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Definition: **crime** from *Merriam-Webster's Collegiate(R) Dictionary*

(14c) **1** : an act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law and that makes the offender liable to punishment by that law; esp : a gross violation of law
2 : a grave offense esp. against morality **3** : criminal activity [efforts to fight ~] **4** : something reprehensible, foolish, or disgraceful [it's a ~ to waste good food] syn see OFFENSE

crime•less \-ləs\ *adj*



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[Encyclopedia of Anthropology](#)

Summary Article: **Crime**

From *Encyclopedia of Criminal Justice Ethics*

Scholars are continuously debating about the precise definition of crime. Whether one is a citizen, policy maker, police officer, lawyer, judge, criminologist, or activist, a specific definition of crime is the foundation of one's activities. Thus, prior to understanding the causes of crime, the various forms of crime, and its consequences, it is important to define crime. To do so, it is helpful to have an understanding of (1) the relationship between social norms, deviance, and crime; (2) social conflict, societal transformations, and crime as a new phenomenon; (3) the criminalization process and criminal law; (4) the various definitions of crime in modern society; and (5) the decriminalization process. The definition of crime is rooted in society's social norms.

Social Norms, Deviance, and Crime

A vital ingredient of social life is social order, a product of various social norms governing human behavior. Norms set behavioral expectations and serve as a control mechanism. These behavioral expectations prevent chaos and make collective living possible. Norms vary in formality, from the unspoken rules governing everyday life to formal criminal law. Regardless of formality, behavior that violates social norms is deviant behavior. And deviant behavior violating criminal law is crime. Societies create criminal laws under specific socio-historical conditions; thus, what is criminal varies across time, groups, cultures, and societies. Overall, norms define what is deviant and criminal; thus, it is important to explore the emergence of norms, including criminal law.

Scholars identify the emergence of norms within two contradictory social processes, consensus and conflict. On the one hand, the consensus model suggests that members of society share a collective consciousness, agreeing when differentiating conventional from deviant behaviors. Thus, norms emergence from this collective consciousness and societal agreement lead to the formalization of norms into criminal law. Consequently, any violation of criminal law violates the society's collective consciousness and is a crime.

On the other hand, the conflict model illustrates a much more complex and less serene social process involved in defining crime in society. Faced with the task of differentiating conventional from deviant behaviors, groups with different needs, beliefs, and morals in society disagree on what behaviors are deviant. In a society with unequal social relations, the most powerful group protects its interests and uses its resources to convert its normative expectations into social norms. Consequently, criminal law

mirrors the interests of the powerful group, and the powerful group uses the criminal justice system to maintain its economic and social position. Thus, behaviors that threaten the status of the privileged are crimes.

Conflict, Societal Transformations, and Crime as a New Phenomenon

Regardless of the theoretical approach, and although deviance is a key ingredient of collective living, crime is a recent phenomenon in human societies. Law has been a crucial ingredient in societal transitions from stateless societies to state societies. From a conflict perspective, these transitions paralleled with groups' unequal accumulation of wealth and power and their need to control the subordinate populations through criminalization.

Ten thousand years ago, hunting and gathering societies featured egalitarian social, economic, and political systems; were nomadic; included about 50 members; shared communal property; and had no organized state or ruler. Social norms were based on tradition, governed communal living, and deviance was controlled through communal negotiation.

Once settled in horticultural/pastoral societies about 9,000 years ago, egalitarianism continued without significant differences in wealth and power, and leaders had no coercive power over society's members. Any conflict or deviance was informally handled, from tolerance techniques to settlement by third party. Social norms governed collective living, but formal law became a key ingredient in agricultural societies.

As humans transitioned from horticultural/pastoral societies to agricultural societies between 5,000 and 6,000 years ago, changes in economic systems produced surplus goods, all lives were no longer dedicated to subsistence work, and social inequality increased. This social inequality was most prominent in slave and feudal societies, where one class controlled the economic surplus. Parallel to this economic transformation, the legal and state system transitioned into a formal apparatus, creating and maintaining the unequal social relations. In this stratified context, law emerged from diverse sources, including, but not limited to, religion, charismatic leaders, legislature, and court cases. Law came to exercise a coercive power, with law professionals interpreting and enforcing the law, establishing guilt and punishment for the offender, suppressing deviance, and reinforcing conformity.

It is not until the English common law (customary law) developed in the 12th century that behaviors came to be classified as crimes forbidden by criminal law, and specific punishments were identified for specific crimes. With it emerged the *nullum crimen sine lege* (no crime without law) and *nulla poena sine lege* (punishment for a crime) ideology. However, in most societies, offenses were handled either privately, in canon courts (religion), or in civil courts (law of torts). It was not until industrialization in the 17th century that criminal law became a formal and prominent feature of everyday living in human societies. Thus, unlike deviance, crime is a new phenomenon in human societies.

Criminalization and Criminal Law

Modern societies with formal legal systems transform deviance to crime through criminalization. The creation and approval of criminal law makes activities illegal and legitimizes the state's right to enforce this law through coercive power. Rooted in a sociohistorical context, what becomes criminal varies across time, groups, cultures, and societies.

Regardless of what specific acts are criminalized, crime is an ingredient of every modern society. According to Émile Durkheim, all dishonest contracts will be defined as criminal and even in a society of

saints, there will be sinners: “[I]n an exemplary and perfect monastery ... faults that appear venial to the ordinary person will arouse the same scandal as does normal crime in ordinary consciousness. If therefore that community has the power to judge and punish, it will term such acts criminal and deal with them as such.” The criminalization process is part of every modern society; thus, crime is part of modern everyday life. States enact legislation that outlaws certain behavior and invest resources on observing (surveillance), policing, convicting, and punishing crime.

Unlike other social control mechanisms, criminal law aims to be formal, specific (vague criminal law is unconstitutional), rational, predictable, and certain. It does not reward conformity, but punishes violations. It maintains the status quo, but attempts to be flexible when times change.

Modern criminal law aims at preserving social order, protecting private and public interests, protecting members of the public from the wrongdoing of others, and is called upon when other control mechanisms are ineffective. It gives the offender, once convicted, the right to appeal. Criminal law legitimizes state control over crime, and states define crime as a threat to the victim and to the welfare of the entire society.

Legal-Consensus Approach

From the legal-consensus approach, Paul Tappan defines crime as behavior prohibited by criminal law. Meaning, crime is an intentional action (*actus reus*; not merely thoughts) in violation of criminal law, without defense or excuse, and penalized by the state (felony or misdemeanor). However, failure to act when one has a legal duty (omission) can also be criminal, such as not filing taxes. Legally, criminal intent (*mens rea*) indicates culpability, including the motive to do the forbidden act, knowledge of the nature of the act, or reckless negligence. But at times, the accused lacks the criminal responsibility required by *mens rea*.

The legal defense comes in different forms, including, but not limited to, entrapment, insanity, duress, necessity, and duty. Entrapment is used when policing procedures entice an average law-abiding citizen to engage in criminal behavior. The insanity defense highlights the accused's incapacity to understand the criminality of his or her actions or inability to conform his or her behavior to the requirement of law. Duress is used in self-defense arguments, mainly in homicide cases when killing another person was a matter of preserving one's own life. The necessity defense is used when the accused had no control over the circumstances, and had no other reasonable course of action available, such as breaking a window to get out of a house on fire. The duty defense is used when the accused's legal position includes a legal justification for the behavior in question, such as a police officer shooting back during an exchange of fire and killing the perpetrator.

Legal professionals organize crimes under various categories, including, but not limited to, *mala in se* (behavior evil in itself) versus *mala prohibita* (behavior evil because it is forbidden), felony (long-term imprisonment and/or capital punishment) versus misdemeanors (short jail incarceration and/or alternative punishments), and crime (behavior prohibited to all citizens) versus delinquency (age-related status offenses and crimes).

The legal-consensus approach provides the most clear and definitive definition of crime. If the above criminal law elements are present and the accused enters a guilty plea or is found guilty in court, the behavior in question is a crime. However, this approach ignores the complex social processes behind the criminalization process, legal definitions that do not always reflect consensus, and behaviors in the

margins of criminal law (wrongdoing captured in civil court or not legally captured at all). Furthermore, crime depends on detection and conviction. The empirical reality suggests that of all the crime committed in society, only a portion is reported, a smaller portion leads to arrest, and a much smaller portion leads to convictions. To address these limitations, other approaches define crime differently.

Sociolegal Approach

In attempts to address the legal-consensus approach's inability to capture behaviors in the margins of criminal law, Edwin Sutherland relaxes the legal criteria and includes antisocial behavior. The sociolegal approach continues to include the legal description of the behavior and the legal penalty for the behavior, but adds social injury as a required characteristic of crime. This broader definition includes all violations of criminal law and wrongdoings captured in civil law, such as socially harmful white-collar crime, affiliated with individuals in privileged positions and punished through fines.

Similar to the legal-consensus approach, the sociolegal approach ignores the complexity of the criminalization and political processes that shape criminal and civil law, and the definition is once again tied to conviction. Furthermore, it ignores white-collar wrongdoings among workers of lower status.

Labeling and Cross-Cultural Approaches

To address the lack of attention to the criminalization process, Howard Becker developed the labeling approach and returned to the social reaction in defining crime. A behavior is not deviant or criminal unless a group in society reacts negatively to that behavior. It is not the behavior but the negative reaction to the behavior that defines it as deviant or criminal. A behavior is defined as deviant or criminal when the label has been successfully applied. This approach highlights the importance of society's negative reaction in defining crime, but it characterizes the criminal as passive and defines crime as relative to the social context.

Similar to the labeling approach, Thornstein Sellin's cross-cultural approach attempts to capture the relativity of crime with the cross-cultural approach. It defines crime as beyond law and broadens it to the violation of any social norm. Across and within societies, normative groups with different social values create and implement their own social norms, but not all social norms are formalized into laws.

Regardless of formality, any norm violation is crime. Thus, the cross-cultural approach combines criminal and deviant behavior, arguing that to be precise and inclusive, all deviant behaviors are crimes. Instead of separating crime from deviance, one is to focus on identifying the universal social norms across social and political boundaries. Although the cross-cultural definition of crime captures the importance of all social norms governing human behavior, this definition reduces the definition of crime to violations of everyday living expectations, limiting one's understanding of crime.

Utopian-Anarchist and Human Rights Approaches

Ian Taylor and colleagues developed the utopian-anarchist approach to defining crime, which refuses to acknowledge any labels and takes a conflict perspective. Societies' definitions of crime are rooted within an oppressed-versus-oppressor conflict. Thus, criminalization is a social control mechanism, repressing offensive or threatening behaviors against the privileged segments of society. Behaviors labeled deviant or criminal are those aiming to achieve social justice. Thus, no human behavior should be defined as crime. Behaviors that challenge the status quo and inequality should be considered human diversity.

This perspective challenges the role inequality plays in the criminalization process, and emphasizes that

the will of the people might not be represented in criminal law. However, it assumes all deviant behavior and crimes are part of activism pressing for social change.

Similar to the labeling approach, the human rights approach constructs a definition of crime that attempts to transcend sociopolitical boundaries. In this approach, Herman and Julia Schwendinger take a global perspective and define crime as any violation of human rights. According to the United Nations Universal Declaration of Human Rights, every human being, "without distinctions of any kind," is born with and equal in dignity and freedom.

Every human being has the right to life, liberty, and security. Under the law, human beings have the right to be recognized as a person before the law, to equality and equal protection before the law, to an effective trial; to a public trial to defend oneself against criminal charges, and to be presumed innocent of criminal charges until proven guilty.

Within political boundaries, human beings have the right to freedom of residence within political borders, to leave any country and return to one's own country, to seek and enjoy asylum from persecution in other countries (with exceptions), and to have a nationality. As members of society, human beings have the right to marry and establish a family; to own property; to enjoy freedom of thought, opinion, and expression; to have an education; and to participate in cultural life.

Politically, human beings have the right to assemble and associate peaceably, to participate in government, to have equal access to public services in one's country, to elect political representation based on the will of the people, and to enjoy social security. In the workplace, human beings have the right to choose to work, to work in favorable conditions, to receive a just payment that affords a dignified living, to unionize, to partake of rest and leisure, and to receive maternity and child assistance.

Furthermore, no human being is to be held in slavery or servitude; subjected to torture or cruel inhumane treatment or punishment; subjected to arbitrary arrest, detention, or exile; subjected to the interference of privacy, family, and correspondence; or subjected to attacks on one's honor or reputation. Overall, conditions or relations between individuals that deny someone's human rights are criminal.

Similar to the legal-consensus approach, the human rights approach takes politically defined formal norms and defines any violations as crime. It moves beyond the legal-consensus approach and embraces the sociolegal approach and cross-cultural approach, expanding its definition beyond criminal law and into cross-cultural social norms. However, its hurry to criminalize human rights violations ignores the empirical need to define crime.

Statistical Approach

Taking an extreme empirical perspective, Leslie Wilkins developed the statistical approach and analyzed behavior in a normal bell curve. Behaviors occurring in low frequency on the right side of the normal bell curve are saintly, and behaviors occurring in overall high frequency are normal. But as the behaviors approach the left-hand side of the normal bell curve and occur in lower frequency, behaviors are deviant, are more likely to be criminalized, become publically defined as worthy of notifying the police, and the less frequent are serious crimes.



The breaking wheel, also known as the Catherine wheel or simply the wheel, was an early means of punishment and execution. It was used during the Middle Ages and continued to be used into the 19th century.

This strictly empirical approach accommodates deviant and criminal behaviors and takes into account the seriousness level. However, it undermines the role social groups or consensus play in defining crime, ignores the content of social norms, and ignores that not all infrequent behaviors are deviant or criminal.

Continuous Variable Approach

Moving the statistical approach forward and taking into account the various approaches to define crime, John Hagan developed the continuous variable approach and constructs an empirical definition of crime that takes the social context into account. Crime is a serious deviant behavior that is actually and potentially liable to criminal law.

To take into account the consensus versus conflict models, the definition of crime must include a measure of societal agreement about the crime, a scale ranging from confusion/apathy to high agreement. In considering the social harm element in the socio-legal approach to defining crime, the continuous variable approach takes into account an evaluation of social harm, measured in a range from relatively harmless to very harmful. Lastly, considering the labeling approach's focus on societal reactions to behaviors, the continuous variable approach measures the severity of societal response, from mild to severe. Overall, crimes score high in the wrongfulness of the act (consensus), include severe societal responses, and are very harmful.

From this approach, the definition of crime is not dependent on law, criminal law, or other laws; includes the crimes of the privileged; takes societal reactions into account; captures social norms regardless of political boundaries; and can be empirically measured. However, societal agreement, severity of social responses, and harm might not be a perfect correlation.

Constitutive/Postmodernist Approach

More recently, Stuart Henry and Dragan Milovanovic have developed the constitutive/postmodernist approach and return to the social construction of crime. Similar to the continuous variable approach, the constitutive/postmodernist approach takes into account various social theories. However, rather than taking a strict empirical approach, it draws from various micro- and macrocritical social theories to

define crime.

The constitutive/postmodernist approach takes power relations into account, does not assume the legitimacy of law, and defines crime as a vital component in the production of society. To fully understand crime, it cannot be removed from the cultural, institutional, and overall structural context from which it emerges. Within this societal context and everyday interactions, individual social actors excessively invested in the creation, navigation, and maintenance of harmful power relations impose their will onto others and deny others the ability to exercise their agency and become fulfilled social beings.

Thus, crime is the product of individuals investing energy in harm-producing relations of power within a stratified social context, being disrespectful to one another, and keeping others from making a difference and jointly transforming their environment. Thus, crime is the exercise of power to negate for others their ability to make a difference.

Taking this holistic approach, all individuals are responsible for constructing the world they live in, including the definition of crime. Within this social construction process, knowledge can be a weapon of domination and resistance. Thus, it is important to understand the decriminalization process.

Decriminalization Process

Regardless of the approach used to define crime, society is continuously changing and criminal behaviors become conventional behaviors. Shifts in power dynamics or morality change social norms. First, informal norms are no longer acknowledged or are eliminated, reducing or no longer eliciting a negative social reaction or punitive outcomes. Second, postcriminalization, group conflict over differentiating conventional from deviant behaviors continues. Although criminal law favors the privileged group, power dynamics shift and activism presses for the decriminalization of the behavior in question. Decriminalization removes the state control over the given behavior. However, decriminalization varies in degrees.

Partial decriminalization reduces the seriousness of the crime, removes some restrictions, and/or reduces punitive outcomes. Full decriminalization can mean the removal of partial or all state control over a given behavior that takes a complete hands-off or laissez-faire policy. Furthermore, legalization does not mean an absence of regulation. The behavior might continue to be criminal for a segment of the population when combined with specific activities or a specific level of the activity. Furthermore, the criminalization or decriminalization of a behavior varies across time, groups, cultures, and societies.

What Is Crime?

Scholars in the sociology of deviance tend to take the broader definitions of crime, focusing on the social construction of crime (the criminalization process) and the labeling process, taking into account the relativity of social norms, and capturing group conflict. Focusing on identifying the causes of crime and methodologically limited to secondary data analysis, most positivist criminologists continue to take the consensus-legal approach.

Policy makers focus on the criminalization and decriminalization processes. Legal professionals use the consensus-legal definition and work toward determining whether a crime was committed. Overall, defining crime is a complex task, especially when different professional goals demand different definitions of crime.

See Also: Choice and Action (Actus Reus); Corporate Crime; Crimes Against Humanity; Criminal Responsibility; Decriminalization; Deviance; Digital Crime and Security; Guilt, Legal; Mala in Se and Mala Prohibita; Malfeasance, Nonfeasance, and Misfeasance; Rational Choice Theory; War Crimes; White-Collar Crime

Further Readings

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