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Chapter 1: C. H. in Crime and  
Definition  
I

## *Crime: A Matter of Definition*

ASSUME THAT WE ARE IN A BANK. A man approaches the teller and hands her a slip of paper. She, in turn, hands him a sum of money, and he proceeds to leave the premises.

Nothing in particular has occurred. The man has simply cashed a check or made a withdrawal. It happens all the time.

But now suppose we learned that the piece of paper was neither a check nor a withdrawal slip. In fact, the man never even had an account with the bank. Rather, he had handed the teller a note stating that he had a gun and would shoot if she didn't hand over the money in her drawer.

Now the event takes on an entirely different character. We have just witnessed a holdup. A crime has occurred before our very eyes. The event that we considered of little significance is revealed to be something quite different from what we had assumed it to be. It has been transformed into something worthy of concern.

What differentiates the two types of events? In both cases a sum of money was transferred. In both cases this happened simply in response to some writing on a piece of paper. Obviously the event we observed was a crime. But on what grounds can we make that statement? Because the man possessed a gun? Because

he didn't have an account with the bank? Because he neglected to use the standard withdrawal form? What, in short, do we mean by the word "crime"?

To the layman, and to most criminologists, the word "crime" refers to a particular kind of behavior. Rape, robbery, disorderly conduct, embezzlement, and a host of other acts come to mind.

But if we are to investigate a phenomenon called "crime" scientifically, we need to be more precise as to just what is meant by that term. Our first task, therefore, is to define crime. This is not so simple as it might appear to be, for a large number of alternative definitions are available. Even social scientists do not agree as to its meaning. The phenomena we study as the subject matter of criminology depend on the definition we choose.

Most definitions of crime take one of two major approaches—the *behavioral* or the *labeling* perspective.

#### CRIME AS BEHAVIOR

Behavioral definitions of crime tend to differ depending on the role they give to criminal law. Advocates of the "sociological" or "normative" approach exclude almost totally any reference to criminal law in their definitions of crime. Their argument is based largely on the premise that scientific criminology should have universal applicability—that its range of subject matter should not be limited by either time or place. The law, they say, is too relative and unstable to form an adequate standard for scientific inquiry. The proper focus of attention should be on a more general category of behavior—behavior that violates "conduct norms." Since every society has rules, or norms, designed to control the behavior of its members, the study of crime, according to this school, is the study of those activities that violate socially prescribed standards, whether or not that behavior happens to break some criminal law (Sellin, 1938:32).

The focus of this school is on antisocial conduct, wherever and whenever it occurs. Incest, for example, appears to be universally abhorred and would therefore be included in a sociological investigation of crime. Similarly, such diverse activities as homicide, cheating on examinations, income-tax evasion, and simple breaches of etiquette, such as belching at a formal dinner party, would all be proper topics for criminological inquiry.

More recent variants of the normative approach expand this list even further. Some writers have argued, for example, that a truly humanistic criminology would direct its attention to acts that violate basic human rights. Hence, criminologists should investigate "racism," "sexism," "imperialism," and the like (Schwendinger and Schwendinger, 1970).

These "sociological" definitions of crime rarely receive serious attention these days. Most criminologists would probably agree that criminologists should investigate a somewhat more limited area of inquiry than the normative approach would suggest. Some criminologists argue that a definition of crime that centers on the criminal law would best serve the interests of criminology and that norm-violating activity not covered by the criminal code should be left to the more general study of social deviance.

The central theme of "legal" definitions is quite simple: crime is any act that violates a criminal law. Indeed, as some proponents of this view suggest (e.g., Jeffrey, 1956), crime could not exist at all were it not for criminal law. After all, it is criminal law that gives behavior its quality of criminality.

There are various definitions that share this emphasis on criminal law. According to some definitions, any act that violates the criminal code—that is, any form of behavior designated by law as socially harmful and for which a penalty is prescribed—can be considered a crime and a proper subject of sociological scrutiny, whether or not some formal declaration that a law has been broken has been made by the courts. For example, one of the more popular definitions expressing this view suggests that the "essential characteristic of crime is that it is behavior which is prohibited by the State as an injury to the State and against which the State may react, at least as a last resort, by punishment" (Sutherland, 1949:31).

Other writers have argued that, since we have no way of deciding who or what is criminal until some person has been officially processed by the courts, criminology should restrict its attention to individuals who have been formally convicted by the courts as criminals. Korn and McCorkle (1959:46), for instance, have argued that an act should not be considered a crime until the actor is actually convicted of violating some law and punished. Similarly, Paul Tappan (1947) urges that only those who have

been adjudged as criminal by the courts should be so considered. From this perspective, crime exists only when such a designation has been handed down by judicial authorities—that is, when some act has been officially identified as in violation of the law. A person can be considered a criminal only when and if legal authorities have ruled that he is responsible for breaking some part of the criminal code.

Before an act can be legally defined as a crime, at least theoretically, five conditions must be met: (1) An act must take place that involves harm inflicted on someone by the actor; (2) the act must be legally prohibited at the time it is committed; (3) the perpetrator must have criminal intent (*mens rea*) when he engages in the act; (4) there must be a causal relationship between the voluntary misconduct and the harm that results from it; and (5) there must be some legally prescribed punishment for anyone convicted of the act (Savitz, 1967:10-13).

Obviously, not all those who break criminal laws are caught and convicted, much less punished. Many acts that could be considered crimes are rarely submitted to the test of criminal prosecution. What meaningful conclusions can we reach about criminal behavior, therefore, if we are to study only those persons who are convicted of wrongdoing? Even the most avid legalist would not limit his conclusions only to adjudicated criminals. In most cases, persons judged as criminals simply serve as samples for study. Like the normative approach, the legal perspective of crime has the underlying objective of studying rule-violating behavior. Legal definitions of criminal behavior, therefore, differ from normative definitions only in the types of rules involved.

One of the problems with both the normative and most legal views of crime is the emphasis they place on behavior. This emphasis has led criminologists to investigate criminal phenomena from a single conceptual point of view. Most of the research in criminology taking "criminal behavior" as its central object of inquiry is oriented toward causal factors. Criminologists following these approaches have been interested mainly in explaining, predicting, and controlling criminal conduct. The questions they have addressed have been concerned largely with the behavior and characteristics of lawbreakers. Who violates the law? Why do they do it? How can crime be prevented? How

can the criminal be rehabilitated? These and similar questions have largely shaped our knowledge and understanding regarding criminal phenomena. We know a good deal about lawbreakers but relatively little about other aspects of crime. Having directed attention to the criminal and the causes of criminal behavior, the behavioral approach to crime has obscured the relevance of other phenomena of interest to criminology.

Several criminologists, however, have taken issue with behavioral definitions in general. Some have suggested that behavioral definitions that focus attention on the criminal are conceptually restrictive. Other criminologists have contended that behavioral definitions perpetrate a misconception of crime, since they claim that the search for causal explanations of crime is little more than an exercise in futility. And finally, a few writers have voiced concern over the moral implications of contemporary criminology (see Gibbons and Jones, 1971).<sup>\*</sup> In response to these objections, a number of alternative definitions of crime have been formulated.

#### CRIME AS A LABEL

There is no intrinsic reason for a definition of crime to be restricted to a behavioral conception. In fact, there is no intrinsic reason to include any reference to behavior in a definition of crime. A number of criminologists view crime as a consequence of social interaction, a result of a process that involves both the "rule violator" and others (e.g., the community, the police, the courts) who see the person's behavior as criminal. Crime, according to this view, is essentially a label attached to a person's behavior by others. Behavior may be defined or labeled as crime, but it is not this behavior in itself that constitutes crime. Rather, the behavior is criminalized—transformed into criminal behavior—by a process of social ascription (Turk, 1969). The behavior labeled criminal by agents of the law should be of interest to criminology. But the *process* and *conditions* of defining (criminalizing) persons and their conduct should also be central objects of criminological study.

Although several definitions of crime embodying this view

<sup>\*</sup> This point is discussed in Chapter 8.

are available, they all share the central idea that no act is innately criminal, that the criminal character of behavior is the product of an interpretation of an individual's conduct made by some person or persons in a position to make this designation. An act is not automatically a crime. Someone in a position to make such a decision must first proclaim that the conduct in question violates some criminal law, that the act is an illegal one. Hence, any definition of crime must include some reference to the process of social labeling.

The basic notion of labeling has been aptly expressed by Howard Becker:

Deviance is *not* a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an "offender." The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label. [Becker, 1963:9.]

Crime, in brief, is not something the observer beholds. It inheres in the perception of the beholder.

Other writers have made similar observations. Austin Turk (1969:10), for example, suggests that crime should not be viewed as some form of behavior; rather, he suggests (p. 25) that criminality is a social status defined by the way in which an individual is perceived, evaluated, and treated by legal authorities. More recently, Richard Quinney (1970a:7) has defined crime as a "legal category" assigned to a person's conduct by authorized agents. A person becomes a "criminal" when others ascribe this status to him. The basis for making this assignment is the official judgment of legal authorities that the person has committed a criminal act. Crime, in short, is the "result" of some official judgment, a decision and proclamation, made by legal authorities.

Many of the labeling definitions of crime still include a behavioral component insofar as they refer to the definition of conduct. But these approaches shift the focus of emphasis from the violations of rules to the designation of specific behavior as rule-breaking conduct. Whereas behavioral definitions lead one to investigate rule-breaking activity, the labeling perspective leads one to study the responses of legal authorities. Rules, in the labeling perspective's view, are one set of grounds for applying

the label "criminal" to a person. But the rule-violating behavior to which this label is applied is not in itself "criminal conduct." The essential point is that crime is not something in the behavior of rule-breakers, regardless of the types of rules one may employ to make that designation. Crime is found in other people's perceptions and evaluations of, and responses to, persons deemed to be rule-breakers. Crime, in this view, can be said to exist only when someone makes a declaration and imposes that judgment on a particular person.

If, then, it is not what people do but how they are perceived and evaluated by others that constitutes crime, it is not what people do but how they are treated by others that provides the subject matter for criminology. Indeed, a person may never do anything illegal and still acquire a social identity as a criminal. On the other hand, most citizens probably break a criminal law at some time in their lives and are not perceived as criminals. Lawbreaking behavior, thus, provides but one dimension of a definition of crime. If we combine this dimension with the perceptions of others, we have four as opposed to two theoretical possibilities, as Figure 1 shows. People are not merely criminals and noncriminals. They are not merely lawbreakers and non-lawbreakers. They are also perceived as wrongdoers or not so perceived.

	Nonlawbreaking Behavior	Lawbreaking Behavior
Perceived as Criminal	I Falsely Accused	II Criminal
Not Perceived as Criminal	III Noncriminal	IV Secret Criminal

Source: Adapted from Becker (1963:20).

FIGURE 1: Types of Crime

In the past, criminologists who have concerned themselves only with the legal/illegal behavior of persons have been content to base their knowledge about all criminals, including those who are not officially designated as lawbreakers (category IV), on their

study of perceived criminals (category II). The assumption has been that a large number of people violate criminal laws every day, but that most of them are never caught or prosecuted and hence are never officially labeled "lawbreakers." It is almost impossible to obtain a sample of these "secret" criminals to study. By studying adjudicated criminals, it is hoped, we will be able to gain more or less accurate information about criminals in general. The problem, of course, is that we can never be sure of the extent to which perceived criminals are representative of all lawbreakers, so that we can never be sure just how accurate our conclusions are.

A person who has not been defined as a criminal by others is, for all intents and purposes, a "noncriminal," regardless of his behavior. At least as far as society is concerned, the individual's social identity has not been altered. We would still hold the same opinion of him we always held; we would not behave differently toward him. It is only when the person is socially judged as being somehow different from what we once assumed him to be that we have reason to alter our conduct toward him. The social acquisition of a criminal identity is but one of a large number of occasions for treating a person differently. It is by the alteration of our conduct toward such a person that he is relegated to the social category "criminal."

Sociologically, then, the perceptual dimension is the primary one. The social reality we are about to investigate is the reality created and lived by the members of the groups being studied. The reality we investigate as crime must, therefore, be the reality created by societal members in the course of living their everyday lives. In this light, we can define crime as a *socially recognized status constructed by societal members or their authorized agents in the course of labeling someone as a criminal*. The sociological reality of crime exists, very simply, only when members select others of their group to populate the social status "criminal."

#### THE CRIMINALIZATION PROCESS

Definitions are neither right nor wrong. They are only more or less useful. The adequacy of a definition depends on its usefulness and the order of phenomena it leads one to investigate. The scientific significance of a definition rests on the types of questions

to which it directs attention. Whereas the behavioral conception of crime directs criminologists toward the criminal offender and the causes of his conduct, the labeling view, while not totally ignoring the behavior of lawbreakers, relegates their activity to a subsidiary position. Rather than attempt to explain why people break the law, many criminologists today address the procedures, grounds, and policies involved in defining or labeling any person's conduct a crime. The central question is not why some people break the law while others do not. It is, rather, why some people's conduct is defined as crime and that of others is not. In short, it is not the criminal character of behavior that is of interest to criminology but the process of criminalizing behavior (Turk, 1969).

This concern requires that the attention of criminology shift from the violator of criminal law to the criminal justice system and the interrelationships between the perception of crime, the administration of criminal law, and society in general. A sociological description of crime involves, therefore, an analysis of the criminalization process and the conditions that underlie the administration of criminal justice—the mechanisms involved in creating the social reality of crime.

This definition of crime implies that criminal activities differ from one society to another. Nor do I mean that crime is relative to different legal systems. What I mean to imply is that crime is not something that can be observed existing in the world. Crime is not a "thing" one apprehends in the same way that one apprehends a tree or a table. Rather, crime is a construct of the social world, one of many possible interpretations men make of reality experiences. In this sense, crime involves a choice. Its existence implies that the decision has been made to treat reality experiences in a particular way. The problem for the sociologist is to describe how and on what grounds members of societies make this choice. In short, the process by which their conception of reality is transformed into actuality. The following chapters of this book focus on how behavior is criminalized by analyzing the factors and conditions that underlie the production of criminally defined per-

ceptions of reality

sons. But before we begin that inquiry, some comments on the general nature of the process are in order.

Crime is innately political. For one thing, the very possibility of crime depends on a political process: the legislative process responsible for the creation of criminal laws. I do not mean to imply here that crime owes its existence to criminal law. Law is not a cause of crime, even though it is doubtful that behavior could be labeled criminal without the law. What I mean is that law provides a standard, a way of judging others as criminals, of transforming an instance of conduct into a criminal act. Although the majority of criminal laws are actually enforced only rarely, the mere existence of some rule furnishes an opportunity for labeling behavior as crime.

Moreover, law supplies authority, a kind of court of last appeal, for transformation activity. Insofar as law is enacted in the name of the group and is invoked on behalf of the group, law serves to justify the apprehension, prosecution, and punishment of our fellow men. Theoretically it is the group that is punishing its own. The group speaks with an authority and a power greater than those of any individual member. Also, since the law is said to codify and systematize the wishes and desires of the group, it stands above the desires and claims of any individual.

Law, as a result, has come to serve a dual function in society. First, it provides the means of registering, signifying, degrading, and stigmatizing (Matza, 1969:159) someone as a criminal, and then, it provides itself with its own justification. Law supplies the *means* and the *authority* to criminalize the behavior of another. Any analysis of crime must begin, therefore, with a discussion of the nature and origins of criminal law.

Crime is political in a second sense as well. Whereas the criminal code furnishes the ultimate grounds for criminalization, the application of these grounds is also a political act in that it involves and requires the employment of power; the power to translate legal rules into action, the power to impose one's will on others, the power to define and enforce one's definition of another's conduct as illegal.

As an inherently political phenomenon, crime is ultimately an expression of group conflict and interest. Indeed, the actual formulation of criminal laws is itself an expression of a basic

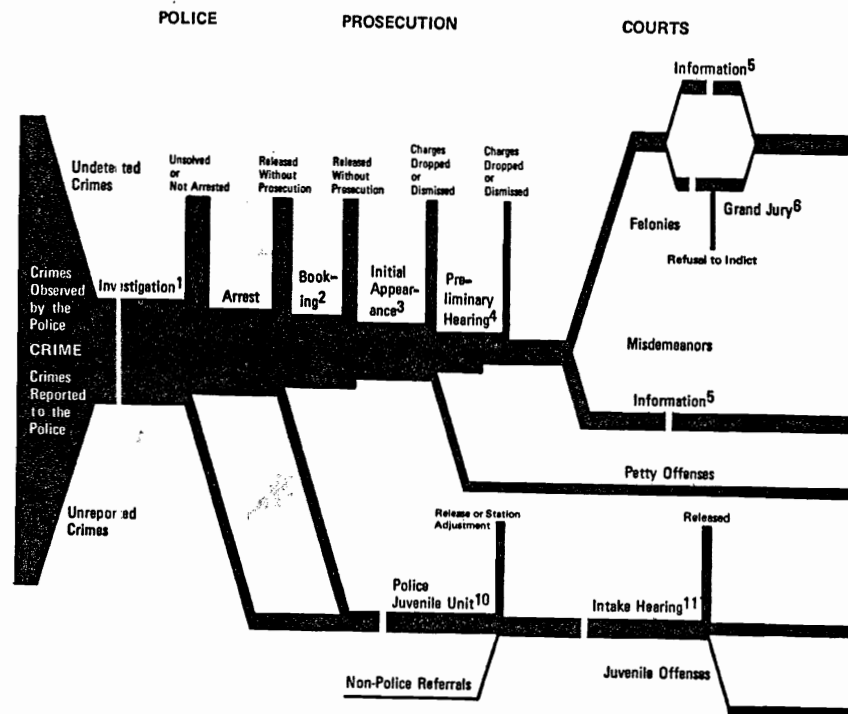
conflict between the interests of differing groups. Those individuals and groups powerful enough to have their interests legitimized in law have the power to force their will upon others, to forge and enforce public policy (Quinney, 1970a:15-23).

Many criminal laws, of course, reflect the interests of the entire society, such as laws prohibiting murder, robbery, rape, and the like. But it is not yet clear whether, or to what extent, the *application* of these laws reflects political (power) interests. Some laws are enforced more frequently and more rigorously than others. In fact, a number of laws are never subjected to enforcement. Moreover, some groups appear to be likely to have their behavior controlled by legal authorities, whereas others seem to be virtually immune from criminal prosecution. Unless one is willing to assume that law-enforcement agents can apply some magic formula to gauge the opinions of the public they serve, unless one is willing to assume that citizens unanimously agree on what laws are to be enforced and how enforcement is to be carried out, unless one is willing to assume that blacks, the poor, urbanites, and the young are actually more criminalistic than everyone else, it must be concluded, at least, that discriminatory law enforcement is a result of differences in power and that actual decisions as to which and whose behavior is criminal are expressions of this power. One need only ask himself why some laws, such as those protecting the consumer from fraud, go largely unenforced while the drug addict, for example, is pursued with a paranoiac passion.

It is clear that illegal behavior is not automatically transformed into criminal conduct. Many acts violate the law, but relatively few receive official scrutiny. In fact, forms of behavior have relative probabilities of being defined as illegal. Further, acts differ in their probabilities of being treated as crimes. Law enforcement is by no means a random enterprise. Acts that are likely to be treated as criminal are those that conflict with the interests of groups in a position to dictate enforcement policy. Hence, the people who typically engage in such conduct are more likely to find themselves subjected to judicial processing than are those whose interests are reflected in criminal law (Quinney, 1970a:18). Hippies, blacks, radicals, young people, and the poor are among the most obvious. If law serves to justify criminal prosecution,



FIG. 2 A GENERAL VIEW OF



<sup>1</sup>May continue until trial.

<sup>2</sup>Administrative record of arrest. First step at which temporary release on bail may be available.

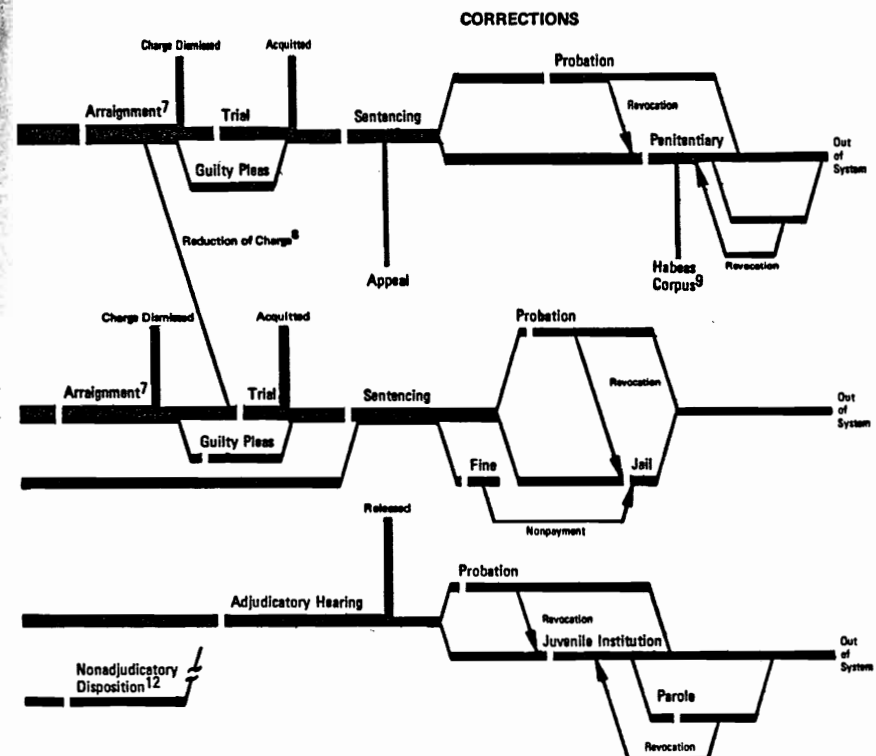
<sup>3</sup>Before a magistrate, commissioner, or justice of peace. Formal notice of charge, advice of rights. Bail set. Summary trials for petty offenses usually conducted here without further processing.

<sup>4</sup>Preliminary testing of evidence against defendant. Charge may be reduced. No separate preliminary hearing for misdemeanors in some systems.

<sup>5</sup>Charge filed by prosecutor on basis of information submitted by police or citizens. Alternative to grand jury indictment; often used in felonies, almost always in misdemeanors.

Procedures in individual jurisdictions may vary from the pattern shown here. The differing weights of line indicate the relative volume of cases typically disposed of at various points in the system.

THE CRIMINAL JUSTICE SYSTEM\*



<sup>6</sup>Reviews whether government evidence is sufficient to justify trial. Some states have no grand-jury system; others seldom use it.

<sup>7</sup>Appearance for plea; defendant elects trial by judge or jury (if available); counsel for indigent usually appointed here in felonies, often not at all in other cases.

<sup>8</sup>Charge may be reduced at any time prior to trial in return for plea of guilty or for other reasons.

<sup>9</sup>Challenge on constitutional grounds to legality of detention. May be sought at any point in process.

<sup>10</sup>Police often hold informal hearings and dismiss or adjust many cases without further processing.

<sup>11</sup>Probation officer decides desirability of further court action.

<sup>12</sup>Welfare agency, social services, counseling, medical care, etc., for cases not requiring adjudicatory handling.

\*Source: The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, 1967), pp. 8-9.



behavior that has been defined by the law as prohibited offers an excuse for invoking the criminalization process. Although it is their behavior that is ostensibly being questioned, people are not necessarily selected to fill the role of criminal solely on the ground that they have violated some criminal code.

How are people selected to fill the criminal role? What happens to them in the process? Figure 2 vividly demonstrates that there are many routes into and out of the judicial machinery. All along the line decisions are made, judgments are rendered, dispositions are given. Who makes these decisions? Under what conditions will a judge place one person on parole, send another to prison, and give a third a suspended sentence? What difference does it make if a person receives one or another of these dispositions? What effect does a criminal identity have on a person and his relationships with others? To what extent does our system of criminal justice reflect the public's attitudes? Indeed, how well-informed is the populace about its criminal-justice system anyway?

These and similar questions are now being asked by criminologists. Answers are not easy to find. Criminology's knowledge of the workings of the criminalization machinery is limited at best. But an understanding of crime requires that these issues be explored in some depth.

In summary, the criminalization process is a twofold phenomenon that involves both the grounds for labeling activity and labeling procedures. To describe this process requires investigating the bases for constructing the criminal label, by addressing the issue of law and what is involved in the formulation of criminal laws. Secondly, the actual conditions, circumstances, and procedures surrounding the labeling process can be analyzed by describing the administration of justice in detail. In line with this discussion, the classes of people that are subjected to judicial handling and what effects this handling has on their lives and on society are to be investigated.

But the criminalization process is more than a conglomerate of grounds and procedures. It is a dynamic enactment of a conceptual reality. It both reflects and reinforces a dyadic view of the world; a view that places God and the Devil, right and wrong, good and evil, the law-abider and the lawbreaker on opposite sides of a moral chasm. Without this ideology the criminal-justice

system would probably be unnecessary; at least, it would be absurd. But because society does have a system (a process) that dichotomizes the world in moral terms—a system that actually “discovers” criminals, that uncovers and reveals evil and corruption—the conceptual assumption prerequisite to crime is sustained and perpetuated. People are convinced that crime exists because they are so successful in finding instances of it. The question is, how is behavior criminalized?