INTRODUCTION

Criminology: A Global Perspective is a text about crime, criminals, and criminal behavior; hence, it is a text in criminology. In this text, we attempt to explain crime and criminal motivation from a global point of view. We describe the criminal justice system's role (either in the United States or other countries) in deterring crime or, at the other extreme, in contributing to it. The primary focus of this text is to explain crime and criminal behavior.

There are a number of terms that must be defined before moving on to specific subjects within criminology. Terms to be defined include crime, criminal, criminal behavior, and criminology, as well as criminal justice. **Criminology** can be defined simply as the study of the causes of crime and criminal behavior. Criminology includes study of the criminal justice system insofar as it can deter crime or, in some cases, cause crime. Criminal justice as a discipline within criminology focuses upon the agencies of the criminal justice system—police, courts, and corrections—in and of themselves without regard to causation of crime. **Criminal behavior** refers to the commission of crime or violation of criminal law, whether or not the perpetrator was caught, convicted, or punished. A **criminal** is a person who has committed a crime and been caught and convicted of that crime. What then is crime? **Crime** refers to a violation of criminal law.

These are short and to the point definitions; however, the situation is more complicated that it first appears. That is because the United States has a **common law system.** If the United States had a **civil law system,** like most countries in Europe, the situation would be simpler. In civil law systems, laws are passed by legislatures, and the courts simply judge whether or not a law has been violated and whether or not the accused intentionally did the crime. In our common law system, there are a host of complications that have to do with **common law** and **case law.** Both of these determine what is a crime and procedures that must be followed to convict a person of a crime, thus making him or her a criminal. Common law refers to the history of English unwritten law while case law refers to court decisions of the past. In a common law system like ours, students of law must know more about the history of common law and case law than do law students in civil law systems, who primarily have to know the law as passed by the legislature. The study of law usually requires approximately three years of postgraduate training in our common law system. Not only is the study of law more complicated in our system than in the civil law system, but the basic definitions of crime and criminal are also more complicated. To prove that a crime has been committed and that the person accused of the crime is guilty, the prosecution must surmount all kinds of legal technicalities pertaining to the "elements of the crime" to prove **legal guilt,** which refers to a person being found guilty in a court of law. If a defense attorney can prove that his or her client lacked criminal intent (for reasons of insanity, infancy, or numerous other defenses), then the accused will be found not guilty and will not be deemed a "criminal." These considerations are just a taste of what goes on in a court of law in our system. In criminology, when we are studying criminal behavior, there is less concern about the legal technicalities (or legal guilt) because we are only concerned about getting at **factual guilt,** rather than **legal guilt.** Factual guilt in criminology refers to a person's admitted commission of crime in an interview or on a questionnaire, regardless of whether or not a capable attorney can obtain an acquittal in court. Thus, what we try to determine in criminology (factual guilt) is more akin to what is found in courts of law in civil law countries, such as many European countries, which focus more upon fact-finding than our courts do. Courts in civil law countries, for that reason, have relatively low acquittal rates, such as 6%, whereas our common law courts have relatively high acquittal rates of 25% or higher, based upon our **adversarial system**.[1]

In any event, the United States has developed a criminal justice system known as the common law system. We need to study the history of that system to understand how crime is conceptualized in our legal system. However, it is important to know that our legal system is quite different from civil law systems that characterize many other countries. Students often experience culture shock when they visit a foreign country, such as Mexico, and encounter a different justice system. Thus, it is important at the outset to discuss other legal systems that exist in the world. Our justice system is not the only one that exists, and it is not the only one used in "modern" countries, or developed nations, or democratic countries. Comparison of our common law system with others will be helpful in understanding how our system differs in its approach to crime. Our system is different in its emphasis upon tradition—upon precedent—in the definition of crime. As a result, those that are considered to be serious crimes in our legal system differ from crimes that are the focus in other legal systems of the world. We will trace the development of the definition of serious crime in America, but first, a brief coverage of other legal systems will be helpful in viewing our legal system comparatively.

THE NEED FOR A GLOBAL APPROACH

The observation that crime has "gone global" has been prompted by two outstanding texts. The first is *Criminology and the Criminal Justice System*, by Adler, Mueller, and Laufer. The second is *Criminal Justice Today*, by Schmalleger. Both texts have chapters on *comparative criminology* and both texts urge the promotion of this approach. Adler, et al. indicate the need for global criminology in the introduction to their text, as well as in the chapter on comparative criminology.

> Crime, like life itself, has become globalized, and responses to law-breaking have inevitably extended beyond local and national boarders . . . the countries of the world gradually became more interdependent. Commercial relations among countries increased. The jet age brought a huge increase in international travel and transport. Satellite communications facilitated intense and continuous public and private relationships. The Internet added the final touch to globalization. . . . These developments, which turned the world into what has been called a "global village," have also had considerable negative consequences. As everything else in life became globalized, so did crime. Transnational crimes . . . suddenly boomed. Then there are the truly **international crimes**—those that are proscribed by international law—such as crimes against the peace and security of mankind, genocide, and war crimes. But even many apparently purely local crimes, whether local drug crime or handgun violence, now have international dimensions. . . . Consequently, national criminology had to become international criminology. *Criminology has in fact been*

> *globalized*. . . . Economic globalization, as much as it promotes useful commerce, also aids organized crime and fosters the global spread of frauds. . . . Consider that drugs produced abroad and distributed locally create a vast problem of crime: Not only is drug dealing illegal, but a considerable portion of street crime is associated with narcotics.[2]

In both of the previously mentioned texts, students are introduced to comparative criminology through features on various international topics. We are inspired to carry the analysis one additional step—to the inclusion of comparative quantitative and qualitative analysis throughout this introductory text. This is because we are finding out more and more that *crime goes everywhere and comes from everywhere.*

Adler et al. point out that the reach of comparative criminology includes not only "internationally induced local crime problems," but also transnational crime and international crime. "Local problems" refers to common law crimes such as murder, robbery, larceny, and other offenses. **Transnational crimes** involve activities that violate the laws of more than one country (e.g., money laundering, terrorist activities, illicit traffic in arms, environmental crimes, illicit drug trafficking, and trafficking in persons). *International crimes* refer to activities that are contrary to the interests of humankind. International crimes include genocide, apartheid (suppression of a racial or ethnic group), war crimes, and international terrorism. Although Adler et al. introduce these topics in their text, a complete coverage of all of these topics would result in a volume of encyclopedic proportions. Thus, it is necessary to limit analysis to selected crimes to produce a text of reasonable size.

As discussed later, we have chosen to focus our analysis upon crimes that are considered to be serious crimes in the United States. Most particularly, these are the seven major crimes that constitute the Federal Bureau of Investigation (FBI) Index crimes: murder, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. In addition to the consideration of "seriousness," a very practical consideration enters into the selection of these crimes for analysis—these are crimes that are included in international crime databases, such as those gathered by INTERPOL and the United Nations. Thus, data exist for the purpose of international comparisons. The fact that such data are gathered by international organizations is a partial indication of the worldwide perception that these are serious crimes.

Focusing upon the "seven major crimes" does not mean that transnational and international crimes are ignored in our analysis. Throughout the text, reference is paid to numerous transnational and international crimes in the analysis of the Index crimes. For instance, a relationship is drawn between drug trafficking, a transnational crime, and the prevalence of murder, a "local crime," in Colombia. Similarly, a discussion of forcible rape pays reference to an international crime, "genocidal rape," in Bosnia.

Although the Index crimes constitute the bulk of comparative analysis in this text, other topics are also addressed, including organized crime, the drug trade, the sex trade, and white-collar crime. These topics involve transnational crimes and the discussion of these topics is comparative in nature.

This text emphasizes the Index crimes for comparative analysis. One benefit of this approach is that international data are available on each of these crimes. In addition, these are crimes that are considered to be "serious crime," both in terms of theoretical classifications and in public opinion. The question of what is a serious crime is addressed later in this chapter. However, first the questions of what is a crime, what is a criminal, and what is criminal behavior in the United States must be answered. The answers to these questions have very much to do with the legal system that has been developed in the United States. As will be shown, what is considered a crime varies considerably with the legal system that is in place in a particular country. For instance, prostitution is a crime in most jurisdictions throughout the United States, but it is not a crime in many European countries, such as the Netherlands and Sweden. Adultery is not a crime in America, but it is considered to be a major crime in many Islamic countries. So, before discussing the definition of crime and the subject of "serious crime," it is important to understand more about the legal system we have in America compared with other legal systems of the world. This topic is also important in the sense that the terms for different legal systems (civil law system, common law system, etc.) are used repeatedly throughout this text in describing various countries.

LEGAL SYSTEMS OF THE WORLD

There are essentially five legal systems that are referred to in discussions of countries of the world. Descriptions of these countries are given on the Website linked to this text, to be referred to as the Comparative Criminology Website. The Website can be located at: *http://www.rohan.sdsu.edu/faculty/rwinslow/index.html*. On the Website, countries are described as having one of the following legal systems: (a) civil law, (b) common law, (c) Islamic law, (d) socialist law, or (e) customary law. A good number of countries have a mixture of different legal systems. Many of these mixtures were the result of conquest and colonization, whereas some countries may have developed blended systems as result of choice.

Civil Law Systems

Civil law systems (not to be confused with American civil vs. criminal courts) resulted from the Roman legal tradition of codifying law done originally by the sixth century Roman emperor Justinian. Subsequently, Napoleon developed a similar written law known as *Code Civil* or Code Napoleon, proclaimed in 1804. What characterizes a *civil law system* is that it is written law and is revolutionary in nature, because when a new code is developed in civil law countries, all prior law is repealed. Of course, the new code may incorporate the old code; however, the validation of the old code comes from being incorporated in the new code, rather than the other way around, as in common law systems. Civil law systems characterize most European countries and are generally associated with parliamentary forms of government in which the legislative branch of the government is the most powerful branch. Civil law systems have an obvious advantage of being able to quickly adapt to newly emerging crimes, such as terrorism or computer crimes, because laws to control such crimes can be quickly passed and enforced with less possibility of judicial nullification. Courts in civil law countries typically do not use juries to decide innocence or guilt, and focus upon determining the facts of the case rather than whether or not due process has been followed.[3]

Common Law Systems

Common law systems are sometimes referred to as being based upon a tradition of unwritten law. *Common law* developed in Britain to resolve conflicts between landlords and vassals (tenants) during feudalism. Essentially, common law courts, with the aid of a jury of peers, settled disputes on the basis of what was customary. Common law was passed on through word of mouth initially. However, it developed into written case law. Citing precedent, based upon what was done in prior cases, reference to common law became a method for defense or prosecution for winning or losing cases. What evolved was the principle of *stare decisis*, which meant that the court was expected to abide by previously decided cases. The distinction between crimes that are *mala in se* (bad in themselves) and *mala prohibita* (bad because they are prohibited) derives from common law. Crimes that are *mala in se* are derived from customs, whereas crimes that are *mala prohibita* derive from government legislation. Based upon the principle of *stare decisis*, it is difficult to overturn existing laws and prior court decisions. Thus, in common law countries, laws supporting traditional morality are more likely to continue, while new laws pertaining to new social problems are less likely to be developed than in civil law countries. Although legislated law is given priority in civil law countries, the judiciary is given much more power in common law countries.

Islamic Law Systems

Islamic law systems are, in a sense, entirely based upon *mala in se*. Islamic law, called Sharia, is based in part upon the Koran and is said to be of divine origin. Although religious beliefs helped shape civil and common legal systems, with Islamic law, religion and law are one and the same. Judges in Islamic countries are trained primarily in religious law. While crimes against morality are downplayed in civil and common law systems, they are considered to be the most serious of all offenses in Islamic law. Thus, in Islamic countries, an offender may face the death penalty for moral crimes such as adultery and severe punishment for consumption of alcohol. In a sense, countries that practice Islamic Law are theocracies in which there is no separation between religion and government. It should be noted that, during colonial America in the 1600s, the Puritans developed a theocracy similar in many respects to that of Islamic countries today. Puritan theocratic jurisprudence was similar to Islamic law in its emphasis upon moral crimes and harsh punishments for these crimes. (Islamic law is discussed more fully in Chapter 3.)

Socialist Law Systems

Socialist law systems, as developed in the former Soviet Union and in Communist China, were an expression of distrust of law and the courts. Historically, law in Russia reflected both the will of the czars and customary law. Customary law came into play because the princes and czars felt no need to develop rules for everyone in all situations. The English and Europeans came to appreciate the rule of law as a natural compliment to morality and a fundamental base for society. However, the Russians never did so. Law was considered to be the arbitrary work of an autocratic sovereign and a privilege of the bourgeoisie. It was thus considered to be of no import to the common person. The negative view of law was compatible, ultimately, with the basic tenets of Marxist–Leninism. This philosophy held that the need for law under communism would ultimately wither away. After the Bolshevik Revolution, courts loyal to the working class were instructed to apply the old imperial codes as interpreted by judges who were in touch with revolutionary ideals. However, subsequent Soviet law became a tool for the leaders to achieve socially desirable ends. Law did not serve as a check on the leader's conduct, as it did in the West. Thus, law became subordinate to policy as a means of social engineering as well as a means of educating the people to the goals of socialism. Although there was systematic denial of even the existence of crime such as murder, rape and robbery during the Soviet era, the policy emphasis enforced through the courts was upon crimes that would be considered white-collar crimes in the West. One prominent text classified criminals as "money-grubbers and loafers, the litigious persons, the slanderers, the anonymous letter writers, the formalists and bureaucrats, the careerists, time servers and traitors, the dodgers and self-seekers."[4] Public policy education through judicial sanction was not always benign in the Soviet Union, but sometimes amounted to "public education through execution." The Soviet Union executed about 800 people each year for various offenses, including bribery and misuse of official position.[5] It should be noted that since the dissolution of the Soviet Union in 1991, the socialist legal system has largely been abandoned in the former Soviet countries (including Russia) in favor of the European civil legal model.

Customary Law Systems

As previously pointed out, the English system of common law developed as an outgrowth of custom and tradition. Customary law usually refers to rules for conduct that are passed from generation to generation in tribal cultures and is typically unwritten law. Few countries or political entities in the world today operate under a legal system that could be characterized as wholly customary. Yet **customary law systems** still play a sometimes significant role, particularly in regard to matters of personal conduct, in a large number of countries, especially in Africa, South America, and Asia.[6] For instance, customary or tribal courts are frequently charged with the task of dealing with problems pertaining to family or neighborhood disputes, whereas common law or civil law courts deal with violations of criminal codes. Thus, the numerous countries that utilize customary law may be more accurately characterized as "mixed systems." In many of these countries, the problem arises that many "serious" crimes, such as rape and assault, may be dealt with by tribal counsels or customary courts. As such, they do not come to the attention of the police and are underreported in international data.

HISTORY OF CRIME AND PUNISHMENT IN THE UNITED STATES

If we were criminologists from another country who decided to use the comparative method to study the United States, how would we proceed? Adler et al. recommend several steps: (a) determining the legal system to which the country belongs, (b) understanding the foreign criminal justice system, (c) learning about the foreign culture, and (d) collecting data. We are going to gather data and test theories about the United States compared to other countries of the world, but first, we must pause and reflect upon the first three steps.

As discussed earlier, America has a common law system; like many other former colonies of England, including Australia, Canada, and India, as well as countless Commonwealth countries, many of which have recently obtained sovereignty. This one fact alone—the type of legal system—explains much about the definition of crime in the United States. Being a common law country, America is to some extent bound by tradition. Thus, much of what was defined as crime during and before colonial days became a basis for case law precedent for modern America. A brief history of crime and its treatment in America should provide an important and interesting background related to the development of contemporary law in America.

Convict Colony

Compared to the Spanish, Portuguese, and French, the English settlers were actually late in their arrival to the New World. A less known fact about American history was that a good number of them were convicted criminals, exiled from England. In the early years, the colonies served as havens for religious heretics, the Puritans. The colonies also served as an important outlet for England for disposing of its unwanted criminals. According to one estimate, one fourth of British immigrants to colonial America during the 18th century were criminal exiles.[7] England used both Australia and America as a destination point for its convicted criminals. This was particularly true after the invention of gin in 1720, which precipitated binges of drinking and rioting by working class people in the urban industrial ghettos of England.[8] However, the exporting of convicted criminals to America was not the only connection between British foreign policy and crime. Had it not been for piracy, the English might not have successfully colonized the New World. Quite possibly, the United States would have been a Spanish-speaking nation, instead of an English-speaking nation.

As every school child has been taught, it was Christopher Columbus, an Italian from Genoa sailing for the monarchs of Spain, who in 1492 "discovered America." In reality, he landed in the Caribbean on an island in the Bahamas, thinking he had reached the East Indies. Subsequently, the Italian navigator Amerigo Vespucci sailed to the north coast of South America in 1499, and European mapmakers named it America in his honor. Spaniard Hernan Cortez invaded Mexico in 1519, and Francisco Pizarro conquered Peru in 1532. Later, in 1534, Jacques Cartier, sailing for France, explored nearly the whole Atlantic coast of the present United States. All of this occurred a full century before English colonization began.[9]

The Spaniards and Portuguese proceeded to denude the newly found lands of their wealth in gold and silver, and wealth enhanced the military might of both countries in competition with other European nation states. According to Chambliss, England devised a plan to offset the increasing power of Spain and Portugal through seeking an alliance with pirates—an alliance Chambliss termed "state organized crime."[10] Many of the pirates and crews of pirate ships had come to the New World as convicts or indentured servants, and the lure of the pirate's life served as an alternative that was more appealing than the conditions of serfdom and indentured slavery.

Subsequently, Sir Richard Hawkins and his apprentice, Sir Francis Drake, were issued "letters of marque" from the English admiralty directing governors of British colonies and captains of British warships to give safe passage, as well as assistance, to Hawkins and Drake who were "under orders of the Crown."[11] In the United States, Charleston, South Carolina, several New England towns, and New York provided safe harbors for pirates in exchange for sharing the booty. John Paul Jones became an American hero as a result of his success as a pirate. Later Jean and Pierre Lafitte organized and aided pirates and smugglers at the mouth of the Mississippi River. They were later enlisted by the U.S. government in the war against England. Thus, Chambliss concludes, "nations enlisted pirates to serve in their navy. In times of peace, they shared in the profits."[12]

The Bahamas, a country composed of an archipelago of over 100 islands, and which once served as hideouts for pirates, received its first Royal Governor in 1717. He was a former pirate named Woodes Rogers. After the American Revolution, Loyalists from the United States settled in the Bahamas, bringing with them black slaves to provide labor for cotton plantations. The Bahamas prospered during the Civil War as a center of Confederate blockade-running, and after World War I, The Bahamas also served as a base for American rum-runners during Prohibition.[13]

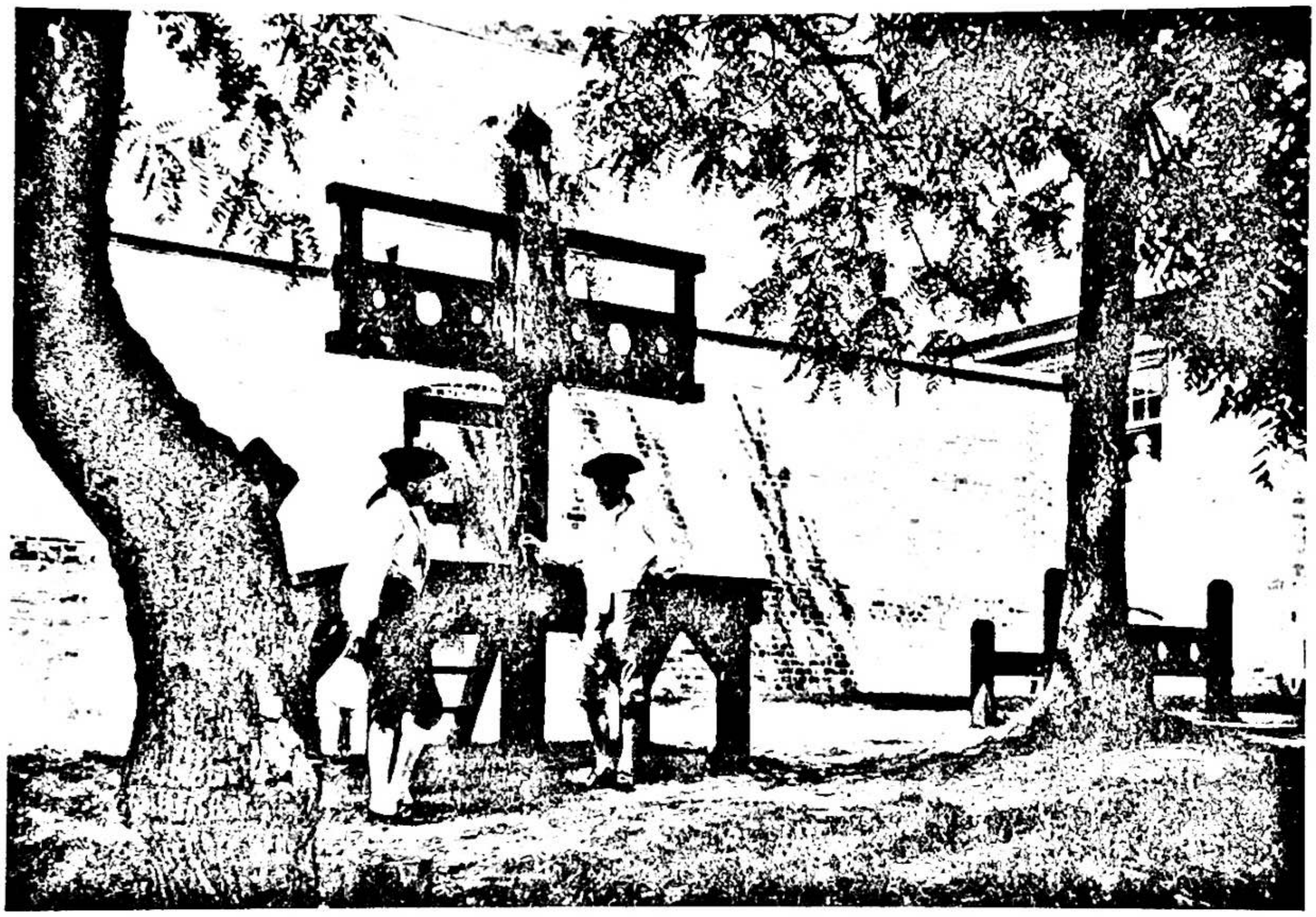
The aforementioned analysis demonstrates that crime and criminals played an important part in the early development of America. Criminals served as indentured servants, but then served the British Crown as pirates to offset the Spanish power at sea, and then later served the United States in combating British sea power.

The Puritan Ethos

Although crime and criminals formed the "dark underbelly" that served as a foundation for English settlement in America, the colonies were the forerunners of the definition of "sin" as crime. This definition (sin as crime) has continued through precedent until today. Puritans were among the first English colonists in America. They were advocates of the Protestant Reformation in

BOX 1-1

The Pillory and Post



The *pillory* consisted of hinged wooden boards with holes in which the head and arms were inserted while the offender remained standing, usually for two to four hours. Being placed in the pillory was considered a more severe punishment than confinement in the *stocks*, which held the offender while seated. In the absence of detention facilities in the New England colonies, the pillory and stocks served as gaols (jails) with the purpose of inflicting public humiliation for minor offenses. The pillory and stocks usually were placed in town squares or next to public meeting houses.

Source: Colonial Williamsburg Foundation. Abby Aldrich Rockefeller Folk Art Museum, Williamsburg, VA.

The *pillory* and *post* from 17th-century Colonies held an offender by the neck and hands. On several occasion, onlookers pelted the pilloried prisoner with such heavy missiles that death resulted. Thomas Granger of Plymouth, a boy of 17, was indicted in 1642 for buggery "with a mare, a cow, two goats, five sheep, two calves and a turkey." Granger was hanged. The animals, for their part in the affair, were executed according to the law. . . . The pillory, or "stretch-neck," . . . stood in the main squares of towns up and down the colonies. An upright board, hinged or divided in half with a hole in which the head was set fast, it usually also had two openings for the hands. Often the ears of the subject were nailed to the wood on either side of the head hole. . . . The *pillory* was employed for lying and idleness, general lewdness, masturbation, fornication, adultery, sodomy, buggery, treason, sedition, arson, blasphemy, witchcraft, perjury, wife-beating, cheating, forgery, coin-clipping, dice-cogging, slandering, conjuring, fortune-telling, and drunkenness. . . . Burglary was punished in all the colonies by branding with a capital B in the right hand for the first offense, in the left hand for the second, "and if either be committed on the Lord's Daye his Brand shall bee set on his Forehead as a mark of infamy.". . . M stood for manslaughter, T for thief, R for rogue or vagabond, F for forgery.[14]

England, persecuted by English royals, such as Queen Mary I, because the royals wanted to retain much of Catholic liturgy and ritual forms, whereas the Puritans wanted to suppress the remaining Catholic forms. The Puritans developed an extreme form of Protestantism when they formed their independent colony at Massachusetts Bay in 1630. The Puritans criminalized moral offenses such as fornication, adultery, misbehavior on the Sabbath, consumption of alcohol, and idleness, and sanctioned violation of the moral code with extreme penalties.

Heresy for the Puritans was *antinomianism*, the doctrine that the Gospel frees Christians from required obedience to any law, and that salvation is attained solely through faith and the gift of divine grace. Ann Hutchinson, who advocated antinomianism, was tried and banished from the Puritan colony for this belief. Later, as a result of the Salem witch trials, some 22 persons were brought to death either through execution or through death in prison.[15]

The Puritan experiment in Massachusetts ended in 1700 after England took actions to regularize the legal systems of the colonies, which were found to be divergent from those of English common law. Succeeding generations of Puritans adopted a conventionalism that saw no conflict between English common law and Biblical law.[16] Nevertheless, the early Puritan experiment left an indelible stamp upon American culture, and the return to fundamentalism in the form of harsh punishments for moral offenses has, from time to time, occurred in the form of evangelical moral enterprise, as will be discussed below.

The Protestant Ethic and Crime

Max Weber was one of the founders of sociology who wrote about the development of capitalism in the West. Weber believed that rational action was the heart of modern society, as manifested in modern day bureaucracy.[17] However, such rational organization is often opposed by tradition. Thus, Weber attempted to discover what forces in the West caused people to abandon traditional religions and encouraged them to develop a desire to acquire goods and wealth. Through empirical study, Weber concluded that the Protestant ethic, which was linked with Calvinism, enabled people to break the hold of tradition. It also urged followers to apply themselves rationally to work. This "work ethic" ironically stemmed from the Calvinist doctrine of predestination—ironic because predestination meant that good works or acts of faith would not assure the person's place in heaven.

To be admitted to heaven, one had to be among the "elect." Although good works did not assure membership in this elite group, wealth was taken

Max Weber (1864–1920)
Source: Library of Congress.

as a sign that a person was one of God's elect. Thus, followers were encouraged to work to acquire wealth to show that they were among the elect, fostering a work ethic called the Protestant Ethic.[18] The Protestant Work Ethic became very much a part of the American value system. Sociologist Robin Williams, Jr. developed a text in which he summarized the American value system. The list of central themes summarized by Williams heavily emphasized values related to the Protestant Ethic. These included achievement and success, activity and work, efficiency and practicality, progress, science and rationality, moral orientation, and individual personality. Values Williams listed that were not related to the Protestant Ethic included humanitarianism, equality, freedom, external conformity, nationalism/patriotism, and democracy.[19] One may observe that there may be some incompatibility between the achievement and success theme in the Protestant Ethic and other values such as humanitarianism and equality, because achievement often involves exploiting the services of others and the "doctrine of the elect" precludes equality. In the 20th century, the Protestant Ethic came to be called *the American Dream*, as it was described by historian James Truslow Adams in 1931.[20] However, as Robert Merton later pointed out, the American Dream was at once a cardinal American virtue that subsequently promoted a cardinal American vice—that of deviant behavior.[21] "The cultural emphasis on achievement, which promotes productivity and innovation, also generates pressures to succeed at any cost."[22]

The Penitentiary Movement

The Quakers, like the antinomians, came into conflict with the Puritans, based upon a claim that they, like the antinomians, need not submit their religious experiences to the review of any church official. For this belief, Quakers were persecuted by the Puritans, and some were put to death. However, long after the Puritan experiment had ended, Quakers were well represented in the United States. The Quakers believed that errant sinners could be redeemed if they were given time alone to wrestle with the evils they harbored. Along with this, the study of the Bible was strongly encouraged. Thus, the first penitentiary was developed in 1790 through remodeling Philadelphia's Walnut Street Jail by the Pennsylvania Quakers to provide solitary confinement, with minimum contact between inmates and between inmates and staff. The penitentiary approach became known as the Pennsylvania system, and it was advocated by both Benjamin Franklin and Benjamin Rush as a humane measure whereby the inmate had an opportunity for penance.[23] Although the penitentiary is today thought of as one of the harshest of confinement settings, in its early days it served as an alternative to the cruel methods used by the Puritans, which included not only the gallows, but burning at the stake, branding, whipping, and other methods of punishment that are considered inhumane today in Western society.

It may be observed that the development of the first Penitentiary occurred after the American Revolution (1775–76), both of which were influenced by the Enlightenment movement that was taking place in Europe. The Enlightenment movement was spurred by liberal thinkers such as Voltaire, Rousseau, Hume, and Locke. Enlightenment concepts such as separation of church and state, natural law, inherent freedoms, equality, and self-determinism, as referenced in the Declaration of Independence, were derived from the authors of the Enlightenment, especially John Locke.[24] It may be added that the doctrines of the Enlightenment could be seen as in conflict with those Protestant religious groups, such as the Congregationalists (formerly Puritans) who had burned people at the stake for exercising "freedom of speech." It should be pointed out that the founding fathers weren't, for the most part, Puritans. A good share of the major leaders of the American Revolution were, in fact, Deists. Deist founders included John Quincy Adams, Ethan Allen, Benjamin Franklin, James Madison, Thomas Paine, and George Washington.[25] Deism was essentially a nondenominational religion that supported the Protestant belief in a direct link between the individual and God, without the intervention of organized religion, and it was compatible with the doctrines of the Enlightenment.

The Temperance Movement

Although the American Revolution may have been influenced by the Enlightenment and spearheaded by leaders of the Deist faith, it was supported, perhaps with some reluctance, by other religious groups who "agreed to disagree" on the question of which faith was to prevail in America and accepted the doctrine of separation of church and state.

Protestant evangelical groups were quite opposed to the principles of the Deists. Evangelical groups, such as the Wesleyans and later Baptists and Congregationalists, believed that loyal parishioners could "be saved from sin and made holy through church attendance." They supported the notion of proselytizing through encouraging people to become lay preachers. They also strongly supported temperance and encouraged members to abstain from consumption of alcohol.[26]

Starting in the 1820s, evangelical members of the Northern Whig Party began a campaign against the use of alcohol. They argued that various social problems that were developing—poverty, crime, family violence, poor child rearing, and so forth—were traceable to heavy drinking. Beginning with Maine in 1851, 13 states adopted legislation that outlawed alcohol by 1855. All but Delaware were Northern states. The Temperance Movement continued,

BOX 1-2

Characteristics of Deists

Deists

- Do not accept the belief of most religions that God revealed himself to humanity through the writings of the Bible, the Qur'an, or other religious texts.
- Disagree with strong Atheists who assert that there is no evidence of the existence of God.
- Believe that God created the universe, "wound it up," and then disassociated himself from his creation.
- Do not view God as an entity in human form.
- Believe that one cannot access God through any organized religion, set of beliefs, rituals, sacraments, or other practice.
- Believe that God has not selected a chosen people (e.g., Jews or Christians) to be the recipients of any special revelation or gifts.
- Deny the existence of the Trinity as conceived by Christians. They often view Jesus as a philosopher, rabbi, teacher, and healer, but not as the Son of God.
- Believe that miracles do not happen. The "world operates by natural and self-sustaining laws of the creator."
- Believe that a practical morality can be derived from reason without the need to appeal to religious revelation and church dogma. "
- Pray, but only to express their appreciation to God for his works. They generally do not ask for special privileges, or try to assess the will of God through prayer, or ask God to perform miracles.
- Do not actively evangelize the public.[27]

basing its case against alcohol upon various quotations from the Bible. As a result of their efforts, the 18th Amendment, supported by the Volstead Act, was passed, outlawing the manufacture, transportation, import, export, and sale of alcoholic beverages. Prohibition was in effect from 1920 to 1933.[28]

The Harrison Narcotics Tax Act of 1914

Originally represented merely as a tax act, the Harrison Narcotics Tax Act of 1914 was the work of then Secretary of State William Jennings Bryan, who was described as a man of deep prohibitionist and missionary convictions. Although the Harrison Act appeared on the surface to be an innocuous tax act, the provision protecting physicians contained the phrase, "in the course of his professional practice only." The law was interpreted by law enforcement officers to mean that a doctor was prohibited from prescribing opiates to an addict to maintain his addiction.[29] This law opened the door for a series of laws that ultimately made it illegal to possess and/or sell an ever-increasing list of substances.[30]

Bryan was the Democratic Party nominee for President three times. Largely based upon his famous 1896 Democratic Convention "Cross of Gold" speech, Bryan was known for his brilliant oratory. In his speech to the Democratic Convention in 1920 in support of Prohibition, Bryan said: "Are you afraid that we shall lose some votes? Oh my countrymen, have more faith in the virtue of the people! If there be any here who would seek the support of those who desire to carry us back into bondage to alcohol, let them remember that it is better to have the gratitude of one soul saved from drink than the applause of a drunken world." Bryan's lecture "Is the Bible True?" was distributed in printed form all over the country and furnished the impetus for the passage of Tennessee's Butler Act, which prohibited teaching evolution in public schools. The prosecution of teacher John Scopes for violation of this act was the basis for the famous "Scopes Monkey Trial" (see text box).[31]

BOX 1-3

State v. John Scopes ("The Monkey Trial")

During the 1920s, traditionalists, the older Victorians came into conflict with modernists who danced to the sound of the Jazz Age, showed their contempt for prohibitions and debated abstract art and Freudian theories. A showdown between these two groups occurred in a Dayton, Tennessee courtroom in the summer of 1925. The trial of John Scopes, a high school teacher who was charged with illegally teaching the theory of evolution, caught nationwide attention. The trial pitted the defense skills of noted agnostic Clarence Darrow against prosecution by William Jennings Bryan. In a surprise move, Darrow put Bryan on the stand and grilled Bryan with questions about the Bible. Bryan was forced to admit that various portions of the Bible, such as the seven-day creation of the world, were not to be taken literally. Although the jury voted to convict (on Darrow's instructions, hoping for an appeal), the case was overturned on a technicality by the Tennessee Supreme Court. Thus, Darrow never got the constitutional test he had hoped for.[32]

Religion and the Death Penalty

Evangelicalism has deep roots both in English Puritanism and in the Wesleyan revival of the 18th century.[33] Protestant evangelicals today have carried forth the Puritan legacy of physical punishment in their support for the death penalty. During the 1970s, the National Association of Evangelicals (NAE), representing over 10 million conservative Christians and 47 denominations, and the Moral Majority were among the Christian groups that supported the

"Wayward Puritan" Dennis Rader, the BTK Killer, carried on a campaign of Puritan style executions as a serial killer who gave himself the nickname BTK for "bind, torture, and kill." BTK has claimed responsibility for at least eight deaths in the Wichita area since 1974. Rader was president of the 400-member congregation at Christ Evangelical Lutheran Church where he was a member for 30 years.[34]

Source: AP World Wide Photos.

death penalty. NAE's successor, the Christian Coalition, continues to support the death penalty. In addition, Fundamentalist and Pentecostal churches, as well as the Church of Jesus Christ of Latter-day Saints (Mormons), also support the death penalty. However, mainline Protestant denominations, including Baptists, Episcopalians, Lutherans, Methodists, Presbyterians, and the United Church of Christ, oppose the death penalty, as does the Roman Catholic Church.[35]

DEVELOPMENT OF CRIMINAL LAW IN AMERICA

Law is one of the oldest professions to deal with the subject of crime and classifications of crime. The legal profession in the United States was a transplant from England, and early lawyers were trained in England. Accordingly, they were viewed as agents of the crown, which made them unpopular. In fact, lawyers during the 17th century in colonial North America were despised, and the legal profession was prohibited in many courts. Most English colonists were uneducated, unemployed men who felt they had been oppressed and cheated by the upper-class elite of England, and lawyers were part of this elite. The Puritans especially hated lawyers. The Puritans believed in Divine Providence and Predestination and wanted to start a new Utopia where everyone got along under the grace of God. Because there would be no disputes in this new Utopia, there would be no use for the legal profession, which, they reasoned, would facilitate the corruption of money-hungry robber barons. However, the Puritans decided that it was necessary to develop laws pertaining to morality. These laws were administered by the clergy. The Massachusetts Code of 1648 defined moral offenses and stated them for the public to read. Moral offenses included drunkenness, fornication, blasphemy, bastardy, swearing, rape, slander, and adultery. Under the Massachusetts Code, adultery was punishable by death.

In most of the colonies, it was against the law to swear, to not attend church services, to exhibit inappropriate conduct on the Sabbath, and to engage in premarital sex and/or postmarital adultery. *Blasphemy* involved denying the existence of God or the Holy Trinity, declaring that there was more than one God, or worshipping another god or goddess. Although prisons were not in use (due to cost), jails were used to hold the accused, who, if convicted, were given a fine or some physical penalty. Physical punishments included the *stock* and *pillory*, whipping, and *ducking*. The *stock* was a wooden framework in which the convicted would be locked while sitting, and the *pillory* locked the convict while standing. It was permissible for onlookers to throw rotten fruit or even rocks at the convict, in some case resulting in death. The *ducking stool* was a chair to which criminals were tied and dunked into water as a punishment.[36]

In the 18th century, lawyers became more prevalent in colonial America as a result of massive immigration and a population explosion due to a high birth rate. As property disputes occurred, the law became a useful and well-paid profession. Although initially most lawyers were educated in England, legal training was subsequently obtained at Harvard College (Harvard University today) and the College of New Jersey

(Princeton University today). Many of the lawyers educated in America, such as Thomas Jefferson, began to speak out in the English Parliament against increased taxes and ultimately participated in the American Revolution of 1776.

During colonial times, the only real law that was established was that of English common law, which was based on one principle—*stare decisis*—that which has been decided stands. The term *common law* referred to the law arising from tradition, and judicial decision, rather than laws passed by legislatures. Revolutionary lawyers initially tried to find a way to overthrow English rule through common law. However, this attempt failed because the English judges were corrupt, would not rule against each other, and were free to determine any punishment they deemed necessary.[37] Ultimately, the documents that led to and followed the American Revolution (Declaration of Independence, Articles of Confederacy, and the Constitution) pertained as much to the arbitrary and dictatorial nature of the English judiciary as they did to English policing practices. However, much of what became law in America was a codification of English common law. American law that was not codified accepted the English common law, by default. Thus, a brief review of common law principles is appropriate in understanding how the concept of crime and of the criminal was (and is) defined under law in America.

Common Law Definitions

An excellent source of definitions and classifications drawn from common law is a website developed by Pennsylvania's Unified Judicial System.[38] A crime is a type of behavior defined by law as deserving punishment (upon conviction), including imprisonment, fine, or both. It should be noted that the punishment component helps to distinguish between crimes and **torts**. Torts are civil wrongs for which the law does not prescribe punishment but does grant the injured party the right to recover damages.[39] However, it should be noted that this distinction between torts and crimes was less clear historically (see text box on the Golden Age of the Victim).

Crimes are classified as either misdemeanors or felonies. A **misdemeanor** is a criminal offense generally punishable by fine or limited local jail term, but not by imprisonment in prison or penitentiary. A **felony** is a serious crime punishable by imprisonment for more than a year or by death, and/or substantial fines. By contrast, an **infraction** is a violation of law not punishable by imprisonment, but usually by a fine.

Although the term felony designates a "serious offense," there are major inconsistencies between states in regard to particular acts so designated. For instance, "animal abuse" is a felony in 35 states, but a misdemeanor in the remaining 15.[40] Up until a recent Supreme Court ruling, sodomy laws made homosexual acts felonies in 13 states. As recently as 1969, every state had an antisodomy law, but in November 2003 a six to three decision by the Supreme Court struck down a Texas state law banning private consensual sex between adults of the same sex.[41] Before the court decision, sodomy was a felony in 13 states and a misdemeanor in 10 additional states.[42] Simple possession of less than one ounce of marijuana is an infraction in 10 states, BOX 1–4

Golden Age of the Victim

In ancient times, wrongs done to a person or his property included what we would call crimes today. However, they were regarded as private matters, subject to remedial action by a victim and his family against the offender and his family. Norms of permissible retaliation arose in tribal cultures for what are now regarded as criminal offenses, and are referenced in the Torah, the Code of Hammurabi, and other ancient codes. The codes require offenders' repayment for victim suffering in addition to retributive sanctions. The goal was to make the victim whole again and to minimize private revenge. This system continued in England and in colonial America up to the formation of the first Metropolitan Police in England and until the Revolution and formation of the confederation of states in America. In colonial America, criminal justice was conducted by individual victims often with the assistance of public officials who charged fees for their services. The victim was responsible for arresting the offender—either alone or with the assistance of the local watchman, justice of the peace, or constable who was paid by the victim. The victim also investigated the crime, filed the formal charges, and prosecuted the offender. If successful in prosecution, the victim could receive damages from offenders who could pay or victims could keep or sell the offender's services for a period corresponding to the damages owed. Today in Austria, Norway, and Sweden, victims still retain a right to prosecute if the public prosecutor declines to initiate criminal proceedings.[43] This early historical period has been called the *Golden Age of the Victim* because victims had considerable influence in the imposition of punishments upon apprehended offenders.[44]

but a misdemeanor or felony in the remaining 40 states and a felony in the United States Code.[45]

In common law, the prosecution must prove three things to obtain a conviction, termed "elements of a crime." These are the specific factors that define a crime, which the prosecution must prove beyond reasonable doubt to obtain a conviction. Elements that must be proven are: (a) that a crime actually occurred (*actus reus*); (b) that the accused intended the crime to happen (*mens rea*); and (c) that a timely relationship exists between the first two factors (concurrence). The term *corpus delicti,* which literally means "the body of the crime," refers to the facts that show that a crime has occurred.[46]

The trial method used in the United States and other countries that have a common law system is termed the adversarial system. It is a system of determining truth by giving opposing parties full opportunity to present and establish evidence. In addition, opposing parties are allowed to test by cross-examination evidence presented by adversaries under established rules or procedure before an impartial judge and/or jury. It should be pointed out that the adversarial system that developed in England lacked the Constitutional guarantees, such as the exclusionary rule (evidence unlawfully seized must be excluded), which American defendants have today. It should also be noted that the English court system is considered to be a unitary system, with the Magistrate Courts at the bottom and the House of Lords at the top—one court system. The system of courts that developed in America was quite the opposite. The United States was founded not as one nation, but as a union of 13 colonies, each claiming independence from the British Crown. The Declaration of Independence referred to the colonies as "free and independent states." As a result, court systems developed independently in the various colonies. Criminal trials today typically take place in state courts of various jurisdictions. Today, there are well over 50 court systems in the United States, including the 50 states, the District of Colombia, and the federal judiciary, as well as territories and possessions. Moreover, many specialized state courts have been created with very narrow jurisdictions to take care of high caseloads in the trial courts. As a result, the court system that developed in the United States, consisting of over 1,000 jurisdictions, is the polar opposite of England's unified system and has been characterized as "fragmented."[47] The result of this peculiar mixture of codified law and decentralized common law justice is a situation in which those who can afford legal representation often receive lenient treatment because they can exploit constitutional protections. Those who cannot afford private attorneys must wait in detention, often for years, or file a guilty plea for a crime for which they may be innocent.

"Guilty Till Proven Affluent"

In the common law courts that have been passed on to us from colonial days and before, the seriousness of a crime is not based solely on the distinction between felonies and misdemeanors. There is also one unspoken criterion that can determine whether the defendant goes to prison or is set free—provability. Thus, people with good legal representation who are guilty of heinous crimes can be set free. Yet others, whose offense is often a trivial one against public morality, may spend many years in jail or prison. Both situations are the result of the legal approach to seriousness that emphasizes provability, combined with the common law traditional focus upon "crimes against morality," which remain on the books because of *stare decisis* or because of the crusading work of moralists of the recent past.

Criminology, the study of the causes of crime and criminal behavior, differs from the discipline of criminal law in a common law system such as our

O.J. Simpson, shown in a booking photo taken June 17, 1994, achieved fame and fortune as a Heisman Trophy-winning running back in the National Football League and through his post-football career as a TV and movie actor, commentator on ABC's Monday Night Football, and star of a series of TV ads. Simpson was accused of murdering his ex-wife, Nicole Brown Simpson and her acquaintance, Ronald Goldman, in 1994. He avoided a conviction (described by UCLA law professor Peter Arenella as a "slam dunk") through the efforts of his "dream team" of lawyers, who were described as "the best lawyers money could buy," including Robert Shapiro, Johnnie Cochran, F. Lee Bailey, and Alan Dershowitz.

Source: AP World Wide Photos.

own. As discussed earlier, criminologists are more concerned with factual guilt than legal guilt. Law focuses upon the determination of who is a criminal, or those convicted of a crime. Criminology, on the other hand, is the scientific pursuit of the causes of criminal behavior—violations of criminal law—regardless of whether the offender has been convicted or not. For instance, one study of burglars done by criminologists utilized the "snowball technique," locating informants through word-of-mouth referrals by other burglar informants. The study found that relatively few admitted burglars in the sample had been arrested or convicted of the crime.[48] Despite the fact that few had been charged in court, the study expanded scientific knowledge of burglars beyond that which could be obtained through the study of those convicted of the offense.

In addition to focusing upon factual guilt, criminology includes attempts to determine which crimes are considered to be serious and which are considered minor in current public opinion. Criminologists recognize that there may be offenses that are violations of criminal law that may be considered felonies in a court of law, but are not considered to be serious crimes in public opinion. This is in part because of a "carry over" on the books of offenses that were considered serious in the past, but are not considered serious today, a byproduct of our common law system of justice.

Victimization

There is a body of research that was done by Sellin and Wolfgang expressly on the subject of the seriousness of crime. In their research, they began with the goal of measuring the seriousness of juvenile delinquency (defined as crime committed by youth under age 18 in most jurisdictions). Their goal was to develop an index that would, as accurately as possible, measure the real or actual incidence of delinquency during a given period or in a given area.[49] To develop this index, it was necessary to narrow down a list of offenses that could be included to those that, based upon public opinion, constituted serious delinquency. Toward this goal, Sellin and Wolfgang developed a list of 141 offense descriptions, drawing from a list of offenses committed by juveniles in Philadelphia in 1960. They then had the list of offenses ranked in terms of seriousness by four subsamples of respondents. These included (a) university students, (b) police line officers, (c) police assigned to the Juvenile Aid Division, and (d) juvenile court judges. Their finding was that offenses rated in the most serious category had at least one of three components of seriousness: *bodily harm, property damage,* and *theft.*[50]

Index Crimes

There may be many problems with data-gathering techniques done by law enforcement bodies, as discussed in Chapter 2. However, there is much wisdom in the categories of crime used by the FBI to develop a Crime Index used for incidence and trend analysis. The Index crimes, listed in rank order according to seriousness, are: (a) murder and nonnegligent manslaughter, (b) forcible rape, (c) robbery, (d) aggravated assault, (e) burglary, (f) larceny-theft, and (g) motor vehicle theft. These crimes have the virtue of including two of Sellin and Wolfgang's criteria of seriousness—bodily harm and theft.

Another advantage of accepting this typology of offenses is that they are represented in the international databases assembled by both the United Nations and INTERPOL. Because the FBI's Index Crimes are considered to be serious both in domestic public opinion research and internationally by the United Nations and INTERPOL surveys, they will serve as a framework for the organization of this text.

DEFINITIONS OF CRIME IN CIVIL LAW SYSTEMS

Much of this chapter has been devoted to the development of definitions of crime in the United States, which has a common law system. Though civil law systems were briefly discussed, we would be remiss if we completed this chapter without discussing how crimes are defined in civil law systems. Civil law as a legal tradition is the basis of law in the majority of countries in the world. Civil law legal systems characterize most of continental Europe, Quebec (Canada), Japan, Latin America, and most former colonies of continental European countries in Asia and Africa (see Table 1–1).

Also, civil law is formally the basis of the law of one of the states in the United States—Louisiana.[51] Just as the adoption of a common law system had implications for the development of law in America, the choice of a civil law system had a significant influence upon law in countries like France, Italy, and Spain, who developed civil legal systems. The major impact of the choice of a civil law system stems from the fact that the codification of laws is revolutionary and changes with the times. Thus, the civil law countries tend to be ahead of common law countries in developing laws to cope with emerging threats, such as terrorism, computer crime, white-collar crime, and organized crime. For this reason, civil law attorneys tend to view themselves as superior to common law attorneys. They also are said to find the common law to be crude, unorganized, and culturally inferior to civil law and common law lawyers as relatively uncultured people.[52]

France

France is a good place to start with an analysis of laws in a civil law system. France was one of the earliest countries to progress from feudalism to a nation-state. The French essentially pioneered the civil legal approach with the Civil Code (Code Napoleon of 1804). Napoleon cannot be credited with creating civil law, but, instead, with reviving it. The original civil law code was the *Corpus Juris Civilis* (Body of Civil Law), also called the Justinian Code, which itself was an update and compendium of Roman law done in the 6th century A.D. by Emperor Justianian.[53] The *French Penal Code of 1994* divides criminal offenses into three categories: *crimes* (serious felonies), *delits* (less serious felonies and misdemeanors), and *contraventions* (violations). *Crimes* are heard before the highest level court (Assize Court) and they are punishable by imprisonment for life or a specific number of years. A Correctional Court hears *delits,* which are punishable by a prison term between six months and 10 years; a fine; or a noncustodial sentence, such as probation. *Contraventions* can result in a fine or noncustodial sentence, such as probation and community service, and hearings for these offenses are held before a Police Tribunal.[54] The Penal Code of 1994 addresses some new issues, such as corporate crime, and includes definitions of new *crimes,* such as offenses wherein persons are placed in dangerous situations by others, ecological terrorism, sexual

Table 1–1 **Legal Systems of the World's Countries.**[55]

Civil Law Systems

Andorra
Angola
Antigua & Barbuda
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia & Herzegovina
Brazil
Bulgaria
Cape Verde
Chile
China
Colombia
Costa Rica
Croatia
Czech Republic
Denmark
Dominican Republic
Ecuador
Estonia
Finland
France
Georgia
Germany
Greece
Greenland
Guatemala
Haiti
Hungary
Iceland
Italy
Kazakhstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macau
Macedonia
Martinique
Moldova
Monaco
Namibia
Netherlands
Nicaragua
Panama
Paraguay
Peru
Portugal
Romania
Russia
Senegal
Serbia & Montenegro
Slovenia
Spain
Suriname
Taiwan
Tajikistan
Thailand
Togo
Turkey
Turkmenistan
Ukraine
Uruguay

Civil Law Mixed

Civil/Customary

Angola
Belize
Botswana
Burkina Faso
Burundi
Cambodia*
Chad
Congo, Democratic Republic
Congo, Republic
Cote dîlvoire
Equatorial Guinea
Eritrea*
Ethiopia
Gabon
Guinea
Indonesia
Laos*
Madagascar
Mali
Mozambigue
Niger
Norway*
Rwanda
Sao Tome & Principe
Swaziland

Civil/Socialist

Cuba*
Korea, North
Poland
Uzbekistan
Vietnam

Civil/Common

Argentina
Aruba
Cameroon
Cyprus
Honduras
Japan
Korea, South
Lesothro
Malta
Mauritius
Mexico
Mongolia*
Philippines
Seychelles*
South Africa
Sri Lanka*
United Kingdom
Vanatu
Zimbabwe

Common Law Systems

Anguilla
Australia
Bahamas, The
Bangladesh
Barbados
Belize
Bermuda
Bolivia
Canada
Central African Republic
Dominica
El Salvador
Fuji
Gibraltar
Grenada
Hong Kong
India
Ireland
Jamaica
Malaysia
Montserrat
Nauru
New Zealand
Papau New Guinea
Saint Kitts & Nevis
Saint Lucia
Singapore
Slovakia
Tanzania
Tonga
Trinidad & Tobago
Turks & Caicos
United States
Venezuela

Common/Customary

Bhutan
Ghana
Israel
Kenya*
Liberia
Malawi
Micronesia
Nepal
Samoa
Sierra Leone
Uganda
Zambia

Islamic Law Systems

Afghanistan
Iran
Maldives
Saudi Arabia
Somalia

Islamic/Civil

Comoros
Djibouti
Iraq
Jordan
Kuwait
Lebanon
Libya
Mauritania
Morocco
Qatar
Syria
Tunisia
United Arab Emirates
Yemen

Islamic/Common

Bahrain
Brunei
Egypt*
Gambia, The
Nigeria*
Oman
Pakistan
Sudan

harassment, crimes against humanity, and genocide.[56] Under the 1994 Code, *crimes* also includes attacks against property that include, in addition to theft, fraud and breach of trust.[57]

It was noted earlier that *contraventions* can be tried before a Police Tribunal, a practice often shocking to American tourists. However, the French system essentially replaces American "plea bargaining," whereby the caseload of courts is reduced through defendants being allowed to plead guilty (often to a lesser offense). In France, suspects are not allowed to plead guilty, but the caseload volume is dealt with through assignment to lower courts (Police Courts or Correctional Courts), thus freeing the Assize courts to deal with serious crimes.

Spain

Spain has a civil law system similar to France, but with its own approach to the definitions of crime. There is a distinction between serious (*delitos)* and less serious (*faltas)* offenses. Serious offenses are indictable and less serious offenses are nonindictable. Serious offenses include a cross-section of crimes that would be considered white-collar crimes in American. The Penal Code in Spain includes as indictable crimes: (a) offenses against state security, (b) fakes and falsifications, (c) offenses against the administration of justice, (d) offenses against sanitation and health (including drug offenses), (e) offenses by public officers, (f) offenses against reputation (libel and slander), and (g) offenses against freedom and personal security. These offenses are considered to be serious, in addition to offenses against individuals (murder, homicide, illegal abortions, assault, and sexual offenses). Although growing, processing, trafficking, promoting, and facilitating the consumption of illicit drugs is punishable by two to eight years in prison, individual consumption of illegal drugs is not subject to penalty. An average of three days drug supply for individual consumption by drug-addicted individuals does not constitute illegal possession as ruled by the Spanish supreme court.[58]

Italy

In Italy, criminal offenses (*reati*) are divided by the Penal Code (*Codice Penale)* into two broad categories: *delitti*, which are serious offenses, and *contravvenzioni*, which are less serious offenses. For *delitti* crimes, the penalty is 15 days to life imprisonment, whereas for *contravvenzioni* crimes, the penalty is 5 days to 3 years imprisonment. *Delitti* crimes include a wide range of crimes, old and new: (a) crimes against the Nation (e.g., espionage, assassination of the President, armed bands, terrorism); (b) crimes against public authority (e.g., corruption, bribery, embezzlement of public property by an officer); (c) crimes against judicial authority (e.g., perjury, to suborn a witness); (d) crimes against public safety (poisoning food, water, or drugs; provoking a railway or air disaster); (e) crimes against public faithfulness (forgery and counterfeiting); (f) crimes against public economy, industry, and commerce (commercial fraud); and (g) crimes against property (theft, money laundering, robbery, extortion, ransom, kidnapping). The Penal Code considers the violent crimes of robbery, extortion, and ransom kidnapping as property crimes because their main intent is to gain property.[59] The personal use of drugs in Italy has recently been decriminalized, following a national referendum. The law does not permit imprisonment for drug-related activities involving personal use only. Only administrative sanctions, such as revoking a driving license, can be imposed. However, producing, selling, or trafficking drugs are considered very serious crimes.[60]

Although these three countries—France, Spain, and Italy—are only three examples of civil legal systems, they are certainly good examples. Italy was the country of origin for the Justinian Code that later was reshaped in France by Napoleon into the Code Napoleon, the first of the modern civil legal systems. Spain is also an important country in that it emulated the Code Napoleon and brought that codified law to the New World in its conquest of South and Central America. American settlers encountered civil law courts in the American West when they occupied California and the Southwest.

Civil Law Definitions versus Common Law Definitions

It is sometimes pointed out that civil law systems and common law systems are tending to become more like each other. For instance, common law systems often develop codified laws, and civil law systems often adopt features of common law systems, such as adversarial proceedings. However, it is still true that common law systems tend to be "judge-made law" in the sense that the judiciary can overturn laws passed by Congress and state legislatures. On the other hand, in civil law countries, judicial review of laws is rare. Thus, legislative bodies in civil law countries can pass laws to deal with current-day social problems and threats without as much concern about judicial reversal. The laws in these three countries have kept up with the times, as well as with public opinion. In Italy and Spain, it was noted that possession of illicit drugs for personal use has recently been legalized or decriminalized. In addition, these countries have been proactive in treating white-collar, corporate, and political crimes as serious as street crimes.

GLOBAL APPROACH TAKEN IN THIS TEXT

It should be pointed out that comparative criminology itself is an old, not a new, discipline. The founders of both sociology (the parent discipline of much criminological theory) and the founders of criminology were comparativists. They studied the cultures of the world, both historically and cross-nationally, and developed "grand theories" to explain the relationship between crime and social development, as well as other sociological variables. Their analyses were based upon the reading of historical documents and a variety of texts in various languages. However, these analyses were too lacking in access to cross-national data to be used for comparison. In addition, the authors were often not trained in the methodology of science, whereas criminologists today are typically trained and adept in the use of statistics and the scientific method. However, despite this training in scientific analysis, it is probably more accurate to say that criminologists are *striving* to be scientific, rather than to say that criminology is a science. This is because criminology is lacking in the development of the universal generalizations that characterize the "hard sciences." The cross-national data that are available today provide criminologists with the opportunity for the development of such generalizations. There are a number of contemporary theories that are attempts at the development of universal generalizations. These theories are different from earlier attempts to arrive at a global theory in that they are based upon international data (available through the United Nations, INTERPOL, and the World Health Organization). Examples include *modernization theory, world system theory,* and *opportunity theory.* According to Barak:

> First, there are the *modernization explanations* that have argued that social changes, such as urbanization and industrialization, are associated with

changes in crime and victimization patterns. According to these models, the changes in crime and crime control are primarily the products of the internal influences of development, regardless of time and place. Second, there are the *world system explanations* that have argued that contemporary developing nations are dependent on—and to varying degrees, exploited by—already developed nations. Hence, the changes in crime and crime control in any country, regardless of its developmental status, are primarily the product of external influences, in relationship to a changing political economy. Third, there are the *opportunity explanations* that have argued that both crime and crime control reflect a mixture of developing material resources and social environments. Thus, changes in the patterns of crime and victimization, over time, are primarily the products of interacting internal and external factors.[61]

These theories are derived from general sociological theories, as discussed in later chapters. However, also to be discussed is the point that all of these theories fall short of being satisfactory explanations in regard to the data that are at hand. This indicates either that the theories or the data are inadequate. It is fair to state that probably both are true. It is also fair to state that there is some truth to all of the theories that have been developed, and that new theories will be developed that account for aspects missed by the existing theories.

Existing theories are often derived from the experience of their authors and may be correct in analysis within the cultural context in which they were developed. However, we believe that it is too early in the game to develop a "grand theory" that explains all crime. Instead, it seems more fruitful to examine crimes, one at a time, to determine which of these theories (or other theories) seems to fit the crime best. Thus, in terms of correlations, in Chapter 6, on criminal homicide, we find that *world systems theory* might be most suitable for explaining murder cross-nationally (i.e., murder stems from conflict traced to social inequality that exists in society). On the other hand, we will show in Chapter 10 that burglary, larceny, and auto theft may be crimes best explained by *opportunity theory*—people steal because "they can." Thus, the approach to "grand theory" taken in this text is exploratory and eclectic.

We have found that the FBI's Index Crimes are recognized as serious crimes both in public opinion and by their inclusion in the two major international databases on crime compiled by INTERPOL and the United Nations.

SUMMARY AND CONCLUSION

We believe that students should be exposed to comparative criminology, the international study of crime, as part of their introduction to criminology.

In this first chapter, five of the world's "great legal systems" were described. These include the civil law, common law, Islamic, socialist, and customary legal systems. The United States, as a former English colony, has a common law system inherited from England. However, in many ways America has deviated from the common law system in its purest form of "judge made law." The early Puritan colonists rejected lawyers and the common law system of England in favor of church law. America, before and after the Revolution, was, in fact, in a state of conflict over religious doctrine. The Quakers and Deists, who favored the principles of the Enlightenment, were in conflict with the many denominations of Puritans, who favored various measures of punishment whose purpose was to exorcise the devil from sinning criminals. The American Revolution had not settled these religious differences, but, instead, the various Protestant denominations "agreed to disagree" through the Constitutional principle of separation of church and state.

The Puritan Ethos, with its harsh punishments, did not disappear completely after the Salem witch trials. It has reappeared, from time to time, in various movements favored by evangelical Protestants. One movement sponsored by evangelicals and spearheaded by evangelist William Jennings Bryan was the Temperance Movement to ban alcohol, which reached its fruition during the Prohibition era. Bryan's crusade for Temperance resulted not only in the passage of the 18th Amendment banning alcohol, but also in the passage of the Harrison Act of 1914, which for all practical purposes rendered opium and cocaine illegal in the United States, as well.

Thus, all of these forces together led to America's unique form of common law system. Fear of the devil led to an emphasis upon law that punished immorality, including drug and alcohol consumption. Fear of tyranny by central government led to an extremely decentralized and fragmented judiciary and a tradition of distrusting lawyers. An abundance of laws pertaining to individual morality led to prolonged detention and harsh punishment for the multitude of offenders who are without adequate legal representation. These various forces have led to crowded jails, crowded courts, and crowded prisons in today's America. We note that the majority of countries in the world do not have common law legal systems. Most have civil law legal systems. Such systems seem amenable to the increasing pace of change that characterizes the modern world.

Scientific criminology has recently been challenged by evangelical Christians and by neoclassicists who want to revive deterrence theory. However, the real reason scientific criminology has fallen from favor, we believe, is that it has essentially "run out of gas," attempting to confine scientific study to the continental United States, despite the fact that, with the global economy, countries of the world are growing more interconnected.

In Chapter 2, we review basic methods of data gathering using both national and international databases. We then give a historical overview of the development of criminological theory in Chapters 3, 4, and 5. Subsequently, we present one chapter each on the FBI's crimes against persons—criminal homicide, forcible rape, robbery, and aggravated assault. One additional chapter will be devoted to crimes against property: burglary, larceny, and motor vehicle theft. In addition, we have included chapters that pertain to "sets of crimes"—organized crime, drug trafficking, the sex trade, white-collar crime, and terrorism. Studying these crimes using the comparative perspective will help us to further understand how *crime goes everywhere and comes from everywhere.*

DISCUSSION QUESTIONS

1. Do you accept the premise introduced in this chapter that "crime goes everywhere and comes from everywhere"? What are some examples of crimes that illustrate this premise? Can you think of any crimes that are exclusively local?
2. Do you think that the U.S. common law system is less effective in combating crime than the civil law systems of many European countries?
3. What role did crime and criminals play in the early development of the United States?
4. Do you think there is a link between today's evangelical movement in the United States and early colonial Puritanism? What bearing do you think the evangelical movement has upon criminal justice today?
5. Do you believe that "money buys justice" in America? On the other hand, do you think that many ordinary criminals "get off on a technicality"?
6. Do you think that cross-national analysis can be helpful in understanding crime in America or that we should confine our analysis to the territorial United States?