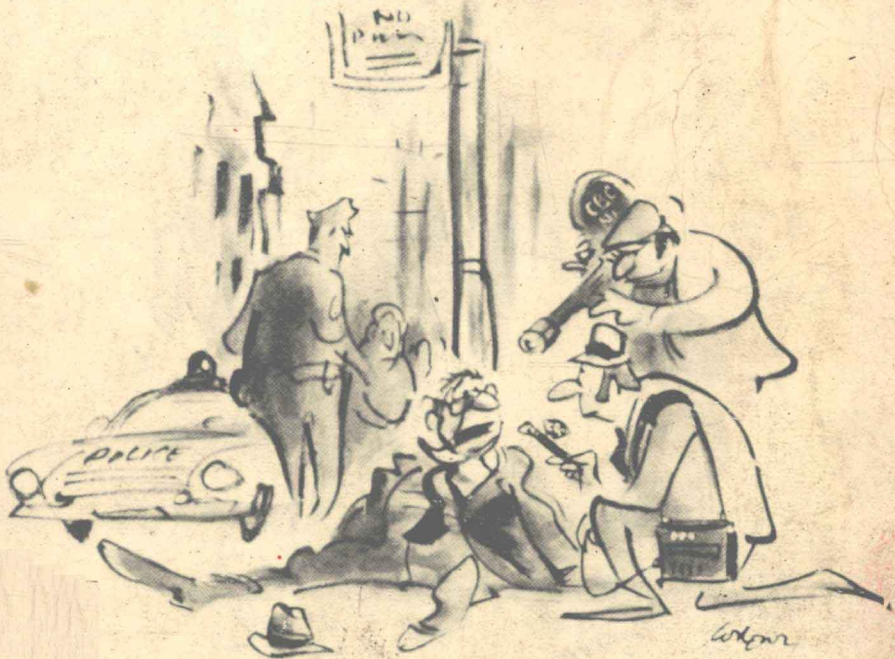


**McGraw-Hill  
Series in  
Criminology and  
Criminal Justice**

# **Explaining Crime**

Third Edition

Gwynn Nettler



*"How do I feel about being mugged? Well, naturally I didn't enjoy it, and I certainly don't condone violence or threats of violence as a means toward social change. However, I can empathize with my assailant and realize that in his terms this is a valid response to the deteriorating socio-economic situation in which we find ourselves."*

# EXPLAINING CRIME

THIRD EDITION

**Gwynn Nettler**

Emeritus Professor of Sociology  
The University of Alberta, Canada

**McGRAW-HILL BOOK COMPANY**

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## **EXPLAINING CRIME**

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# EXPLAINING CRIME

## **McGraw-Hill Series in Criminology and Criminal Justice**

**Binder and Geis:** METHODS OF RESEARCH IN CRIMINOLOGY AND  
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**Walker:** THE POLICE IN AMERICA: An Introduction

**This book is dedicated to the taxpayers  
of the Province of Alberta, who paid me  
to teach some of them and their children  
and who gave me time to read and write.**

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# PREFACE

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"The seeds of every crime are in each of us," Leo Tolstoy believed. The point of Tolstoy's aphorism is to indicate a possibility common to all of us. The poverty of his statement is that it does not describe how the criminal seeds are germinated. On this, we dispute, and the victim in the cartoon on the cover of this book is no more confused in his response to crime than many of us.

Professional students of crime, like nonprofessionals, quarrel about which wrongs should be considered crimes. We vacillate between sympathy for the criminal and concern for the victim. We argue whether the "violence of conditions" justifies the violence of persons, and we debate whether crimes "understandably motivated" should be excused by the force of their circumstances.

Intellectuals—the occupationally thoughtful—can be heard praising and condemning arson, theft, and murder depending on their agreement with the political motives of offenders and their approval or disapproval of victims. The general public, as usual, stands on a middle ground between the stimulating ideologies about which academics take sides. The citizenry thinks it knows what it means by "crime." Both its definition of crime and its sense of justice remain more universal and more historical than the current claims of political advocates. However, when nonprofessionals turn to professionals for explanations of crime and guidance in policy, they receive a potpourri of answers that leave them as "balanced," or as muddled, as the citizen in our cartoon.

Criminologists dispute what should be called "crime" and how to count crime. We quarrel, too, about where to lay the blame. Some explanations of crime hold the actor responsible for his or her behavior and look for the causes of crime in the criminal's difference from lawful people. Other explanations blame the actor's circumstances; still others blame the "moral entrepreneurs" who have the power to define crime and to enforce their definitions through police and courts.

These disputes will be described and criticized as they address three issues: *definition*, *measurement*, and *explanation*. Our standard of criticism is concerned with the *clarity* of concepts and hypotheses, with the *evidence* for a theory of crime production, and with the practical *consequences* of applying a theory. It will be apparent that some theories of human behavior that appear plausible on paper do not work well with people.

All the explanations to be described say some true things. The prices we pay when we believe one explanation rather than another vary, however.

The exposition concludes with a statement about conditions that generate crime. This brief roster of criminogenic conditions provides a partial account of the costs of reducing crime.

## **ACKNOWLEDGMENTS**

The third edition of *Explaining Crime* revises some earlier arguments, incorporates recent research, and expands descriptions of crime production. A booklet of discussion and test questions is available for instructors.

Fellow students have read portions of this text and, while they are not to be blamed for my mistakes, they are to be thanked for their help. My appreciation is due Ronald L. Akers, William R. Arnold, William R. Avison, John Braithwaite, Lawrence E. Cohen, Travis Hirschi, Richard Jung, James B. McKee, Edward Sagarin, James F. Short, Jr., and Robert A. Silverman. I am also indebted to Rodney Quinn for research assistance.

*Gwynn Nettler*



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# CRIMES AND OTHER WRONGS

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## DEFINING WRONGS: CRIME

“Crime” is one of the words used to describe the wrongs we do ourselves and others. “Wrong” is, of course, a moral term. It represents an *evaluation* of acts or conditions, rather than a *description* of them. Definitions of crime rest, then, on moral grounds; and the meaning of the word moves with moral judgment. Consequently, *there is no essence of criminality* to be observed in an act or situation.

The roster of conceivable wrongs is enormous, and the word “crime” does not encompass all the damage done. In its *legal* sense, “crime” refers only to those injuries condemned by the criminal code of a state and prosecuted by a government.

Because there are so many possible wrongs and because “crime” denotes only a select sample of all disapproved acts, the definition of crime varies from time to time and from place to place and there is continuing controversy about what should or should not be called “crime.” The laws and morals that dictate which wrongs are to be dealt with as crimes are themselves under challenge in changing societies.

## How the Notion of Crime Develops

**Sin** The general idea out of which the notion of crime has developed is a moral idea, the concept of *sin*. Sin is a breach of divine law, an offense against the commandment of a god or gods. “Sin” is not a popular word among social scientists, but the moral motive that defines some acts as sins persists in the definition of crime.

**Vice** Another conception of wrong that affects the definition of crime is the notion of *vice*. A vice is considered to be the wrongful use of one’s appetites. According to some observers, the harmful or degrading satisfaction of our desires is vice when we do not know we are acting “badly” and sin when we do (Brock, 1960, p. 34).

Notions of sin and vice may be uncomfortable for some modern thinkers, but both concepts underlie the idea of crime. Quarrels about which wrongs should be considered crimes and about the relative gravity of crimes remain *moral* quarrels. The idea of crime starts with some conception of proper behavior. The conception of proper behavior may be justified by reference to divine commandments or to naturalistic ethics, but a moral conception is at the root of the idea of crime.

**Shifting Morals and Changing Crimes** Morals change, whether or not we approve of this, and with the changes go variations in the content of crime. The broad boundaries of offenses against property, person, and “society”<sup>1</sup> remain fairly steady, but the criminal content within these boundaries varies. In 1934, the American financier Samuel Insull expressed the point this way:

If two men walked down Fifth Avenue a year ago—that would have been March, 1933—and one of them had a pint of whiskey in his pocket and the other had a hundred dollars in gold coin, the one with the whiskey would have been called a criminal and the one with the gold an honest citizen. If these two men, like Rip Van Winkle, slept for a year and again walked down Fifth Avenue, the man with the whiskey would be called an honest citizen and the one with the gold coin a criminal.<sup>2</sup> (Schultz, 1972, pp. 135–136)

Despite such interesting variations in the definition of crime, all societies recognize some kinds of property appropriation as theft, whether the property is deemed to belong to the gods, the state, or individuals. Similarly, all societies define some kinds of killing of its members as murder and some kinds of disloyalty to the group as treason. However, the particular acts and circumstances that constitute theft, murder, and treason fluctuate, and in changing societies the meanings of these terms are contested.

**Example: The vocabulary of homicide** The conflict over whose wrong should be a crime is reflected in the names we give to the killing of other people. The word we use to refer to a homicide indicates whether the killing is justified or deplored. For example, “murder” is the name for legally unjustified, intentional homicide. The word has a *legal* meaning—homicide that the criminal law of our state calls “crime.” But it also has a *moral* meaning—homicide that is disapproved. Thus when terrorists kill their enemies or the symbols of their enemies in the form of innocent bystanders, they absolve themselves from blame for murder by calling their killing “execution.” Elevating homicide to execution makes a claim for its justice; reducing homicide to murder denies the fairness with which death is dealt.

The quarrel in semantics is apparent also in the debate about abortion. Those who oppose the legality of induced abortion call it “murder.” Those who favor legal access to abortion speak of “terminating pregnancy” or “removing tissue.” Antiabortionists say that life begins with the fertilized egg. Proabortionists distinguish between stages in the development of human life. Thus they refer to a zygote (a fertilized ovum), an embryo (up to the last part of the third month of pregnancy), and a fetus (during the remainder of pregnancy). The point is that such different vocabularies reflect different moralities.

No facts will resolve such a moral debate, because life and death are matters of definition, and definitions can be *chosen*, as Humpty Dumpty told Alice. In matters of right and wrong, morals, not facts, decide definitions.<sup>3</sup> Recognizing this, the cynical journalist Ambrose Bierce (1842–1914?) placed in his *Devil's Dictionary* (1958) this definition of homicide:

*Homicide*, n. The slaying of one human being by another. There are four kinds of homicide: felonious, excusable, justifiable, and praiseworthy, but it makes no great difference to the person slain whether he fell by one kind or another—the classification is for advantage of the lawyers.

Being “murdered” or “executed,” and being alive or dead, are more than matters of passing some observational or physiological test. They are also matters of social definition.

Every society sets boundaries to what it considers life and death, justifiable homicide and murder. Ordinarily we do not notice that we have *defined* such issues. Our daily definitions are conventional, and the meanings to which we have become accustomed are part of us. However, there are occasions when a “decision rule” is required—that is, an official definition that permits action. For example, Sudnow (1966) reports that for an American hospital

an expelled fetus is either considered “human” or not . . . The dividing line is 550 grams, 20 centimeters, and 20 weeks of gestation. Any creature having smaller dimensions or of lesser embryonic “age” is considered non-human . . . and if “born” without signs of life, is properly flushed down the toilet, or otherwise simply disposed of. . . . Any creature having larger dimensions or of greater embryonic “age” is considered human, and if “born” without signs of life, or if born with signs of life which cease to be noticeable at some later point, cannot be permissibly flushed down the toilet, but must be accorded a proper ritual departure from the human race. (pp. 176–177)

To show that our morals *define* wrongs is disturbing, particularly when others challenge our morality and its preferred definitions. Each contestant in moral disputes likes to think that his or her preferences are divinely ordained, historically progressive, based on facts, or justified by some combination of these virtues. It is probable, however, that our morals, and hence our conceptions of crime, are learned preferences that define our ethnic and personal identity. Morals support self-interest, at least in the sense that a shared morality is valuable for personal identity, for knowing how to be. But apart from this grounding in self-interest, it is doubtful that concrete results, or other facts, affect morals as much as morals select facts to support ethical preferences.

## Defining Victims

**How Concepts of Victims Affect Concepts of Crime** The grounding of conceptions of crime in conceptions of wrong means that it is easiest to define crime when there is an identifiable victim. Moreover, it is easiest to define crime when the identifiable victim is one of “our people” rather than an alien or an enemy.

It becomes more difficult to define crime, however, when the victim is a collection of individuals—a corporation or a university, for example. It is a commentary on our honesty that even “good” people find it easy to steal if the victims are not visible persons but invisible collections of anonymous others. Not only is stealing from organizations—such as the government or “Ma Bell”—a common practice, but it also does not appear like theft to many “noncriminal” people. If an organization is big enough, and distant, guilt about stealing from it diminishes (Smigel & Ross, 1970). Vocabularies shift, again, to express differences in our moral appreciation of such acts, and stealing is translated as “expropriation” or “ripping off.” Euphemism relieves conscience, and, conversely, the words we use to describe the wrongs we do reveal whether there is a conscience to be relieved.

There is a further anomaly in our attitude toward crime. If the crime is carried off with flair and if the prey is big government, big business, or some detested victim like the stodgy rich—and if, in addition, the thieves are people with whom we can romantically identify, like Robin Hood, Robert Redford, or Paul Newman (for example, see *Butch Cassidy and the Sundance Kid*)—then thuggery is less likely to be considered criminal and more likely to be thought of as belonging to some other category of sin or adventure.

A measure of this differential definition of some "big" crimes is that neither their perpetrators nor large segments of their audiences seem to regard them as criminal. Thus the first American skyjacker to parachute with an extorted fortune immediately became a type of folk hero, his name emblazoned on T shirts, and his act imitated by others.<sup>4</sup>

A similar attitude is witnessed in the case of a small-town banker who allegedly stole about \$5 million. Many of his acquaintances felt, "Well, he got caught and should be punished, but he is still a good old guy" (Maxwell, 1972, 1973). A comparable attitude has recently been expressed toward a midwestern stockbroker who misused securities in his trust and left four brokerage houses and a bank with losses of about \$39 million. Despite his frauds, the broker's flamboyant life made him a folk hero. Songs were written about him, T shirts printed, and lapel buttons flaunted. One songwriter titled his piece, "Take the Money and Run: Outlaw Ballad No. 23." The balladeer explained the local popularity of his song by saying, "America loves its outlaws, but here in Iowa we do not really get our share" (Minsky, 1982).

Bandits, ancient and modern, have always had their defenders as well as their prosecutors. In the public eye there have been "noble robbers" as well as monsters. Much depends on who the victim is and how the bandit handles himself or herself. Thus the poet dos Santos (1959) has eulogized the modern Brazilian robber Lampeo by claiming that, although he "killed for play and out of pure perversity," he also "gave food to the hungry."

The notorious French robber, killer, and kidnapper, Jacques Mesrine, stole so much money, escaped from prison so often, and had so much fun in his work that, after his death in 1979 in a police ambush, he was adopted as a hero by bands of "punk rockers." Late in his career Mesrine justified himself with a popular political ideology. As a consequence, his acts are now defined as revolutionary by some leftist intellectuals (Cobb, 1980).

There is, of course, some threshold of tolerance for glamorous banditry beyond which a community rebels, depending on how many, and who, get hurt.

It will be one of the recurring themes of this book that some crimes are rational; they achieve objectives. For this reason many citizens look upon crime with a schizoid attitude, condemning it when they or their revered institutions are damaged and praising it when the victims are despised or the predators seem heroic. In short, when wrongs are done, "victims" are variously defined.

Some wrongdoers are themselves considered to be "victims of circumstance," pressured into their wicked ways and hence more to be "understood" than blamed. Yet other malefactors are deemed to be "persons" responsible for their decisions to do wrong and therefore blameworthy.

Those who are injured are also variously evaluated. Some are held to be "victims," while others are not. Sometimes we believe that an injured person "deserved what she got" or "contributed to his own misfortune." A judgment like this makes such a contributory actor less innocent and hence less of a "victim."

**Conclusion: Spreading the Pain Reduces the Blame** Defining a victim depends, then, on attributions of responsibility and conceptions of harm. If criminal damage is dispersed among us so that no one person seems to be injured, our sense of offense is diminished. If, in addition, everyone seems to profit in the short run, the wrong becomes difficult to discern. However, crime that lacks immediately apparent victims may still have high social costs—that is, we all pay for such crime "in the end."

**Example: Automobile theft** Automobile theft is a prime example of crime with reduced immediate pain, high profit, and long-term costs. No one seems to be hurt much by the stealing and fencing of automobiles and automobile parts. The victim is

inconvenienced but is compensated for the loss by insurance. Car thieves are seldom punished. Purchasers of "laundered" vehicles get a good deal, and the insurance companies pass the costs of this crime back to the consumers of automobiles in the form of higher premiums.

With the damage so distributed, victims are difficult to define, and automobile theft continues to be a profitable business. It is estimated that between \$2 and \$3 *billion* worth of cars and parts are stolen in Canada and the United States each year and that they are resold at a net profit of more than \$1 billion (Plate, 1975, pp. 34–35). Since most legitimate businesses regard a 5 percent profit as a sign of success and a 10 percent profit as miraculous, the return from stealing automobiles—50 percent or greater—makes stealing automobiles a better business than manufacturing them.

Some New York police officers call automobile theft "happy crime" because everyone seems to profit and no one feels the sting. The point of this example is, again, that crime can have high *social* costs without immediately apparent *individual* costs.

### **Crimes against Ourselves: The Notion of Victimless Vice**

Difficulties in defining crime do not end with difficulties in defining victims. If it becomes more difficult to recognize wrong where the victim is an unknown aggregation of individuals rather than an identifiable person, it is even more difficult to define injuries that we willingly inflict upon ourselves or upon that vague entity, society. Thus we debate whether licensing or ignoring pornography, sexual aberration, violent television programs, and dope hurts their consumers and the social order. We quarrel about the "right"<sup>5</sup> of individuals to harm themselves, and we are not certain how much self-inflicted injury constitutes a threat to society. We are far from clear whether people who damage themselves should be viewed as persons or victims. However, no matter which definition is accepted, it will be a *moral* definition rather than a purely factual one.

**How Concepts of "Victimless Vice" Affect Concepts of Crime** Since societies differ in morals, they draw different boundaries between "persons" and "victims."

A person is one who decides; a victim is one who suffers. A person chooses to act in the way he or she does; a victim suffers from defective will or from what others decide. Alternatively, it is assumed that a person's choices are informed and therefore beneficial, while a victim's choices are ignorant and therefore harmful.

These definitions are provided by morals, not by facts. They are attributions, not observations. They change, therefore, with moral movements and with "the side we are on." As we shall see (Chapter 10), our moral stance also affects the assignment of causation to human action.

Within this shifting boundary between rights and wrongs and between victims and persons, every society defines as criminal some acts that have no apparent individual victims. Every society condemns some violations of religious or ideological commandments, some offenses against public decency, or some threats to its welfare, even though no particular person is deemed to have been damaged by such acts.

Despite the universality of laws against offenses that do not immediately harm another person, western criminologists, but not their eastern counterparts, have been concerned with defining categories of "victimless crime" that, it is believed, should be "decriminalized."<sup>6</sup> Thus Schur (1965) has questioned the advisability of legal penalties

against induced abortion, homosexuality, and drug use. To this list, Geis (1972) adds prostitution and gambling, and urges that

the most efficacious method of dealing with deviancy<sup>7</sup> is to ignore, to the furthest point of our tolerance, those items which we find offensive. Such response is predicated upon the assumption that there exists in our society a core of values which exert enough appeal to win over the deviant ultimately, or at least to keep him within the society in terms of other aspects of his behavior, provided that he has not been irresolutely shut off from conformant living. (p. 261)

Toward preferences for abortion, homosexuality, prostitutes, narcotics, and gambling, Geis advocates "tolerance and flexibility, combined with attitudes designed to encourage and reward desired behavior" (p. 262).

Recommendations for decriminalization do not end here, of course; and from Sweden, the Netherlands, and Great Britain come additional suggestions for reducing the inventory of crimes. For example, England and Wales removed suicide and attempted suicide from the criminal code in 1961. However, these states, and Canada and the United States, continue to condemn "aiding and abetting" suicide as a serious crime. Such law is now challenged by a British organization called EXIT that is concerned with "easy death." Easy death is not to be confused with euthanasia, which implies assistance of a physician or a nurse in administering a lethal agent. EXIT is interested only in making available drugs and information about them so that individuals may choose the time of their dying. EXIT has prepared a booklet describing effective means of suicide, but the British Medical Association and some lawyers object to the publication of this document (*Lancet*, 1980).

Decriminalization is also urged for categories of "sexual offense" other than homosexuality and prostitution. The Swedish psychiatrist Lars Ullerstam (1966) not only recommends decriminalizing so-called "perversions," but also advocates state subsidy of facilities for "erotic minorities." In a parallel extension of "sexual rights," Tom O'Carroll (1980), head of the Paedophile Information Exchange in England, argues that adults who prefer children as sex partners should not be the object of criminal law.

Many criminologists recommend that *some* roster of so-called "victimless crimes" be taken off the books for both practical and moral reasons.

On practical grounds, the overloading of police and courts in western countries urges that some acts once deemed criminal be differently defined. This has recently happened, for example, in the case of private homosexual acts between consenting adults.

Furthermore, laws against these behaviors are difficult to enforce, and it seems practical not to spend so much time and energy on them. Such laws are difficult to enforce because many of these offenses are vices, and vices are pleasures. For the glutton, overeating is a pleasure; for the addict, smoking opium; for the gambler, risk; for the masochist, an encounter with a sadist. With the exception of induced abortion and some pedophilic relationships, the allegedly victimless crimes involve a self-inflicted injury or a voluntary exchange between a buyer and a seller—as in the drug trade or prostitution. Even some incestuous connections, particularly between brother and sister, are voluntary and considered desirable by their participants (Santiago, 1973; Weinberg, 1955).

Since victims of vice are not likely to complain about their pleasures, the police have difficulty finding a plaintiff, and the enforcement of laws against vice requires surveillance rather than response to citizens' complaints. Such enforcement is costly.

These practical reasons for challenging the criminalization of vice are seconded by moral doubts. When individuals choose to harm themselves, philosophers in free societies are placed in a quandary as to whether vice is wrong and, right or wrong, whether it deserves legal attention. By contrast, philosophers in totalitarian societies have no such doubts. Totalitarian regimes are bolstered by an ideology and managed by an elite with an



unchallenged monopoly of power. The ideology includes moral conceptions of how people should behave. Modern tyrants therefore have no hesitation about punishing activities they define as immoral—activities ranging from homosexuality and prostitution to drunkenness, absenteeism from work, the use of narcotics, the expression of “wrong” ideas, and being “corrupters of the earth” (Pahlavi, 1980). There is no freedom in Cuba, the People’s Republic of China, Iran, or the Soviet Union to be a “drag queen,” a whore, or a dissident. Moreover, there is no public debate in these countries about whether people *should* be free to choose some forms of morally defined self-destruction or to criticize their social orders (Bassiouni, 1974; Connor, 1972; McColm, 1981; Solzhenitsyn, 1973, 1975; Tuchman, 1972; Zeitlin, 1967).

In contrast, the very notion of a free society requires that individuals be responsible for their conduct and, therefore, that the state let them alone. In this tradition, the psychiatrist Thomas Szasz (1974) argues that self-damaging behavior is none of the state’s business and that a person who chooses to commit suicide slowly with tobacco, alcohol, or heroin, or more quickly with a gun, should be free to do so. Szasz and others believe that there are enough crimes of an interpersonal sort—the damage we do each other—for the state to attend to and that these wrongs are more deserving of official attention. In this liberal tradition, it is also argued that the state which begins to protect individuals from themselves will be difficult to bridle and will progressively intrude upon private lives.

**Liberalism and “Victimless Crimes”** *Liberal roots* Such doctrines in defense of liberty are historically rare. They have become rarer in recent decades as the number of democracies has decreased. In modern times western intellectuals trace their debt to John Stuart Mill (1806–1873) whose famous essay *On Liberty* (1859) attempted to set the proper limits to state power. Mill objected to the state’s “pushing people around.” He held that

the only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest. (pp. 75–76)

People who favor liberty, in this Millian sense, used to be called “liberals,” but this fine label has been so stretched in the twentieth century that anyone who uses it has to specify which kind of liberal he or she is. Thus some nineteenth-century “small-l” liberals who live in the twentieth century have changed their political name to “individualist” or “libertarian” to distinguish themselves from other breeds of modern “liberals” who have less fear of state power.

The change of title indicates that it is difficult to believe in freedom and to practice consistently what one preaches about restricting state power. It is difficult for many reasons. One is that we cannot ask the state to do things *for* us without inviting it to do things *to* us. If the state is asked to guard our welfare, it will guard our welfare even when we have not asked it to—as when it protects our health against alcohol, fast cars, and other pleasures.

This is not the only reason why it is difficult to be consistently liberal, however. It is also tough to be a true believer in freedom because we have to live together as people with different tastes. We therefore cannot help intruding upon one another, and we are constantly redefining the boundaries—called our “rights”—of this intrusion. The issue in criminology is whether the criminal law ought to be used to define and defend these