communal sharing in times of need. Why one society permits such behavior while another society treats the same behavior as a crime requires a careful examination of the social structure, values, and level of economic development of each society.

An important but often perplexing problem is why some acts are defined as crimes whereas other acts are not defined as crimes.¹⁵ For various reasons, some acts evoke *moral indignation*, a sense of outrage that asserts that those who "do wrong" should be punished for justice to be done and for their own good. This urge to punish is sometimes a "disinterested" tendency to inflict punishment, meaning that the motivation to punish does not represent narrow economic interests but rather a sense of morality.¹⁶ Sometimes moral indignation is aroused and organized by "moral entrepreneurs," people who promote the idea that a certain type of behavior is harmful and should be made the subject of a criminal law.¹⁷ Such moral entrepreneurs sometimes use propaganda to arouse support for a change in the law; these "mobilizers of bias" frequently lack direct contact with those groups that they are condemning.¹⁸ Although moral entrepreneurship is relatively uncommon for such "conventional crimes" as murder, rape, robbery, and larceny—crimes that have obvious victims and pose clear threats to the security of person and property—other types of behavior have attracted the attention of moral entrepreneurs. A good example is Anita Bryant's campaign to prevent and overturn local laws guaranteeing homosexuals the same legal rights as other citizens. If the law defines certain behavior as illegal or limits the rights of certain groups, the law itself may influence public attitudes toward that behavior over time, although such attitudes may in turn reinforce the strength of the law and make legal reform unlikely. Laws may thus influence popular attitudes as well as arise from such attitudes.¹⁹

The criminalization of behavior is usually political in nature, with the criminal law benefiting one group to the detriment of another group. The *conflict perspective* on the criminal law suggests that the nature of the criminal law is closely intertwined with the distribution of political power and economic resources in a society.²⁰ Conflict theorists argue that only certain types of behavior are legally defined as crimes, and

that those with power and resources in a given society determine which types of behavior will be defined as crimes and which types will not be defined as crimes. The criminal law in a capitalist nation reflects the will of the economic elite; behavior that threatens the interests of that elite will be harshly sanctioned. The conflict perspective claims that the criminal justice system in such a society will be biased against those who are disadvantaged by social class or minority-group status. The claim is made that lower-class people are more apt than middle-class people to be watched by the police, to be arrested in suspicious situations, to be held in jail rather than released on bail, to be tried in court, to be found guilty, and to receive harsh sentences for their crimes.²¹ However, much recent evidence on the operation of the criminal justice system in the United States does not support this claim of discrimination by the criminal justice system against those of low social class or those who are members of minority groups.²²

The conflict perspective is useful in directing attention to the origin of criminal laws. It forces criminologists to reexamine their premises and their conclusions. This perspective redirects attention from the “conventional crimes” of murder, rape, and robbery to crimes such as white-collar crime and government corruption. However, most work by conflict criminologists has drawn on a few selected case studies to buttress the arguments of the conflict perspective. There is no conclusive evidence of the types of discrimination in the criminal justice system that the conflict perspective asserts must exist to serve the interests of the capitalist elite. The conflict perspective also ignores the fact that many crimes are violations of norms that are strongly adhered to by members of all social classes, and indeed by members of noncapitalist societies as well as of capitalist ones. The economic interests of a capitalist elite do not explain very well why members of all social classes and all minority groups, as well as members of almost all societies, support criminal sanctions for such crimes as murder, rape, and theft.

In contrast to the conflict perspective on the political nature of all criminal law stands the *consensus perspective*. This position is that the criminal law in any society represents social consensus or agreement about what types of behavior should be punished by the state, rather than the imposition of ideas about what behavior should be criminalized by one group on another. The consensus position is that the law reflects the shared values and norms of the whole society rather than the norms and values of particular social groups. Consensus is derived from discussion and compromise by the elected lawmakers in a society, rather than imposed on the society by one economic interest group.²³

Probably the best way to view the criminal law is to examine the degree of consensus and the degree of conflict involved in the passage