

# A HISTORY OF CRIME AND CRIMINAL JUSTICE IN AMERICA



# A HISTORY OF CRIME AND CRIMINAL JUSTICE IN AMERICA

SECOND EDITION

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*As always, to my wife, Judy, and my boys, Paul, James, and Mark. A special dedication goes to Sarah Elizabeth Oliver, always my “little girl.”*

—Willard M. Oliver

*With love and thanks to my late parents, Frederick and Dorothy Hilgenberg, and with deepest affection to my best friend, my true soul-mate, my lovely wife, Joyce.*

—James F. Hilgenberg, Jr.

*Those who cannot remember the past are condemned  
to repeat it.*

—George Santayana

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## Foreword

Crime is one of America's most enduring social problems, consistently ranking with economics, poverty, and war as an ongoing public concern. Given the severity of the crime problem, it is not surprising that most Americans have strong feelings about how we should deal with criminals and improve the criminal justice system. Unfortunately, most Americans know little about the criminal justice system and even less about the history of our ongoing war on crime. Willard Oliver and James Hilgenberg's *A History of Crime and Criminal Justice in America* provides a window into the past and a cure for our collective historical ignorance and amnesia.

Clear, comprehensive, and well written, this book provides an overview of the origin, development, operation, and impact of the American criminal justice system from the arrival of the first settlers during the Colonial period into the twenty-first century. The book is systematically organized. Each chapter begins with an excellent overview of the political, economic, social, and cultural forces that shaped society within a particular time period. The authors then present a history of ordinary crime (e.g., murder, rape, and robbery) and extraordinary, high-profile criminal acts. Oliver and Hilgenberg use this discussion of historical context and crime as a foundation to describe and analyze the development and impact of police, law, courts, corrections, and juvenile justice.

Drawing upon a variety of historical and empirical data sources, Oliver and Hilgenberg present a complex view of the history of ordinary crime. Crime was rare in Colonial America. The villages and towns established between 1607 and 1775 were "tight little islands" that were small, homogeneous, and largely focused on survival. Familiarity and surveillance were high, and there were little opportunity or time for crime. However, the arrival of millions of immigrants transformed America during the nineteenth century. The rise of cities, new transportation networks (roads and railroads), and changing social, economic, and political relations increased mobility and anonymity, providing enhanced opportunities for crime and deviance. Increasing population, new forms of industrialization, and technological innovations have accelerated the trends toward anonymity and mobility and provided even more opportunities for crime and deviance in the twentieth and twenty-first centuries.

The authors' analysis of high-profile, extraordinary crimes is particularly interesting because it provides a

wider and more expansive view of the history of deviance in America. The execution of Mary Dyer for being a Quaker in 1659 and the witchcraft trials in Salem Village in 1692 were reflections of religious prejudice and collective social fears in Puritan New England. Bacon's Rebellion (1676) and Shays's Rebellion (1786–1787) were products of seventeenth- and eighteenth-century economic, political, social, and class conflicts. The trial and execution of John Brown in 1859 provide insights into the slavery debate and conflicts between the North and South. The New York City Draft Riots (1863) and Orange Riots (1870) were, in large part, reactions to economic, religious, and racial conflicts. The authors use the 1919 Red Scare and trial of Sacco and Vanzetti in 1920 as a way to understand twentieth-century nativism and fear of communists and anarchists. The execution of Ethel and Julius Rosenberg for spying in 1953 was a product of the Cold War. The Oklahoma City bombing in 1995 and attacks on the World Trade Center in 1993 and 2001 are used to explore our newest criminal concern: terrorism.

Oliver and Hilgenberg demonstrate that the development of American police has also been a reflection of social structure and a response to real and perceived increases in crime. The early colonies used a variety of forms of policing: sheriffs, constables, or the night watch. However, these "law enforcement officers" were amateurs who were untrained, unmotivated, and largely ineffective. Local police agencies were introduced during the nineteenth century to deal with increasing immigration, crime, and social problems. But nineteenth-century police were political appointments who were untrained, corrupt, brutal, and inefficient. State police, founded during the nineteenth century and early twentieth century, focused much of their attention on the repression and control of Indians, immigrants, and workers. The quality and performance of local and state police departments were extremely uneven into the second half of the twentieth century, until the introduction of the professionalization movement. The abuses of civil liberties by the Federal Bureau of Investigation under the stewardship of J. Edgar Hoover reveal that federal law enforcement agencies also have a checkered record of achievement, raising serious questions about the Patriot Act and role of law enforcement in the current war on terrorism.

Most Americans believe that laws are fair, equitable, and just and reflect the collective will of the public. How-

ever, Oliver and Hilgenberg provide many historical examples that challenge this claim and demonstrate that laws were, in fact, rooted in racism, sexism, discrimination, and class conflict. For example, laws in a number of colonies prohibited the admission of Catholics and Quakers. Slave codes introduced prior to the Civil War were designed to minimize slave resistance and rebellion and to make the slaves good, obedient workers. Black and Jim Crow laws introduced after the Civil War were designed to repress and control free blacks in a new form of slavery, and were in full force until the Civil Rights movement of the 1960s and 1970s. The Mann Act (1910) prevented the transportation of white females, not black females, across state lines for immoral and illicit purposes. The Reefer Madness scare of the 1930s was the product of a moral panic aimed at Mexicans and blacks. During World War II, Japanese citizens were interred in prison camps, with their assets seized, as threats to the government, even though there were no reports of espionage or sabotage.

America's courts have a checkered record. Colonial courts were small, informal, and run by amateurs. Justice was uneven and juries often decided the fate of defendants on community standards, not on law and evidence. Nineteenth-century courts adapted to changing social conditions, as well as real and perceived increases in crime and social disorder. New courts were added to deal with increasing caseloads. Judges, prosecutors, and defense attorneys became more professional and took on a variety of new roles. Juries increasingly rendered verdicts based upon law and evidence. Plea bargaining became increasingly used to deal with rising caseloads. These innovations and trends continued into the twentieth century, laying the foundation for modern courts. However, the legal rights of defendants have markedly increased in the twentieth century, largely due to a series of rulings issued by the Warren Supreme Court in the 1960s. Nonetheless, the character of justice has remained uneven throughout American history: Courts have favored the interests of the rich and powerful; women, blacks, distrusted immigrant groups, and the poor have received inferior justice in American courts.

Oliver and Hilgenberg's history of American punishment and corrections is thorough and insightful. Colonial punishments were graded for severity and based upon the notion of reintegrative shaming: fines, restitution, stocks, pillory, whipping, branding, banishment, and, in some colonies, short-term imprisonment. The death penalty was reserved for extreme cases and used rarely. Prisons, juvenile reformatories, probation, and parole—the foundations of the modern corrections system—were introduced during the nineteenth century to control the

“dangerous classes” (i.e., Irish, Germans, and later Italian and Russian Jewish immigrants). However, there was a wide disparity between the promise and practice of nineteenth- and twentieth-century corrections. The treatment afforded inmates in prisons and other correctional institutions has often been brutal and harmful. Probation and parole, the cornerstones of community-based corrections, have been marginally effective at helping or policing offenders. Despite the ongoing failures of the penal system, calls for increased punishment in the 1980s and 1990s led to an explosion in incarceration and a wider, deeper, and stronger network of social control, though still aimed at the minorities and the poor and powerless.

The care received by delinquent, dependent, neglected, and incorrigible children in the juvenile justice system has reflected a similar pattern. Americans take great pride in being a caring, child-oriented society. However, the treatment afforded children has not been kind and humane. Nineteenth-century juvenile reformatories were, in essence, miniature prisons. Juvenile courts were introduced in the late nineteenth and early twentieth centuries, in theory, on the assumption that the state would act *in loco parentis*, helping, treating, and reforming children. But the historical record reveals a long history of arbitrary and capricious treatment, as well as racism, sexism, and discrimination against the progeny of the lower class. Modern trends toward punishment for juveniles have resulted in a wide range of new strategies: “scared straight” programs, boot camps, fixed sentencing, and increased waivers to adult court. These strategies have, however, achieved questionable results.

The authors have also included a well-placed chapter that examines the history of crime and criminal justice in the “wild West.” Oliver and Hilgenberg expose the myths and realities surrounding the careers of infamous western criminals and law enforcement officers. The crimes of Billy the Kid, Frank and Jesse James, the Dalton Brothers, Quantrill's Raiders, and Butch Cassidy and the Sundance Kid were often dramatized and exaggerated by nineteenth-century newspapers and biographers, and the modern motion picture industry has perpetuated many of these myths. Similarly, the image of famous western lawmen (e.g., Wyatt Earp, Bat Masterson, and “Wild Bill” Hickock) as fearless gunmen and noble enforcers of the law is simplistic and often inaccurate. Oliver and Hilgenberg's expansive definition of crime lays the foundation for a thought-provoking analysis of other justice-related events: the gunfight at the O.K. Corral, the operation of Judge Roy Bean's court, Custer's last stand, Chinese opium laws, the displacement and slaughter of Indians, and the Lincoln County, New Mexico (1878–1881), and Johnson County, Wyoming (1892), range wars.

Writing a comprehensive history of crime and criminal justice in the United States from 1607 into the twenty-first century is, indeed, an extremely difficult and daunting task. The authors have done a masterful job of synthesizing and presenting this enormously complex topic. This book is well suited for practitioners who work in the criminal justice system, politicians who make laws, undergraduate and graduate students, as well as general readers who simply want to learn more about the history of American crime and social control. This book will not

provide a cure for crime or a magic bullet to reform the criminal justice system. Readers who make this fascinating journey through time with Willard Oliver and James Hilgenberg will, however, gain a heightened sense of the complexities of American criminal justice—and, hopefully, learn to avoid the mistakes of the past.

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**Willard M. Oliver** is Professor of Criminal Justice in the College of Criminal Justice, Sam Houston State University, in Huntsville, Texas. He holds bachelor's and master's degrees in criminal justice from Radford University in Virginia, and a master's degree and Ph.D. in political science from West Virginia University. He is the author of *Killing the President: Assassinations, Attempts, and Rumored Attempts on U.S. Commanders-in-Chief* (Praeger, 2010) and *The Public Policy of Crime and Criminal Justice*, 2nd ed. (Prentice Hall, 2011). He has published numerous scholarly articles and book reviews in various criminal justice and policing journals. His research interests include the politics and policy of crime, all things policing, and historical perspectives of crime and criminal justice.

**James F. Hilgenberg, Jr.**, was, for many years, a Professor of History and Chair of the Social Sciences Division, Glenville State College, in Glenville, West Virginia. Following his undergraduate work at Baker University in Kansas and an M.A. in history at the University of South Dakota, Dr. Hilgenberg completed his history Ph.D. at West Virginia University in 1978. He has a number of presentations, papers, honors, and awards to his credit. In 1993, Dr. Hilgenberg published *From Enemy to Ally: The U.S., Japan, and the Early Cold War in Asia*. In 2004, during the writing of this book, Dr. Hilgenberg opted for early retirement, became Professor Emeritus, and relocated with his wife, Joyce, to their home in Ocean Isle Beach, North Carolina.