

You never get clarity ... as long as a word is used by twenty-five people in twenty-five different ways.

-Ezra Pound!

Words are the daughters of earth ... things are the sons of heaven.

-SarnuelJohnson²

I never threw an illegal pitch. The trouble is, once in a while I toss one that ain't never been seen by this generation.

-Satchel Paige³

I shall not today attempt further to define [pornography] ... but I know it when I see it.

-Justice Potter Stewart⁴

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Crime Defined

Suppose that two vice-squad officers—one from California and the other from Australia—meet while on vacation. Both are concerned that women are illegally imported into their countries to be prostitutes. They discuss enforcing their relevant laws. Then the American officer learns that selling sex is usually quite legal in Australia. Can they still trade notes about prostitution?

My goal in this chapter is to help them find common ground. To study crime properly, we need to know its universal features. We need to find a

general definition that applies in all countries and all places. Natural scientists, too, have often needed to separate universals from particulars. Their practical experience can help us define crime. We have to state, clearly and consistently, what all crimes have in common. This chapter offers a clear definition of crime, helping us think about when and how it occurs and what to do about it.

If you give me a list of all human behaviors, I should be able to tell you which ones are crimes and which ones are not. I should do this in very few words, being very practical.

Such a definition should not try to serve all purposes. It should not try to specify who's really guilty. Nor should it promise to count up every crime that real people do in real life. By setting aside these issues, this chapter takes on a focused task. But to define crime, we still have much to worry about.

It's hard to study crime for a general reason. Justice is a living process. Laws grow, meander, respond to stimuli, and stray from what is written. Not only do laws change names and coverage, but they vary from place to place. How, then, can we use earthly laws to define crime in a consistent fashion? Naturalists can help us think in terms of overall natural history, going beyond anyone patch of land or moment in time. They have experience with definitions as devices assisting human comprehension.⁵ Before we can borrow from naturalists, we first need to study in greater detail our problem—why it's hard to define crime.

Localities Are Not Consistent

Inconveniently, legal systems often treat the very same behavior differently. That does not help our search for a single definition of crime. Even felonies are subject to variations in legal action. Burglary usually draws more police attention in low-crime American towns or counties, while big-city authorities might not even send out a police car. But the greatest variations in legal policy and action are found with "vices."

Prostitution Policy Is Especially Uneven

Consider Canada's policy on prostitution. That policy began by banning soliciting sex for money. Then Canada removed that ban but continued to treat *other communication* for prostitution as illegal. Then it brought back its earlier policy.⁶ Until 1999, Sweden prohibited pimping but permitted

trading sex for money. In the Netherlands, prostitution itself has been legal since the time of Napoleon, but *organized* prostitution is illegal. Many jurisdictions have laws against sex selling, but enforce these laws unevenly, seldom, or not at all.⁷

Some places require prostitutes or houses of prostitution to have licenses, perhaps arresting those unlicensed. In other localities, police try only to arrest prostitutes if they are underage or overt. Still other jurisdictions permit houses of prostitution but prohibit street soliciting.⁸ Nevada is the only American state that licenses brothels; and they are licensed only in some Nevada counties. The city of Las Vegas bans prostitution within its borders, but allows advertisements for licensed brothels not far away. Many local areas in other states tolerate massage parlors or seedy bars that front for prostitution.

Even within a jurisdiction, prostitutes can be banned from one street while another is left without much enforcement. Some police departments focus on *prostitutes themselves*, while others arrest their *customers*, or act against *owners* of illicit bars or buildings housing them.⁹ Not just sex for pay, but many behaviors are treated differently under law-by nation, historical epoch, jurisdiction, or neighborhood.

Alcohol and Drug Control Policies Vary

Even greater variations are found in treatment of alcohol and drug offenses. In the American colonies, hemp—the crop from which marihuana is produced—was not only legally grown but inspected for export. to American soldiers in the 19th century carried marihuana with them as a normal matter. Indeed, marihuana did not become a public issue until the 20th century.¹¹

Its significance varies greatly among jurisdictions. Consuming a small amount of marihuana is a felony in one place and a misdemeanor in a second place, while a third jurisdiction looks the other way entirely and a fourth deems it legal. "Small amount" means one thing here and another there. Some jurisdictions enforce their marihuana laws strictly and others mildly or rarely. A marihuana statute can be enforced in one decade, ignored in another decade, and repealed in a third.¹²

Sometimes administrative or civil ordinances or administrative rulings restrict a behavior that criminal law permits. It may be legal to serve a drink to a pimp, but letting him do business in your tavern could risk your liquor license. Accordingly, half-hour rooms for prostitutes could get a motel in trouble with the civil or administrative law.

Go-vernment Fights Crime With Diverse Tools

Defining crime is further clouded by the multiple ways public agencies can act against an activity they do not like. In many American cities, police departments have written letters to absentee owners of marginal businesses, asking them to make changes. "Civil abatement" has often been effective both at reducing undesired behavior and avoiding arrests, since respectable people-fearing bad publicity-tend to give up their unrespectable income.¹³ They also have something to lose through noncriminal law.

A local government authority could disrupt drug abuse within a bar in at least these ways:

- Ask police to talk to owners or managers.
- Complain to the liquor board.
- Use administrative law against them.
- File a *civil* lawsuit claiming damages.
- Use *criminal* enforcement.

Also, authorities might interfere with an establishment in *practical* ways-parking a police car in front, strict enforcement of building codes, or spawning bad publicity.¹⁴ Or they might do *nothing* at all.

Within the United States, we find tremendous variations in written law, case law, and enforcement among the 50 states and over time. We even find inconsistencies within a single criminal code in a single year. Criminal codes reflect public wrath, media pressure, regional priorities, and electioneering. Like too many cooks in the kitchen, lawmakers often write untidy legislation. Unfortunately, you can't get reelected for making the criminal code internally consistent.¹⁵ Moreover, in the United States (a common-law nation), ongoing court cases shift and confuse crime definitions as we speak,¹⁶ Even nations with one police force have local variations in what they really do. So how can we define crime?

Oddball "Crimes" Versus Rare Crimes

President Charles de Gaulle said of his beloved France, "How can anyone govern a nation that has 246 different kinds of cheese?"¹⁷

How can we make sense of crime when it has thousands of odd varieties? In American states, the following behaviors have been banned in a few places: Mourners at a wake may not eat more than three sandwiches. Snoring is prohibited unless all bedroom windows are closed and securely locked. Goatees are illegal unless you first pay a special license fee for the privilege

of wearing one in public. **It** is illegal to go to bed without first having a full bath. Bullets may not be used as currency. Two people may not kiss in front of a church. **It** is illegal to eat peanuts in church. Women may not wear heels over three inches in length while on the common. **It** is illegal to dispose of used razor blades. **It** is unlawful to walk backwards after sunset. Only white Christmas lights are allowed for display. You aren't allowed to cross a street while walking on your hands. To stroll down the street playing a violin is against the law. Women must obtain written permission from their husbands to wear false teeth. You cannot sell the clothes you are wearing to payoff a gambling debt.¹⁸

Of course, many such laws are only found in one or two jurisdictions, and might not even be taken seriously there. A broad and useful definition of crime must exclude insignificant oddities. The problem is that these strange laws seldom exist and are seldom enforced. That helps us draw the line:

Rare crime: This behavior is criminalized in enough societies, but it either rarely happens or is rarely discovered and punished. **It** should be *included* as a crime, anyway.

versus

Oddball "crime": This behavior is criminalized in odd places and cases. To be practical, we must *exclude it* from our comprehensive crime definition.

This distinction is similar to one found among naturalists. A sheep born with three legs is not declared to be a new species. On the other hand, a rare species of bird can be defined if its members have some normalcy and generality, despite paucity.

Do Not Quit the Task

In despair, many scholars have abandoned the search for a comprehensive crime definition. They define crime for one locality at one time. We could define crime as "anything that violates local laws at any time," but that evades the question, offering no single and consistent list of crimes. To study crime scientifically, we must continue searching for a general definition of crime.¹⁹ To quote Gertrude Stein, "Everything must come into your scheme, otherwise you cannot achieve real simplicity."²⁰

Our task is to find a crime definition that neither depends on local variations nor ignores them.

Subsuming Crime Under a Larger Category

The problem is to reconcile local with universal. Some scholars try to avoid this problem by defining a category wider than crime. For example, many sociologists expand their inquiry to "social deviance." Studying "deviance from social norms" avoids local variations in legal systems. Unfortunately, a universal definition of deviance is also elusive. One society tolerates hashish but hates alcohol, while another society does the reverse. Homosexuality is okay in San Francisco, not that bad in Japan, but very bad in rural North Carolina. So we are back where we started-unable to find a consistent definition.

Some observers subsume crimes within a more objective and general category of harmful behavior. For example, Professors Michael Gottfredson and Travis Hirschi²¹ avoid any particular legal system by studying "criminality"-a broad tendency to commit selfish acts that are harmful in some way. Legality is beside the point. Thus doing poorly in school, being a bad parent, performing badly on the job, and criminal behaviors often result from low self-control. According to this theory, some people commit illicit acts even beyond what they might prefer.²²

Similarly, many psychologists write about "aggressive behavior" or "antisocial behavior." But is shoplifting aggressive if you do it calmly? Does it make sense to call a social group smoking marijuana "antisocial"? Wider categories often create more problems than they solve. To study crime we cannot run away; we must define its boundaries.

A Better Choice

In the past, scholars were forced to choose between (a) defining crime *differently* in each jurisdiction, or (b) defining something much *broader* than crime itself, then including crime within it.²³ I have not given up on a third option, a comprehensive definition. Fortunately, broader science teaches us how to find it.

A good naturalist has a local eye, but a comprehensive mind. Taking natural variation into account, a naturalist studies specifics without giving up generalities. Exhibit 2.1 shows how naturalists solve five problems of definition, and how their solutions can help us study crime. Row 1 considers variations among continents. The common American groundhog is absent from Australia, while the Australian koala is foreign to America. Naturalists simply define a larger category, such as "mammal," then subdivide that

Exhibit 2.1 Natural Variations in Flora and Fauna Compared With Those in Crime

	<i>Flora & Fauna</i>	<i>Crime</i>
1. <i>Variations among nations</i>	Australia has koalas, America has woodchucks	Prostitution legal in Australia, illegal in the United States
2. <i>Extinctions</i>	Dinosaurs	Hanging horse thieves
3. <i>New finds</i>	New butterfly species	Internet frauds
4. <i>Migrations</i>	Wolves migrate to a new habitat	Crack cocaine migrated from California
5. <i>Variations among individuals</i>	Plant colorings	Offenses by people in different social categories
6. <i>Ugly examples</i>	Hideous toads	Laws impinging on human rights

category to handle variations found around the world. Similarly, sex for pay is legal in Australia but illegal in most of the United States. A comprehensive definition of crime can take natural variations into account, too. It allows us to expand, divide, and link categories, as necessary.

Exhibit 2.1 illustrates how naturalists use comprehensive thinking to solve such problems. Their definitions include both living and extinct animals, such as dinosaurs. We too can include such extinct practices as hanging horse thieves. Just as naturalists incorporate new species, we can include emergent forms of Internet fraud. Animal migrations do not thwart the naturalist's definitions, nor should we be bothered that crime shifts from one place to another. If naturalists can handle plant colorings that vary within a category, we can handle crime variants, too. If naturalists can code ugly species, we can include crimes defined by tyrants to reduce individual liberty, even if we disapprove of such laws.

To define crime, we must perform two distinct tasks:

1. Formulate a definition
2. Study variations within each defined category

Thus *crime* can include behaviors that I personally think *should not* be banned, and *noncrime* can include behaviors I think *should* be banned.

A scientist avoids mixing up what *is* and what *ought to be*. If you forget that, you will confuse yourself and everybody else. A comprehensive crime definition transcends natural variations, finds a common denominator among them, and allows observers to classify variants later-while avoiding oddball crimes.

Now that I have set out my goal, the rest of the chapter tries to reach it.

A Comprehensive Definition of Crime

This section proposes a brief but pointed definition of crime, taking into account formal law, citizen violations, and official response to such violations. A crime is

any *identifiable behavior* that
 an *appreciable number* of governments
 has *specifically prohibited* and
formally punished.²⁴

This IS-word comprehensive definition of crime requires that a law must be stated and enforced some time in human history. Some part of a law must be written for it to help define crime. Thus prehistoric people had no crime in the formal sense. Yet a crime can exist if the law is *not entirely* written down, so long as the banned behavior is specific and official.

I used the term "appreciable number" for a reason. That removes illegal acts that are quirks of a particular place, but have no general significance as crime. We can say for practical reasons that, to be a crime, a behavior must have been banned by at least 10 societies in history, and its violation must have been punished on at least 50 occasions in each of these societies. That eliminates the oddities.

It is easy to make a mess of crime definitions by mixing up two distinct questions:

1. What crimes do people commit-before anything is done about it?
2. How does the justice system *act* after it decides a crime has occurred?

The second question brings with it many more complexities: Whether a crime happened *this time*; whether *this person* did it; whether the accused are *treated* equally by the justice system; and how people in different places and times act or do nothing.

This chapter seeks to answer *only* the first question-what crime is *before* something is done about it. That just requires knowing that *some* offenders have been sanctioned some time in history for something they really did.

Crime considers behaviors prohibited by *governments*.²⁵ It excludes most bad behaviors of everyday life—which are handled outside government and have little to do with criminal law. Of course, governments can prohibit a behavior, yet act against it only occasionally. A crime by definition does not require the justice system to act every time. It requires that a specific behavior,²⁶ with an identifiable target of action,²⁷ be formally prohibited (by an appreciable number of governments), that this prohibition be subsequently violated, then that the violator be formally sanctioned (in an appreciable number of cases).

Thus crime's comprehensive definition includes past and present crimes, and leaves room for future crimes. At least for now, the list includes crimes that occur rarely (yet are not oddities), are found here but not there, then but not now, or now but not then. Like species, the list of crime types never shrinks, even with extinctions. The list grows longer as

- new criminal laws are enacted and acted upon;
- old legal codes are discovered along with evidence they were used;
- vague prohibitions are made specific, and enforced; or
- existing prohibitions are violated and sanctioned for the first time under criminal law.

You now have a rule for deciding what's a crime.

Be Practical!

You can usually designate a crime by asking a few questions. Did at least a few societies designate a specific behavior to be criminal? Did somebody engage in that behavior after it was banned? Did that society punish some offenders formally for their violations? If all three responses are positive, the behavior is a crime. If one of the answers is negative, the behavior is not a crime. This definition of a crime can incorporate the many variants of prostitution law or drug violations, even if not all variants are in force at all times and places. One then can study the many natural variations in crime just as naturalists study the distributions of rabbits, amphibians, or orchids.

This comprehensive definition overlaps with local and expansive definitions of crime.²⁸ Vague and ill-defined offenses, such as unspecified "disorderly conduct" or nonspecific "loitering," cannot fit the comprehensive definition, even if they are listed as illegal in a particular jurisdiction. Only if police procedures, custom, or case law make such a prohibition reasonably clear and specific could it be added to the comprehensive list.

A definition of crime must *never* include all or most human behavior. The definition committee might need a new rule in the future about what strange law:s to omit. But violations should not be removed simply because they are strange. If a silly law is widely used, we have to include it within our comprehensive definition of crime.

Our assignment is now simpler. We might not agree on what *should* be criminalized. But we can probably agree that a behavior has often been *treated* criminally. Going back to the officers from California and Australia, they can discuss prostitution as a crime-in terms of the comprehensive definition-then consider how their local variations in law affect the behavior and its consequences. In other words, *Australian criminologists can study prostitution as a crime by the larger historical definition, even if it is not a crime by their own standards.* I think that's a simple and practical solution to the definition problem.

Overview

We now have a comprehensive crime definition. Later we will be able to classify our general list of crimes. Clearly, prostitution and drug violations are criminal acts in pragmatic and comprehensive terms, even though they do not always violate local laws. As Samuel Johnson noted, "A blade of grass is always a blade of grass, whether in one country or another."²⁹

Our broad crime definition is not limited by local variations in law, by oddities of local law, or by what the justice system does, who is the culprit, or whether somebody was unjustly treated. Those are important issues, but should not confuse the task at hand-finding a comprehensive definition for crime that helps sort out which behaviors fit and which don't. This chapter offers a crime definition that can be put to work. After all, definitions are human devices to help us make sense of nature, else why do we have them?

Central Points, Chapter 2

1. Crime can be defined, despite local inconsistencies and oddities.
2. A stable and comprehensive definition is necessary if we want to study crime scientifically.
3. A crime is any identifiable behavior that an appreciable number of governments has specifically prohibited and formally punished.

4. Local definitions of crime are highly inconsistent over varying places and times. Regulation of drugs, alcohol, and prostitution is especially prone to variation in time and space.
5. Naturalists find definitions that allow variation, expansion, and extinction. Their thinking helps us define crime.

Notes

1. U.S. poet, critic (1885-1972). Interview in G. Plimpton, ed., *Writers at Work* (New York: Viking Press, 1963) (The *Paris Review* Interviews, 2nd series).

2. A famous 18th-century figure (1709-1784) in Britain and beyond. He compiled the first real dictionary of the English language, and was a great writer and humorist. See Samuel Johnson, "Preface," *A Dictionary of the English Language: In Which the Words Are Deduced From Their Originals, and Illustrated in Their Different Significations by Examples From the Best Writers: To Which Are Prefixed, a History of the Language, and an English Grammar* (London: Printed by W. Strahan, for]. and P. Knapton, T. and T. Longman, C. Hitch and L. Hawes, A. Millar, and R. and J. Dodsley, 1755-1756). For a list of editions, see Vassar College Library special editions, <http://specialcollections.vassar.edu/exhibits/johnson!editions.html> (accessed October 19, 2005).

3. Great baseball pitcher in the Negro leagues (ne: Leroy Robert Paige, 1906-1982), who only entered the major leagues late in life, after they were racially integrated. Quoted in P. Dickson, *Baseball's Greatest Quotations* (New York: Walker Books, 1991). Available from <http://www.baseball-reference.com> then search for Paige (accessed September 3, 2005). For a biography of Paige, see "Satchel Paige," in Wikipedia, http://en.wikipedia.org/wiki/Satchel_Paige (accessed September 3, 2005).

4. Supreme Court Justice of the United States, in *Jacobellis v. Ohio*, where he voted with the majority to overturn a pornography conviction.

5. I argue throughout this book that naturalists and ecologists can help us make sense of crime. But they are not perfect. See M. L. Corn, "The Listing of a Species: Legal Definition and Biological Realities" (Washington, DC: Congressional Research Service Reports, 1992). Available from the National Council for Science and the Environment, <http://www.ncseonline.org/INLEICRSreports/biodiversity/biodv-10.cfm> (accessed September 3, 2005).

6. This oversimplifies the variation but makes the point. Of course, Canada has provincial variations, even in federal features. The Royal Canadian Mounted Police are federal, but they do not act uniformly, wear red, or ride horses very often.