Florida Law Review

Volume 16 | Issue 2 Article 2

September 1963

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Recommended Citation
Vernon Fox, *What Is a Crime?*, 16 Fla. L. Rev. 147 (1963).
Available at: https://scholarship.law.ufl.edu/flr/vol16/iss2/2

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WHAT IS A CRIME?

VERNON FOX

Crime is a symptom of social and personal pathology in which the individual damages the group. The manner in which the group is damaged is dependent upon the definitions of both acceptable and intolerable behavior as viewed by the group. Social organization is necessary for a durable society, the roles and statuses of individuals within the group representing a functional division of labor and leadership that contributes to the total social formation. The social formation is held in shape by the experience of each individual in association with other participants in a structured manner that leads him to anticipate the behavior of others in certain situations. Such anticipation leads to intangible but real phases of interpersonal interaction as trust, faith, belief, common attitudes and prejudices, and other similar contributions to the social interaction. Any deviation damages the formation. Crime is the defined action of individuals that most seriously damages this formation.

The laws of a society and the activities of its courts identify the problem areas in the social formation. As a negative prohibition, crime is never defined unless there is need for this definition to preserve order. Crime, then, is an antisocial act, a failure to live by the standard of conduct that binds the rest of the community. The common factor underlying crime in all societies is the attitude of the group.

Although morality is frequently associated with the concept of crime, morality and crime are not congruent. Crime is neither exclusively the transgressions against a particular moral code as the moralist would have it, nor is it entirely the infringements against carefully stipulated and defined criminal statutes, as the lawyer might have it. The definition of crime solely in terms of the criminal law is too restrictive to be useful to the social scientist.[1] As far as he is concerned, intolerable behavior evolved long before legal recognition of it was stipulated in the statutes, and it is the attitude of society, rather than

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1. CLINARD, SOCIOLOGY OF DEVIANT BEHAVIOR 156 (1957).

Published by UF Law Scholarship Repository, 1963

the statutes, which therefore controls his definition of crime. While lawyers see their work as a profession, social scientists see the law as a social institution.

Law, either as a profession or as a social institution, develops through three broad stages to maturity.[2] Stage one is the exploratory stage of theoretical discussion in which an area of truth is isolated and a perspective is communicated. In criminal law, the philosophers and lawgivers of ancient and medieval time provided this service. Stage two is the work of the craftsman attempting to apply the knowledge gained to particular and practical problems. The development of the Napoleonic codes and the efforts of Blackstone and his contemporaries are examples of this type of work. Stage three, or modern law, is the development of intellectual autonomy and maturity in which the moral authority of legality is explored, the role of social science is clarified in creating a society based on justice, and the function of law in establishing and sustaining the framework for such a society is examined. The definition of crime follows the development of law through these stages.

Parliamentary government began in England in the fourteenth and fifteenth centuries and legislation was introduced at that time to secure the social order. Making war against the king, forbidding serfs to leave the land in search of work, and forbidding dogs to be kept by anyone not owning property were involved in an effort to maintain and perpetuate the social status quo. The early indifference to crimes against persons was evidenced by the fact that murder was punished by fines or short imprisonment. During the sixteenth and seventeenth centuries legislation was aimed at consolidation of the church and state. Treason and heresy became crimes, as did swearing, adultery, and witchcraft. During the eighteenth and nineteenth centuries, piracy, forgery, and banking offenses were made crimes. In the twentieth century, white-collar and commercial crimes have resulted from the changing social order.

It is obvious that crime is the final definition assigned so that force can be applied to the individual to effect conformity with and perpetuation of the existing social formation. Crime is the ultimate definition in social control so far as the individual is concerned.

Development of Social Control

The development of social control probably had its beginnings with the development of spoken language. This occurred about 50,000 B.C. when the base for symbolic interaction was laid.[3] Interaction with

2. Selznik, *The Sociology of Law*, Sociology Today 115-27 (1959).

3. Modern man (homo sapiens) has existed at least since 240,000 B.C. in

symbols, especially language, made social organization possible with the subsequent development of roles and the formation of social units of family, clan, and tribe. Division of labor and leadership resulted from social organization. Social control emerged as a necessity to maintain these social units and to provide stability to the direct and symbolic interaction between people within the newly organized social formation.

The earliest behavioral norms developed by the group and imposed on individuals were folkways and customs which, in reality, were nothing more than the habitual ways of doing things. This permitted behavior of others to be predicted and anticipated, developing trust and faith, and gave stability to the social formation. Comfortable and spontaneous interaction with others thereby resulted. While deviations from the folkways and customs were not "illegal," they did produce concern in the group of "others" whose anticipations and predictions of expected behavior had been violated. The sanctions imposed to maintain folkways and customs lay exclusively in the opinions of and acceptance by the group. Such opinions were manifest from simple disapproval to physical violence.[4]

As man progressed further into civilization, he began to attach emotional values to some of these customs and they became "right" and "wrong." The beginnings of religion, conceivably around 25,000 B.C., resulted from intelligent man's inability to accept himself as the supreme planner and controller of the world, and from his fear of death and catastrophe. Very early in the development of religion, creeds emerged to control the interaction between people within the social formation. The creeds that were associated with religion controlled social behavior and were more complex and refined than the early "codes" of folkways and customs.

Soon after the development of written language about 4000 B.C. came the Sumerian Codes (3500 B.C.) and the Code of Hammurabi in Babylon (2000 B.C.). Both were simple manifestations of general ethical principles. The Law of Moses, developed between 1500 B.C. and 900 B.C., and the lesser codes developed by other lawgivers in the ancient world, were further refinements of the ethical principles of social interaction being forged from the experience of socialized man.

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some stage, and homo species of some sort has existed since 500,000 B.C. While fossil records reveal nothing about the noises that were made, anthropologists are in agreement that the existence of various kinds of artifacts, such as chipped stone flakes, indicated that the people who made them could talk. 13 ENCYC. BRIT., *Language* 696 (1962). Flake tools developed in Mousterian culture between 100,000 and 35,000 B.C., with increased development apparent around 50,000 B.C. EDITORS OF LIFE MAGAZINE, THE EPIC OF MAN 18 (1961).

4. BERNARD, SOCIAL CONTROL pt. 1, at 30 (1939).

The Sermon on the Mount by Jesus Christ was the epitome of the early formulations. It is important to remember that these were merely codes and mores, or morals, not laws. Crime and law are not "given" by individuals on a religious, psychological, philosophical, physiological, or any other premise, but are created and developed by social systems.[5]

The codes were developed by society and articulated by the lawgivers to be used as guidelines for living, not to be "enforced" by society in the contemporary sense. The proliferation of these codes was organized into a unitary code by Emperor Justinian of the Byzantium Empire in A.D. 600, including Roman Law as well as these previous codes. Roman Law had developed to give structure to civil government and social organization, but the Latin *crimen* referred not to crime as we know it, but to the accusation. The Justinian Code became the base of the law of the civilized world and remains practically intact today in many parts of the world.[6]

Overlapping with the development of "right" and "wrong" and moral values was the ritual that also appeared soon after the beginnings of early religion. As the ritual became an integral part of culture, it was institutionalized in the culture along with its attendant meanings. In this manner, the behavioral norms and their controls took their places as parts of the culture. Social institutions and their rituals, including organized religion, marriage, education of the young, and law, became integral parts of the culture within which they developed.

As civilization developed, these institutionalized behavioral norms became law. The lawyer might say that crime appeared with the law. The social scientist would say that crime appeared before the law and that the law was merely a ritualistic recognition of the existence of intolerable behavior and a precise definition of it. In any case, it takes a long time for behavioral norms to progress from simple folkways and customs to law and crime. By the time law develops to cover specific intolerable behavior defined as crime, it will have gone through a long process of trial and error, consideration, deliberation, and use, and it does not become defined as a crime without serving a specific and useful purpose in securing the social formation within which it appears. The relationship between the individual, the social formation,

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5. White, *The Definition and Prohibition of Incest*, 50 AMERICAN ANTHROPOLOGIST 416 (1948).

6. The Holy Roman Empire accepted the code in its entirety and continental jurists dealt with the law books of Justinian for centuries. Italy, Germany, and England have legal structures that still show the influence of the Justinian Code. See SEAGLE, THE HISTORY OF LAW 166-70 (1946).

and the law becomes clear in historical and developmental perspective. In the cross section of the present, there may appear to be considerable conflict and confusion between the individual, society, and the law; however, in the longitudinal view of the development of social organization, law is seen as defining the relationship between the individual and his society.

The social scientist is not concerned with the rational product of the work of centuries in developing this body of law. Rather, he is more concerned with the development of law in defining the attitudes and practices of the society in which that law appears and which it supports. When the question arises as to which came first, the chicken or the egg, or normal behavior and the legal norms, the social scientist and the lawyer seem to arrive at different answers. The lawyer is inclined to agree with Hobbes[7] that individuals seek to conform to the law, while the social scientist is inclined to regard law as a reflection of the customs and normal behavior of the people. Perhaps it is more accurate to state the result as an interaction between normal behavior and the legal norms.

Certainly the primary concern of primitive man was the protection and preservation of the social order. From primitive times to the Industrial Revolution of the eighteenth century, the community was the primary concern and the individual was expendable for the welfare of society.[8] Exile, slavery, and death were the most frequent dispositions accorded people who exhibited behavior that deviated from the social norms. During the early Christian era, some regard for the individual developed and the Justinian Code incorporated several provisions to protect the weak from the strong.[9] Nevertheless, the emphasis remained on the welfare of society over the individual. Criminal law, as a body of law, was neglected, however, and individual cases were adjudicated or arbitrated by the courts on their individual merits.

In 1764, Beccaria published his now famous *Essays on Crime and Punishment,* in which his primary contention was that behavior that deviated from the social norms should be previously delineated and defined in the statutes, rather than being made on the spot during an adjudication or arbitration in court. Furthermore, Beccaria contended

7. Thomas Hobbes (1588-1679) was the first of the great contract writers, preceding John Locke (1632-1704) and Jean Jacques Rousseau (1712-1778). These men thought that government was a "contract" and that rulers governed at the consent of the governed.

8. GAROFALO, CRIMINOLOGY 370-408 (1914).

9. The development of equity was influenced by the Digest of Justinian. Some of the humanitarian concepts generally ascribed to the religious influences, such as the care of the indigent and the young, are examples of this influence. See TAPPAN, CRIME, JUSTICE AND CORRECTION 31-33 (1960).

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that the resulting punishments should be commensurate with the seriousness of the offenses. "Let the punishment fit the crime" became a primary contention. To indicate that this was a social movement for which Beccaria was but one spokesman, William Blackstone[10] and Jeremy Bentham[11] of England, as well as others, joined in the contention. Blackstone recodified English criminal law and defined specific crimes, formulating the punishments that should result from various offenses. For the first time, definitions of crime and criminal procedure were formalized in law. By 1800, English criminal procedure had a basis in statutory law.[12] It was at this time and under these influences that the American Constitution was written and adopted in 1789. The criminal law had now come to focus on the seriousness of the offense rather than on the welfare of society.

During the last half of the nineteenth century and the early twentieth century, the social and behavioral sciences emerged. Intelligence testing, psychoanalysis, psychiatry, sociology, psychology, anthropology, economics, and social work developed. The law and the administration of justice took these developments into account. The problem of *individual* criminal responsibility, as opposed to society or to the offense, entered the legal world with the M'Naghten Rule as laid down in England in 1843.[13] The basic test for sanity under this rule was whether the defendant knew the difference between right and wrong at the time of the crime. After the insane, young offenders were next moved into a status of non-responsibility as society became enlightened by the behavioral sciences. Although schools for juveniles were established long before, it was not until 1899 that Illinois passed a juvenile court law[14] that was constitutionally acceptable. In the twentieth century, various laws and interpretations involving diminished responsibility have been incorporated into the law of most jurisdictions in the world.

The focus of the criminal law has now turned to the offender. This is manifest in the penal codes of most jurisdictions in the indeterminate sentence,[15] the criminal sexual-psychopath laws, sanity hearings,

10. 2 BLACKSTONE, COMMENTARIES OF THE LAWS OF ENGLAND bk. 4, at 1 (Sharswood ed. 1859).

11. BENTHAM, PRINCIPLES OF MORALS AND LEGISLATION 178-88 (1823 ed.).

12. 6 ENCYC. BRIT., *Criminal Law* 710-14 (1957).

13. Daniel M'Naghten's Case, 10 Cl. & F. 200, 8 Eng. Rep. 718 (H.L. 1843). See discussion of modern debates in NICE, CRIME AND RESPONSIBILITY 108 (1962).

14. Ill. Laws 1899, at 131 (now ILL. REV. STAT. ch. 23, §§2201-36 (1961)).

15. See discussions of the indeterminate sentence in Florida in Note, *Judgment and Sentence in a Florida Criminal Case*, in text at notes 104-12, and in Clark, *Curable Ills of the Criminal Law of Florida*, in text at notes 125-28, both in this Symposium.

parole procedures, medical centers for prisoners, and correctional programs aimed at rehabilitation.

In the formulation of the legal framework within which social control is accomplished, then, there has been a progression of emphases from simple protection of the group, through consideration of the seriousness of the offense, to the personality of the individual offender. While this progression has taken place, vestiges of the earlier philosophies remain in the criminal law. The interrelationships among these vestiges and their individual and collective relationships with the citizen and with society in an attempted definition of their relationships present an interesting, if confusing, approach to social control and to the securing of the social formation.

CULTURAL VARIATIONS

The definitions of crime vary with the culture. Killing another person in Florida is illegal, except in war, execution after judicial pronouncement of the death sentence, or when juries consider the killing justifiable or excusable.[16] Among the Indians of Laborador, killing the elderly persons is expected when they become an economic liability on the tribe. Theft is not a crime among the Dobu. There is no crime at all among the Ifugao in northern Luzon. Patterns of crime vary widely among the various tribes in equatorial Africa. Homosexuality is punished in this country, but is not punished in southern Europe and Scandanavia. It was accepted as part of the culture among the ancient peoples of Greece, Rome, and the Near East.

These variations reflect the attitudes of the societies in which criminal definitions are made. The cultural values of a given society reflect the cultural aspirations of that society. The societies differ as to respective values. Values held in high regard by many people in India and China may be in sharp contrast to those held by the majority in the United States. The different definitions regarding use of alcohol and narcotics appear as an example.[17]

Variations appear regarding the definitions and applications of the criminal law. The prescriptive or idealistic codes and the practical values or structural organization of society may result in variations between societies and cultures, within a society, and between preachment and practice. For example, prostitution, gambling, and liquor

16. FLA. STAT. §§782.02, .03 (1961).

17. The crime laboratories in America spend about one-half their time on blood-alcohol analysis, according to materials in the Law Enforcement Seminar at Indiana University in December 1961, while similar laboratories elsewhere in the world spend hardly any time with this type of analysis in criminal or potentially criminal cases.

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violations may be against the prescriptive cultural codes, but be permitted and even protected in practice.[18]

Variations appear as to who will be affected by law and why. The law does not cover everyone in the same way. Psychological and cultural factors assist in the determination of who will be affected by and who will be protected from the legal sanctions.[19]

The anthropologist is interested in the cultural definitions of crime. What constitutes crime in various cultures? Does the same type of behavior constitute crime in all cultures? A review of the anthropological studies of crime in different cultures shows patterns of private and public crimes, but only a few specific crimes, such as homicide, constitute crimes in the majority of cultures. For lesser crimes there is considerable variation. Sex crimes, theft, and vice vary widely from culture to culture. The underlying principle in all cases is the attitude of the people and the maintenance of the status quo. To the social scientist the procedure and the controls become more important than the content.

The anthropologist is also interested in the marginal definitions of crime within a culture. The dyssocial offender is one who is well adjusted within his own reference group, but violates the law of the larger society. The "moonshiner," for example, makes liquor and sells it at lower cost than tax-paid whisky. His service to his immediate society is demonstrated by his income. The prostitute provides a service for which customers will pay large sums in some cases. Gambling meets the emotional needs of many people. All these behaviors, however, are illegal and are criminal, even though they provide a service. How can a service be defined as criminal? This question must be reconciled within the broader framework of the total culture, taking into consideration the values and attitudes of the total society, rather than that of the immediate reference group.

The social, economic, and political philosophies of a society determine to some extent its definitions of crime. Napoleonic law is more lenient on the individual than is Anglo-Saxon law, and has been accepted by southern Europeans and Latin Americans where it seems to be more compatible with the temper of the people. The influence of physical and biological sciences in Italy and Greece has resulted in strong recidivistic codes on the theory that if biological urges are too strong to be changed the first time in prison, they will not be changed during the second or third imprisonments. The religious temper of

18. See Bell, *Crime as an American Way of Life,* 13 ANTIOCH REV. 131 (1953).

19. Toch, *Introduction to Legal Psychology,* in LEGAL AND CRIMINAL PSYCHOLOGY pt. 1, at 9 (Toch ed. 1961).

Spain has influenced its crime definitions. The harsh punishments of northern Europe appear to reflect the rigid philosophies of Kant, Nietzsche, and Hegel.[20]

The Soviet system deserves special consideration in this context because the Soviets are convinced that the communistic system will eliminate crime through the development of a perfect social system. A perfect social system would be one in which all phases of the culture meet perfectly all the needs of each of the individual participants within the culture. This can be achieved, according to the Soviet criminologists, by eliminating private property and individual need. In such a system there would be no need for crime.

African criminal definitions remain one of today's most fascinating areas of study. The infusion of modern civilization with ancient tribal organization and customs provides an entire range of systems from the most primitive in some parts of the Congo to the modern definitions of Egypt, Liberia, and the Republic of South Africa. All of these are small enough to be compared easily. For example, the well-disciplined social order among the Kanuri of Bornu province in northern Nigeria respond to the concept of *berzum,* or discipline-respect, to the extent that maximum security facilities are not necessary for prisoners.[21] On the other hand, the individualistic societies, such as Algeria, necessitate stronger controls on the individual. The definitions of crime vary accordingly.

Testing the Limits of Criminal Behavior

The prescribed and practical limits of criminal behavior are at variance because the rigid enforcement of criminal laws would result in breakdown either of the present social structure or the present legal structure. Flexibility is necessary for functioning realtionships. Crime may be classified as against the person, against property, and against the state. The prescribed and practical limits of criminal behavior are closer together in crimes against the person and they are at greatest variance in crimes against the state.

Only a minority of crimes are reported to law enforcement agencies and of those that are reported, many are not prosecuted. This provides a differential between the prescribed and the practical limits of

20. Examination of the sentences for crime in Europe shows that northern European countries, including Germany and Scandanavia, have longer sentences than do countries in southern Europe, such as France, Italy, and Spain. That this is the result of culture is suggested by the similarly more rigorous scientific experimentation and more rigid philosophical systems that emerge from northern Europe as compared with similar endeavors and thinking in southern Europe.

21. Sobe, *Training School in Northern Nigeria,* 4 Canadian J. of Corrections 32 (1962).

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criminal behavior. Further differentials are found in the attitude of society in enforcing criminal laws. For example, when jurisdictions enforce traffic laws rigidly, they may become known as "speed traps" and be subjected to the sanction of public opinion. All laws must be enforced with discretion and flexibility and in the manner dictated by the attitude of the society. An excellent example of this is the prescribed prohibition against selling alcoholic beverages in Mississippi.[22] Yet, by "gentleman's agreement," most of the restaurants and clubs on the Gulf Coast around Biloxi and Gulfport have drinks printed and priced on their menus.

The limits of social control by defining some activities as criminal have long been the concern of political philosophy and ethics. How much freedom and how much control should be exercised to have an ideal society is central to the concern of political science. How the optimum balance can be obtained and maintained between individual expression and the welfare of the group is central to the concern of ethics.

Present Problems in Defining Crime

Present problems in defining crime can be classified into sociological and economic, anthropological and cultural (as seen previously), and psychological and psychiatric. Because man and his society are common to all these areas, as well as is the law that defines the relationship between them, all of these problem areas are interrelated. Any separation is for academic convenience.

The sociologist is concerned with the laxity and rigidity of social control within the legal framework. Some sociologists, such as Ferri[23] and Bonger,[24] have indicated that modern societies prepare their lives so that a constant proportion of the population may come into conflict with law enforcement. The presumption is that if more than the constant proportion should be arrested, a revolt against tyranny, whether violent or by legislative procedure, would bring the proportion back toward the constant. On the other hand, if fewer than the constant tend to be arrested, there is margin for tightening up the controls. Within this broad framework, some areas have displayed differential law enforcement as their economic base. Las Vegas has served as a recreational area for California residents because of lax laws regarding gambling and vice. Galveston has served the same general purpose more informally for Houston. Phenix City, Alabama,

22. Miss. Code Ann. tit. 11, §2613 (1942).
23. Ferri, Criminal Sociology (1896).
24. Bonger, Criminality and Economic Conditions (1916).

went too far in the differential in this type of "service" for Ft. Benning, Georgia, and was "cleaned up." It has been observed that differential law enforcement exists between minority and majority groups in many sections of the country. Class differences with regard to law enforcement have contributed to confusion. In capital punishment, it is the impoverished, male, Negro who has been executed to a significantly greater extent than anyone else. These are but a few of the areas that concern the sociologist while viewing the legal framework in social control.

The psychiatric and psychological problems provide the most intense and specific area of difficulty because modern criminal law has come to emphasize the offender, rather than the community or the offense. The responsibility of the individual for his acts has always been a problem, but is becoming more and more enigmatic rather than becoming simplified. English common law placed the age of responsibility at seven years because a person could earn his living at that age under the old economic system. Today, a "juvenile" generally is not criminally responsible, except for the capital offenses. However, under prescribed conditions he can be certified to criminal court prior to his seventeenth birthdate when, in most jurisdictions, he becomes originally responsible.[25] The problem of sanity and responsibility is a continuing problem without any real agreement. The development of further special areas of diminished criminal responsibility, such as the criminal sexual psychopath laws, has been explored throughout the past century and particularly in the past two or three decades.[26]

Many psychiatrists hold that no person is ever really responsible, but that the interpretations of responsiblity have to be made so that they will fit into the legal framework. The problem of sanity hearings is particularly confusing in the attempt to determine responsibility. Modern psychiatry has frequently attacked the M'Naghten Rule as an impossible standard with which to interpret realistically a psychiatric condition. Guttmacher has said openly that the M'Naghten Rule is in large measure "sham" and is juggled by the practitioner to make a realistic interpretation fit into the legal framework.[27]

The practical approach to present problems regarding definitions of crime involves the questions:[28]

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25. *E.g.*, FLA. STAT. §39.02(6) (1961).

26. *E.g.*, Sutherland, *The Diffusion of Sexual Psychopath Laws*, 56 AMERICAN J. OF SOCIOLOGY 142 (1950); Swanson, *Sexual Psychopath Statutes: Summary and Analysis*, 51 J. CRIM. L., C. & P.S. 215 (1960).

27. Guttmacher, *Introduction* to NICE, CRIME AND RESPONSIBILITY 10 (1962).

28. Wechsler, *The Challenge of a Modern Penal Code*, 65 HARV. L. REV. 1097, 1105-30 (1952).

(1) What behavior ought to be made criminal?
(2) What should be determinative of variations in treatment?
(3) What methods of treatment should be prescribed?

Even if these problems are resolved, however, their resolution would be momentary, reflecting only the attitudes and procedures of a culture at a specific place and time. It would be unfortunate to "freeze" a definition, the determinative factors, and the method of treatment. Certainly, variations in social attitudes and conditions will change what acts should be made criminal. The present state of the social sciences is such that a complete formulation of criminal law would be premature. There must be room for sufficient flexibility to incorporate advances and changes in the body of knowledge of the social sciences. A systematic balance between the rigid prescriptions proposed by Beccaria[29] and Blackstone[30] and the fluid judge-made law that preceded them appears to be evolving in modern criminal definitions. Definitions of crime should cover conduct that is harmful to society and conduct that indicates that the individual is a danger to society in sufficient proportion to warrant the intervention of social authority for the protection of society. Defining and redefining crime in this context would reduce the variation between crime as prescribed and as practiced.

With these objectives in mind, the law is in the process of accommodating present knowledge and making criminal definitions and treatment flexible through the criminal sexual psychopath laws, the indeterminate sentence, and other modifications of the "let the punishment fit the crime" philosophy. Even in the modifications and accommodations, however, many paychiatrists have difficulty in translating their medical knowledge and psychological concepts into the legal framework. Psychiatry and psychology take the medical and clinical and non-judgmental approach. Theology and law take a moral approach and must be judgmental. The clinical approach is basic to the individual, while the moral approach is basic to the community. Consequently, the translation of concepts between these different systems is difficult. Yet, the law is society's system of administration of justice and social control. The social sciences and the individuals must fit themselves into the legal framework. To accomplish this without losing something in the process has thus far proved to be impossible.

The chemist and the physicist in the crime laboratory are faced with the same general problem. Fitting their specialties into the legal framework without losing effectiveness is difficult. While some

29. See discussion at note 10 in text.
30. *Ibid.*

physical evidence may be conclusive, it is frequently inadmissible for a variety of reasons. Furthermore, a competent chemist can be made to look like a fool on the witness stand. The translation of scientific concepts to the controlling legal framework again is most difficult.

The contemporary problems in crime definitions seem to represent gaps and struggles between traditional and progressive concepts. The law looks backward for precedent. Science looks forward for prediction. While these approaches are not incompatible, their blending into a progressive society with stabilizing controls necessitates a broader viewpoint than is available from a single descipline or profession. Neither the social sciences nor the law have yet been able to provide it adequately. The law provides stability while advancing scientific knowledge provides progress. Their integration will provide a dynamic but stable society.

The nature of the legal framework that structures society is similar to the lesser individual disciplines or areas of interest in smaller perspective. The problem is one of the balance between structure and function. Changing the rules of football to accommodate changing needs, new problems, and new recognition of old problems, or the changing of an organization to facilitate its function, or altering the theories of physics to accommodate new knowledge, all present the same general problems. The law, however, as the legal framework in overall social control, is much larger, more complex, and the gaps and struggles can be expected to be more intense and extensive.

The problem with the function of law in social control is how to build a legal architecture that can house a functioning society in such a way that it provides stability and permits progress. In criminal procedure an effective social control can be accomplished within a legal structure that is perfectly congruent with the definitions of the social behavioral norms. The use of expert witnesses without the phalanx of witnesses on both sides and the reflection of the dynamic social and behavioral sciences through providing freedom of action within the legal framework are but a few of the problems that face the future. The present legal structure was developed from the heritage of a prescientific day and was built when society was fighting tyranny. The problem of rendering the legal framework sufficiently flexible to accommodate anthropology, psychology, psychiatry, sociology, economics, and other growing bodies of knowledge, and still to maintain the stability of society will probably never be resolved. Interrelationships between structure on the one hand, and function on the other, are always dynamic ones. Frameworks are always accommodating new knowledge and organizing the old. As new knowledge is incorporated into the old structure, the structure is modified, but generally retains its stability. Where it not to modify, the pressures

against it would become so great that it would collapse. The future legal framework in social control is, of necessity, in the hands of men more sensitive and knowledgeable than ever before, who are alert to social change and can mold the legal structure toward the perfection that will render revolution and misunderstanding less frequent.

Crime and Culture

The definitions of crime in a culture reflect the attitudes of that culture toward all the affairs of men in that society. The framework-of-reference points, in terms of deviant behavior, establish the social structure within which the affairs of men may function in that culture. Sir Winston Churchill told the House of Commons in 1910 that "The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country."[31] He readily could have included reference to the definitions of crime. Further, the mood and temper of the public guides politics, education, technology, engineering, and all the affairs of men within a culture. The definitions of crime are a most accurate index of the entire functioning culture.

Crime represents the acting-out disorders of a people. The social, economic, and political philosophies of a society determine in part the nature of its definitions of crime. Crime, together with its attendant subjects, is the meeting place of all facets of culture, central in the observation and consideration of deviant behavior, both individually and collectively.

Criminology is the study of the lawbreaker and of broken law. Since it reflects the attitude and temper of a culture, it is dependent upon the definitions of crime. Criminology is the study of the control of behavior for the general welfare and the protection of the society for which the definitions of crime serve as a framework of social structure. Crimes are defined for the purpose of securing the social order. Conversely, the study of the definitions of crime in a culture becomes the study of the measure of the social order itself.

It is no accident that the literature of the world has crime as central to its plots more frequently than any other approach except, perhaps, heterosexual adaptations. Dickens,[32] Voltaire,[33] Montes-

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31. Barnes & Teeters, New Horizons in Criminology 50 (3d ed. 1959). See an analogous thought expressed in the quotation preceding the *Foreword* to this Symposium.

32. *E.g.*, Dickens, Oliver Twist.

33. *E.g.*, Voltaire, Henriade and Oedipe. Both of these works were begun while Voltaire was in the Bastille.

quieu,[34] Shakespeare,[35] and others are known for their works involving crime. Victor Hugo's *Les Miserables* is a classic example. The conflict between a culture's definitions of "good," "bad," and "crime," frequently depicted as a conflict between the "good guy" and the "bad guy," permeates all the arts. The definitions fit the culture and must vary from culture to culture. Leonardo da Vinci may well have been locked up in modern America.

It is no accident that modern America is interested in mystery stories, whodunits, and literature and drama reflecting other social problems involving crime. One has only to spend an evening with his television set, read the comic books, the fairy tales, nursery stories, and the titles on the newsstands to appreciate the central position of crime in our culture. None of this is by accident.

Crime is the most cosmopolitan and universal measure of the advance of a culture. Economics, sociology, psychology, government, political sceince, law, psychiatry, chemistry, physics, and all the other disciplines and arts represent single dimensions of the total culture. Crime, however, is influenced by and, in turn, influences all the disciplines and arts and serves to bring them together to bear on the central problem of securing the social order. Crime defines the limits of tolerable behavior in a society and, as such, holds the structure of society. Focused on individual mental health and social health and pathology, the definitions of crime form the limits of culture and any deviation becomes subject to action by society's agencies for the administration of justice.

Sometimes we do not understand the pathological relationships between individuals and their society as expressed in deviant behavior. It was in 1692 that six young ladies dropped to their hands and knees and started barking like dogs. Their parents were alarmed and called for the nearest physician, a Dr. Griggs from nearby Salem. In all his medical experience, he had never before seen anything similar. While we consider this behavior today to be symptomatic of the conversion hysterias, a type of neurosis, these disorders were unknown until Sigmund Freud defined them two centuries later.[36] Dr. Griggs pronounced, "the evil hand is on them."[37] Being the medical authority

34. *E.g.*, MONTESQUIEU, THE SPIRIT OF THE LAWS.

35. *E.g.*, SHAKESPEARE, ROMEO AND JULIET.

36. The behavior reported seems to resemble the conversion hysterias described, for example, in Alexander & Shapiro, *Neuroses, Behavior Disorders and Perversions*, DYNAMIC PSYCHIATRY 117, 125-27 (Alexander & Ross ed. 1952).

37. STARKEY, THE DEVIL IN MASSACHUSETTS 42 (Dolphin ed. 1961); see Fox, *Reflections on Determination of Legal Responsibility as Associated in Mental Illness*, 2 INDIAN J. OF SOCIAL RESEARCH 59 (1961). This material is displayed in signs and in pamphlets at the Witch House at Salem, Massachusetts, where the trials were held and which has become a tourist attraction.

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in the community, his word was taken seriously. The young ladies were placed on trial to determine whether, in fact, the evil hand was upon them in sufficient proportion to be dangerous to the community. With the blessings of the Reverend Cotton Mather, these six young ladies were found guilty of the crime of witchcraft and were disposed of by hanging. Being contagious in the same moral pressure system, others were similarly affected. Before the year was done, nineteen young ladies and six men had been convicted of witchcraft and were hanged. Miss Rebecca Nourse was hanged after she had been acquitted. This lack of understanding and blind conformity to the attitudes of the culture interfered with the clear evaluation of the pathological relationships between the individuals and their culture. Such misunderstanding, lack of knowledge, and determinant attitudes remain with us today. While it is hoped that it is at a more enlightened level, we are still hanging witches at Salem Village in some of our definitions of crime.