



What is crime?

Contrasting definitions and perspectives

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INTRODUCTION

Crime, we are told, is today a salient fact, an integral part of the risks we face in everyday life. In both scholarly and public opinion crime is associated with harm and violence; harm to individuals, destruction of property, and the denial of respect to people and institutions. It is clear that we face pressing problems of a practical and scholarly nature in understanding crime. But we lack agreement on the most basic question, namely *what is crime?* This battle over definitions, of categorizing events as crimes or other things, is no tame affair. In a bid to make sense of the diversity of opinions, definitions, and perspectives surrounding this question, this chapter will introduce some of the complex interrelationships surrounding the various ways that crime is constructed and objectified, before setting out some of the different perspectives that people actually take towards defining crime in practice. Many of the issues outlined in this chapter will be picked up in the substantive chapters that follow in this text.

BACKGROUND

Crime operates as a core concept in modern society. It seems like a common sense category but this is only a superficial appearance. Its widespread use, moreover, makes it necessary to ask what boundaries can be placed around the use of the term 'crime'. What does its use mean for us, individually, as speakers of the word, and collectively, as social groups that use the concept? Who has the power to make their claims as to what is a crime, and by what processes do these claims stick? These questions raise issues of social power and of popular acceptance, of objectivity and relativism; is there a settled or 'objective' way of calling things crime that is accepted across social groups and different territorial institutions or must any use of the term crime be subjective, perhaps accepted within a particular locality or group, but leading to relativism when other perspectives are taken into account? What is the role, function, and consequences of our reliance upon 'crime' (and its related concepts, such as 'punishment') as an organizing concept in social life? These are difficult issues and lead analysis onto the acts of power of the agencies responsible for acts of public speech, for example, within the nation state, the legislature, and the courts, and the bodies responsible for enforcing the terms of that speech, notably the police and the agencies of punishment, the prisons and other instruments of coercive social control (see Chapters 21, 22, 26, and 27). This section will concentrate upon the first part of the question while the frameworks within which different approaches make sense will be discussed in the following sections.

It is clear that there has been a great deal of variation in history and across different jurisdictions as to what has been defined as a crime. Some of the major figures in history have been termed criminals by a State process that was considered legally valid at the time. In ancient Greece, Socrates (d. 399 BC)—who we remember through Plato's dialogues as one the greatest philosophers of all time—was condemned by a court for the crime of corrupting the youth of Athens with his teachings. He died by taking hemlock after refusing the aid of his supporters to free him. In Roman-occupied Palestine, Jesus Christ was

condemned and crucified along with ‘two common thieves’; Martin Luther King was imprisoned for his role in the 1960’s US civil rights movement. While in prison he wrote his *Letter From Birmingham Jail*, an essay that stands as one of the classic writings on civil disobedience (in which he argues that one has a duty to disobey unjust laws, but also to abide by the lawful processes of the State including any punishment so ordered). Likewise, Nelson Mandela was convicted for activities against the apartheid State of South Africa and served 26 years in prison before his release. He subsequently became the first democratically elected President of South Africa. Are we to call individuals like these ‘criminals’? Or do we say that it was a mistake to have ever called them that?

Writing in the late nineteenth century, the French sociologist Emile Durkheim—often referred to as the ‘father figure of sociology’—pointed out that a great deal of social change has occurred as the result of people going against the settled rules and opposing the interests of those in power (see Chapter 4 below). According to Durkheim, a society that had no crime would be ‘pathologically over-controlled’:

According to Athenian law, Socrates was a criminal, and his condemnation was no more than just. However, his crime, namely, the independence of his thought, rendered a service not only to humanity but to his country. It served to prepare a new morality and faith which the Athenians needed, since the traditions by which they had lived until then were no longer in harmony with the current conditions of life. (Durkheim, 1966: 71)

Following Durkheim we do not look at ‘crime’ as something that exists in abstraction, or define it as reflecting some form of simple, ‘plain-fact’ situation. Instead ‘crime’ is a complex interaction of many processes: from the creation of a concept of ‘crime’, to people identifying some event as a crime; from the responses to the event so called, to the behaviour and formal activities of state agencies (or in the emerging global arena supra-national bodies such as the International Criminal Court or the International Criminal Tribunal for Yugoslavia) that may or may not process the persons responsible as ‘criminals’ and punish them. These interactions all take place against the backdrop of the cultural world inhabited at that time. In understanding these interactions it is also important to notice what was not done, what was avoided, as much as cataloguing what was done. This is the subject of the next section.

Defining crime: confronting events and understanding processes

Reflecting upon the processes involved in claiming certain actions or events as crimes serves as a route into analysing differences and similarities in actual events and their role within the sets of beliefs, understandings, and reactions to others that enables our societies to cohere. Consider the following examples of social events. Are they crimes?

- In 1781 The *Zong* was a slave ship owned by a large Liverpool slaving company employed on the well-tried route from Liverpool to West Africa and thence with a cargo of slaves to the Caribbean. On 6 September it sailed from West Africa with a cargo of 470 slaves bound for Jamaica. Twelve weeks later, closing on its destination, the *Zong* had already lost more than 60 Africans and seven of the 17-man crew because of dysentery brought on by severe overcrowding. The *Zong*’s captain ordered that sick slaves should be thrown overboard both to preserve dwindling supplies of water and to allow the shipping company to claim their loss against insurance. One hundred and thirty-one slaves were thrown overboard and drowned, even though

it had rained and there was plenty of water. None of the sick sailors were thrown overboard.

- On 5 July 1884, the yacht the *Mignonette*, crewed by three men and a cabin boy, sank in a storm 1,600 miles off the Cape of Good Hope. The crew escaped in a small open boat with no supply of food or water except a can of turnips. By 24 July, all four were in a terrible condition and one of the men, Dudley, killed the cabin boy, who was delirious, with a knife and all three drank his blood and fed on his body. Four days later a passing boat picked them up. It is accepted that the boy would not have lived and the men probably would have died if they had not eaten him.
- On 6 August 1945, US forces dropped an atomic bomb called 'Little Boy' on the Japanese city of Hiroshima. Three days later they dropped another called 'Fat Man' on Nagasaki. By the end of 1945, less than six months later, the Hiroshima bomb had caused 140,000 deaths, and the Nagasaki bomb 70,000. Five years later the totals were 200,000 and 140,000. At the time the reason put forward was that the use of atomic devices was necessary to shorten the war and save allied lives. Was this a crime? Does it matter to your opinion that at the Tokyo International Military Tribunal set up to judge Japanese war criminals, the only judge with any previous experience of 'international law', the Indian judge Pal, issued a full dissenting judgment? He refused to accept the prosecution of the Japanese defendants as he considered that the Allies too should be tried and punished for crimes committed during the war, in particular for the dropping of the atomic bomb.
- In 1994, after the plane carrying the President of Rwanda was shot down, government military forces along with perhaps as many as 50,000 civilians armed with knives and machetes systematically killed more than 800,000 out of the 1,000,000 minority Tutsi population and at least 20,000 moderate Hutu in a three-month killing spree. This received very little international attention and the United Nations withdrew its small peacekeeping force due to an absence of Security Council pressure to protect anyone. Most commentators believe that if international action had been taken the majority of the 800,000-plus people killed would have been saved.
- In 1999, the government of a major European country facing legitimacy problems have their secret service agents stage a 'terrorist attack' on their own citizens, killing 200. They then blame the attack upon separatist 'terrorist' movements in one of the other provinces of the country. As a result they engage in a military crackdown in which a reputed 100,000 civilians lose their lives. Four years later militant separatists, several of whom have lost their families in the military action, seize a school and take hostages. Government forces try to free the children, but in the following action 400 hostage children lose their lives.
- On 11 September 2001, the Twin Towers in New York, once the tallest buildings in the world, were struck by planes hijacked by members of the 'terrorist' group Al-Qaeda (literally 'a base'; the origins of Al-Qaeda can be traced to the Muslim Brotherhood in Egypt, as they developed they were aided and financed by the US CIA and factions within Saudi Arabia as part of the Afghanistan Mojahaden waging Jihad against the Soviet occupation of Afghanistan). The crashed planes started intense fires which collapsed the towers with the loss of nearly 3,000 lives. Some commentators,

including the US Secretary of State, called this a massive crime but quickly they were redefined as ‘acts of war’. The US President in a State of the Nation speech divided the world up into a civilized group that were with the US and others that stood against them. The US Congress and Senate authorized the President to ‘use all necessary and appropriate force against those nations, organizations, or persons *he determines* planned, authorized, committed, or aided the terrorist attacks...or harbored such organizations or persons’ (115 Stat 224, 18 September 2001: Authorizations for Use of United States Armed Forces).

- Inmates in a government prison learn that another inmate sentenced for a relatively minor crime has admitted to a cellmate that he has sexually abused children in the past. The inmates convene their own court, try the inmate, and find him guilty. As a sentence they beat him up, breaking both his legs and kneecaps, and leave him permanently crippled. Are their actions a crime, or are they justly punishing him?
- The owner of a factory operates in breach of health and safety regulations and keeps the fire escape exits locked. As a result of a fire on the premises many of the factory staff burn to death. Is this a crime, or an industrial accident?
- In 2003 many thousands of abortions were carried out in the US in accordance with the valid law. Members of the pro-life movement claim that the doctors carrying out the operations are guilty of murder—are they? One pro-life member shoots and kills a well-known abortion-performing doctor, because he says the doctor was breaking God’s will and he needed to be punished.

The examples could be multiplied. Certainly all ‘crimes’ are unique events; however, are there common characteristics to some of these events that mark them off for special recognition and thus mean they are crimes? Is there a coherent way of distinguishing key factors and ensuring that ‘we’, that is the representatives of a community, come to an agreement as to what makes up a crime, or, indeed, what should then follow from agreeing that a crime has taken place? Or does the issue of agreeing on what is crime actually show how divided ‘we’ are? If we answer each event with a yes, that those events should be accepted as a crime, are we merely being emotive? (Emotivism is defined as a use of language that asserts something which cannot logically be backed up in such a way that it convinces the majority of others to agree.) Can we separate what *is* legally a crime (that is, it is contrary to the valid law) from what we feel ought to be a crime? Or is this way of distinguishing things a mistake? Is it a lazy way out of the dilemma of our responsibility towards the world? What then can we learn from following through the above examples?

- The *Zong* actually went to trial as an insurance case. The boat owners had claimed insurance on the dead slaves as they said they were simply ‘property’ that had been thrown overboard out of necessity. The original jury agreed and ordered the underwriters to pay insurance on them, but the underwriters appealed and we do not know if any insurance money was ever paid out. Meanwhile, a group of people around a prominent individual called Glanvill Sharp tried to get the authorities to prosecute the crew for murder, but they were unsuccessful. The system did not want this to be called a crime (see Gearey, Morrison, and Jago, 2009, chapter 2). As Walvin (1992)

argues, if this event had been called ‘murder’, it would have unpicked the legality of the whole slave system and the international trade in it. As a result people around Glanvill Sharp got together and formed an anti-slavery and abolitionist movement that ultimately changed the system.

- In the case of the cabin boy who was killed and eaten, the men were prosecuted and the case of *Dudley and Stephens* (1884) became a leading case for the proposition that necessity cannot be a defence against the charge of murder in English law. The judge who heard the case made a wonderful statement that it was always the duty of the captain of a ship to look after his passengers and crew before himself. Of course the *Zong* was not mentioned in argument! The men were sentenced to death, but this was reduced to six months’ imprisonment. In fact it was a custom of the sea for men in similar conditions to cast lots and the person with the shortest lot to be killed and eaten (Simpson, 1984). In this example the men had agreed to do this, but the cabin boy was so weak that they decided to kill him without casting lots. The Admiralty opposed the trial as they did not want the customs of the sea upset, but another government department insisted on charges.
- No one has ever faced charges in respect of the atomic bomb, although Sellars (2002: 66), relying upon a biography of the US President Harry Truman (written by his daughter, Margaret) relates a stag dinner hosted by Truman in early 1953. At this dinner, the famous wartime British leader, Winston Churchill, had the bad manners to ask Truman if he had his response ready for when they both were to stand before St Peter and told to justify using the atomic bombs. This caused considerable shock, which was alleviated when the party organized a mock trial of Churchill with Truman as judge and a jury consisting of the US Secretary of State and other close US colleagues and Generals. Acquittal resulted, though Sellars could not find in Margaret Truman’s account the reason; perhaps, Sellars surmised, ‘they sensed that their own hands were dipped in blood. Or perhaps, they reasoned that it did not matter anyway. After all, even in real life tribunals, no one ever punishes a victor.’

Let us pause for reflection. What are the consequences if we accept the definition of crime that is presented in most criminal law textbooks, namely a crime is some conduct (an act or omission) which, when it leads to a certain state of affairs, is treated in that jurisdiction as being capable of leading to prosecution and punishment? Glanville Williams (1955: 107), for example, defined crime as ‘an act that is capable of being followed by criminal proceedings, having one of the types of outcome (punishment etc) known to follow these proceedings’. This in practice is the definition of crime most commonly accepted, as was brought out by Tappan’s famous injunction that criminology accepts as its object of study crime, defined as ‘an intentional act or omission in violation of criminal law (statutory and case law), committed without defence or justification, and sanctioned by the State as a felony or misdemeanor’ (1947: 100). But this means that there is no common element to a crime other than the fact of the prior legal procedure defining such and such act or omission as a crime. It also means that so far in the events considered only the act of killing the cabin boy was a crime, and that was a near thing. In the great age of sail it is probable that many cases occurred where crews ended up in open boats or stranded on desolate shores and one of their company was killed and

eaten. But they drew lots, thus when they were picked up everyone could be satisfied that the custom of the sea had been followed and no crime occurred and the authorities were never involved.

- In the case of Rwanda we face a situation, which most commentators now say, was the most easily preventable mass crime of the twentieth century. The attention of the world's media was on events in South Africa where Nelson Mandela was elected President and apartheid ended peacefully. When the first killings began ten Belgian UN soldiers were killed with the result that the UN withdrew the mission and all attempts to get intervention failed, in particular because of US reluctance caused in part by the previous killing of 18 US servicemen in Somalia. The subsequent official US line was that they did not have proper information; they did not appreciate the full picture. We now know that they knew fully what was going on and that President Clinton had ordered that the term 'genocide' not be used as that might trigger calls for the US to intervene, not to mention the quasi-legal obligation to take action as a country that had ratified the Genocide Convention (see, for example, 'US chose to ignore Rwandan genocide', *The Guardian*, 31 March 2004). Thus, deliberate US inactivity was one of the crucial factors that condemned to death the equivalent of the US domestic homicide total for 1950–2000. It would be literally unthinkable for President Clinton to face penal sanctions in connection with these deaths; for his deliberate inactivity to be called a 'crime'. He was, however, pursued by extremely expensive legal proceedings (costing more than a UN force that would have deterred or at least stopped the main killings of the genocide) for most of his second term in office. The question to be ascertained in those particular proceedings, which included impeachment hearings, was did he commit a crime or misdemeanour when he stated that an activity with a certain female intern at the White House, later found to be an oral sexual act, did not constitute 'sexual relations'. He was acquitted (his defence was that he used the term in a precise legal sense, i.e. that it defined penetrative sexual intercourse which he had not engaged in).
- The situation with the 'major European country' and terrorism equates to what many have claimed the situation was between Russia and Chechnya. In the context of the current 'war on terror', most governments say that Chechnya is an internal matter for Russia, in effect closing their eyes to massive human rights violations, death, and destruction.
- The action of the prison inmates constitutes 'self-help'. It is deemed a crime and not justified 'punishment' in part because one of the principles that modern society is founded on is that the State claims a monopoly upon legitimate violence. There are many examples of groups that organize themselves in such a way that they almost constitute a State within a State—such as the Mafia or transnational drug dealing organizations—taking on State-like roles and procedures. In doing so they pose a threat to the State's existence and since the sixteenth century the dominant mode of large-scale social organization has been the 'nation state'. It is the nation state that has the authority to define what sort of activities can be deemed crimes within its boundaries and only officials of the nation state are authorized to carry out punishments. (When the first edition of this chapter was written, October 2004, American

and Iraqi forces were waiting until after the US election to attack the Iraqi city of Falluja to establish government control. A key point has been that ‘in Falluja, the insurgents are free to carry out their own brand of justice, like the public lashings of people suspected of theft and rape, and the videotaped beheading of...one of the city’s National Guard commanders’ (Filkins, 2004.) The English for capital punishment comes in part from the Latin word *capitalis* which means ‘of the head’, and was originally by decapitation, literally ‘a capital offence’. The symbolism of the beheading is the denial of the legitimacy and the ability of the State to function and its replacement by a counter-state group.

- The consequences of the response to the events of 11 September 2001 are many; at the time of revising this chapter (September 2008) they include the invasion of Iraq and Afghanistan with great division in world opinion as to the legality of those actions and the bloody insurgency that opposes the foreign presence. If the choice had been made to call 11 September 2001 a ‘crime’ then the response might have been an international policing action determined to bring the perpetrators to the justice of an international court; the choice of war seems to many to have weakened the movement for international or global justice.
- The final three examples are simplified examples based on real cases. They allow us in the words of the Norwegian criminologist, Nils Christie, to hold up the processes in which crime is identified and reacted to as a mirror revealing a picture of social relations not otherwise seen. Take the example of the factory owners. In the early 1990s similar fires caused the deaths of hundreds of workers in the US, Thailand, and China.

In the North Carolina Chicken Processing Plant fire of 1991, 25 workers died and 49 were injured when a fire broke out and all but one of the nine fire escapes was locked. The owners had locked the doors and boarded up the windows to prevent the staff stealing food; however, no security fence had been constructed or any security guard hired. Nineteen of the 25 dead were single mothers, predominantly black—blacks had only been allowed to work in the factories of the south since the 1970s and even then they were nonunionized and unable to bargain for reasonable conditions. Blame for the fire was attributed to various local, federal, and State agencies. It had not been visited by health and safety officers for over 11 years and had already experienced several minor fires that year. There was no trial, the owner pleaded guilty to 25 counts of manslaughter, while his son and another manager went free as part of the plea bargain arrangement. To the extent that it was reported and picked up in the media, the fire revealed the conditions of work for many in the semi-rural areas of the US and demonstrated the divided nature of social life in the US. But if one thought that defining something as a crime invokes sympathy for the victims and that political measures would be likely to be taken to reduce victimhood or harm, this case is sobering; for less than two years later insurance companies and the business lobby in North Carolina got together and introduced legislation to reduce compensation for injured workers. Moreover, crime in Anglo-American jurisprudence is an individualist responsibility; in other words crime usually can only be proven when specific individuals are implicated and responsibility can be fixed upon them. Thus, it is individuals who are blamed and not the system. This can

be seen even more clearly from another case where on 10 May 1993, fire broke out at the Kader toy factory outside Bangkok, Thailand. Managers had locked exit doors to make sure the workers could not steal the toys. Hundreds of workers, mostly young women, were trapped inside. Officially 188 were killed, with 469 injured, many seriously, after they were forced to leap from second, third, and fourth floors of the buildings to avoid being burnt to death. Blame was fixed on the managers. But did the fault lie only with the managers? The fire occurred at the height of the Simpsons craze and the factory was producing Simpson toys: a melted Bart became the symbol of the tragedy and the consequences of the new global capitalist/consumer economy. The following quote is from a Malaysian labour activist, Tian Chua, who writes from prison where he had been detained from April 2001, without being charged, for attempting to organize Malaysian workers without government permission (you may note the politics here, for if she was actually charged with a 'crime' most jurisdictions require a court appearance where at least a minimal level of proof is brought forward in order that the person remains in custody!).

The bodies of Bart Simpson scattered all over the ground—some half burned, some without heads or limbs, some half completed...Kader was one of the largest toy manufactures in Asia. It was also a typical multinational company which moved around for cheap labour. Kader was jointly owned by Thai and Hong Kong capitalists. It mainly produced toys for European & American markets...The toy industry is a sector which produces fun and joy. Toys bring laughter to children and parents. However, the tragedy of Kader fire revealed the sorrows and suffering behind toy manufacturing. Kader made us aware that workers use their sweat, tears and blood to exchange happiness for children around the world. (quoted, 2Bangkok.com, accessed 19/10/04)

In 1993, another fire broke out in the Zhili Toy factory in Shenzhen, China, with 87 deaths. Here we come to the difference between a sociological/critical criminological reading of these events as crimes and a more legalist or narrowly focused criminological interpretation of the event. From the sociological or critical criminological perspective, the international connections between market driven consumption, demands for cheap but well-produced products, and the avoidance of operating according to full health and safety measures are apparent and have considerable bearing on the fire. From a more narrowly focused understanding of crime, those factors are all 'externalities'; what is of concern in ascertaining whether the events were a crime is then only the immediate actions and mental states of those who locked the doors and those who should have ordered them to be open. Moreover, what of the issue of responding to the victims and preventing future similar incidents? Whereas earlier, well published industrial fires, such as the Triangle Shirtwaist Factory fire of 1911 in New York (where nearly 150 people died because of locked fire exits), led to labour agitation and improved regulations of working conditions, the conditions for workers in the so-called developing world are at the mercy of multinational corporations that can quickly relocate to cheaper, less regulated locations. The international press gave Kader some attention, but today writers say very little has improved:

Thailand's limited building and safety codes, minimal wage levels and factory regulations are not enforced. Indeed, the government in Thailand attracts foreign capital to its shores by

openly advertising the lack of restrictions on the exploitation of workers. The Kader factory was no aberration. All the horrors of nineteenth century European capitalism—child labor, dirty and unsafe working conditions, shanty housing—are on display everywhere in Bangkok. (Symonds, 1997: 58–9)

So, even if we were to agree to call this a crime, the consequence may be that a small group of individuals are blamed and punished, but the wider social conditions that caused social harm are pushed to one side and overlooked. This leads several criminologists to say we should not concentrate upon ‘crime’ as an organizing concept, but replace it instead with ‘social harm’ or protection of ‘human rights’ (see, for example, Hillyard *et al.*, 2004).

To summarize this section: we are therefore talking about complicated and changing interactions of governmental and discursive power, public concerns, and the different roles of officials who control key decision-making processes (see Chapter 21) as well as the media that highlights certain issues and downplays others (see Chapters 7 and 8). There are complex factors at work that influence how the edifice of public administration—including what the literature refers to as ‘the criminal justice system’—relates to and processes events that may or may not be termed crimes.

REVIEW QUESTIONS

- 1 Under the law of society X, it is lawful to keep slaves and any slave that escapes or attempts to escape commits a serious offence; it is also a crime for any person to consciously assist in the escape of a slave or not to report a slave to the authorities if they come across an escaped slave [assume that there are no international conventions concerning slavery]. While on holiday in X you meet a person you realize is an escaped slave but do not report them; in fact you allow them to stay in your hotel room. Are you a criminal? Is the slave? Your partner decides that they must obey the law and they report you to the authorities with the result that you and the slave are sent to prison. Has your partner done anything wrong?
- 2 Using Internet sources and the library, research the Bhopal disaster in India 1984. Who was at fault and has justice been achieved in response to that event? What role if any does racism or corruption play?

Frameworks of choice and logic: the politics of criminology and the definition of crime

So far we have explored matters with respect to practical examples. We have seen how in practice and in the literature there is much disagreement over defining exactly what a crime is. McCabe (1983: 49) says ‘there is no word in the whole lexicon of legal and criminological terms which is so elusive of definition as the word “crime”!’ How then can a discipline that has as its common focus the study of crime ever have a settled focus? The history of criminology can be read as revolving around this question. It has been said that most definitions of crime involve a drastic circularity and that criminological explanations relying upon them become tautologies. Perhaps it is the effect of this, but

criminology as a scholarly discipline has moved in circles over many of its central issues. One problem is that the definition of crime adopted by an individual reflects the whole world perspective of that individual and the social groups they reside within. We are faced with various distinctions, controversies, and frameworks of logic that are related to our view of the world and mankind's place in it. These include choices between the following assertions or claims:

- Crime is some action or omission that causes harm in a situation that the person or group responsible 'ought' to be held accountable and punished, irrespective of what the law books of a state say.
- Crime is an action against the law of God, whether as revealed in the holy books, such as The Bible, Koran, or Torah, or that we instinctively recognize as against God's will, irrespective of what the law books of a State say. If the State law books allow something that we know to be against God's will this does not change its status—it is still a crime.
- Crime is an act or omission that is defined by the validly passed laws of the nation state in which it occurred so that punishment should follow from the behaviour. Only such acts or omissions are crimes.
- If there is no public authority capable or ready to police social activity and punish offenders, then there is no crime. Crimes and criminals only exist when a public body has judged them such according to accepted procedures. Without the State and the criminal law there is no crime. Without criminal justice systems there are no criminals.
- Crime is an irrelevant concept as it is tied to the formal social control mechanism of the State; deviance is a concept that is owned by sociology, thus our study should be the sociology of deviance, rather than criminology.

We can identify at least four frameworks in which to make sense of how crime is defined:

- (a) crime as a social construction;
- (b) crime as a product of religious authority/doctrine;
- (c) crime as a reflection of nation-state legality;
- (d) more recent concepts beyond the nation-state derived from social and political theory.

Criminology and, indeed, our present position more generally contain the legacy of the earlier positions. Let us look briefly at each in turn.

Social construction

Social construction is a highly influential and controversial current perspective. In summary it argues that our concepts and the practical consequences that flow from using them are the products (constructions) of social interaction and only make sense within the communities in which that interaction takes place. In other words, 'crime' is a label created in social interaction, but once created it has both a symbolic and practical reality.

We endow the world with symbols and respond to the meanings contained in them. Language and other symbolic systems codify these meanings and by using language we impose a grid on reality; the law is a particularly strong grid system. In this case we create terms of crime and punishment that enable us to identify and distinguish different events. But these terms also impose certain consequences, as in the following statement from a very influential book on criminal justice: 'When a crime is committed, justice must be done... a failure to punish crime is wrong and a community that does not punish its criminals is derelict in its moral duty' (Gross, 1979: xv and 18). In many accounts crime and punishment are linked as if they were unproblematic concepts reflecting a reality in which crimes are committed as a matter of identifiable facts and once the person responsible is identified certain processes must logically follow. However, those who accept social construction argue that since language and other symbolic systems are social products, this is a socially constructed grid. It is a social choice to recognize such and such an event as a crime, or such and such a person as a 'criminal'. Some other term and therefore some other course of action could be used. Two consequences follow. In one we have a research project of following through the creation of the use of the concept crime and its actual allocation to particular events or situations (the process of criminalization). A second consequence is that we can argue that there is no particular natural level of use of the concept crime, that it can imprison us in particular techniques of social ordering, and it may be better to abolish its use. This was stated clearly by the Dutch abolitionist lawyer, Louk Hulsman:

categories of 'crime' are given by the criminal justice system rather than by victims of society in general. This makes it necessary to abandon the notion of 'crime' as a tool in the conceptual framework of criminology. Crime has no ontological reality. Crime is not the object but the product of criminal policy. Criminalization is one of the many ways of constructing social reality. (Hulsman, 1986: 34–5)

Drawing upon anthropological evidence of how different social groups identified troublesome situations and individuals, the American criminologist Howard Becker (1963) and others developed an influential school of thought in sociology known as labelling theory (see Chapter 4). This holds that the terms crime, deviance, or punishment are labels, variously applied by acts of power and not some natural reflection of events. The full potential of labelling theory was not realized. When Becker wrote, for example, he only mentioned in passing the gender divide in which men made the rules in society for other men and women. Today, in the hands not only of feminists but deconstructionists, labelling theory leads in a more radical social constructionist theory in which a multi-sided account of criminalization is given (see Chapter 4). In its abolitionist forms, such as with the Norwegian criminologist Nils Christie (2004), the major challenge for criminology is to understand the social processes of the application of these basic labels and, by implication, if we follow through the process we might come to an understanding that may lead to a lowering of the rate of 'crime' by abandoning the entire processes of criminalization. His central assertion undercuts the common-sense views of crime and disorder:

Crime does not exist. Only acts exist, acts often given different meanings within various social frameworks. Acts and the meanings given to them are our data. Our challenge is to follow

the destiny of acts through the universe of meanings. Particularly, what are the social conditions that encourage or prevent giving the acts the meaning of being crime? (Christie, 2004: 3)

Crime does not exist. Only acts exist, acts often given different meanings within various social frameworks. Acts, and the meanings attached to them . . . but is this actually so and even if this was the case, could humans really accept such a radical view?

Crime in 'the city of God'

The phrase 'city of God' comes from the Christian writer St Augustine (354–410), but could with only slight modification be used to describe Islamic or Judaic systems; it refers to the world view where we humans live in a universe created by God and his commands. Social construction theory is denied by many people who see in it the consequences of human ambition to position ourselves as the masters of the world and our destiny. Instead, very significant numbers of people believe that God created the universe and allocated a place for humans within his creation. To enable us to know something of his intentions God also sent messages to humanity through prophets and other forms of revelation; these messages were collected in books of authority of which the Koran, the Bible, and the Torah are best known. Each lays out various rules in terms of imperatives and warnings of the consequences if these are not followed. Let us fear God, says the Koran, 'verily, God is witness over all'. God will prepare shameful woe for those who disobey his rules. To the followers, the laws of God lay out the path to heaven and redemption. There is no problem of the legitimacy of these rules and the definition of what should be crime since God's will is the ultimate driving force of creation—even if humans have been endowed with free will and the capacity not to see the truth. There are numerous problems for social order in a complex grouping: a crucial one is who can agree on the exact message from God, what happens to constrain conflicting interpretations? As Blaise Pascal put it, 'men never do evil so openly and contentedly as when they do it from religious conviction'. Take as examples two crime-related words that have found their way into our English dictionary: thuggery and assassination. The derivation of thuggery is from the Sanskrit *sthag*, to conceal. For centuries a religious sect existed in India to rob and murder. A conservative estimate is that they killed well over a million people between 1740 and 1840 until suppressed by British colonial authorities. Thugs were devotees of the goddess Bhowani or Kali, the 'Black Mother', the Hindu goddess of death and destruction. Gangs of men operated to murder and rob, strangling their victims as sacrifices to Kali. When caught Thugs looked forward to their execution as a quick route to paradise. The English word assassination comes from the Muslim world, where after the death of the prophet Muhammad, three of his early successors were killed with daggers. A group, 'assassins', was founded by Hasan Ibn al-Sabbsh, whose followers killed rival Sunni Muslims, and many Muslim caliphs (ultimate leaders) have been killed over the subsequent centuries. The Assassins killed as acts of piety and sought to replace an allegedly corrupt Sunni regime with a supposedly ideal Shiite one; when caught they accepted their death.

Throughout the western world the horrors of the massive religious conflicts of the late middle ages resulted in the separation of Church and State. The city of God became

replaced by the city of man, and religious belief was deemed in practice to be a personal matter. For much of its history criminology has been a secular discipline, an applied science of the nation state; but there are now serious arguments that it has been badly compromised by neglecting to engage with the religious belief systems that many people live by (Knepper, 2001).

Nation-state legality

From the seventeenth century, slowly and with many oppositions, a secular view of crime arose where crime is understood as an act or omission as defined by the sovereign authority in factual charge of a specific territory—the nation state. It is important to note the full implications of this view. First, the substance of what is made criminal is a matter of the ‘will’ of the sovereign body, the Parliament, the courts, and the Senate. Second, as liberal jurisprudential writers, such as H.L.A. Hart (1961) emphasize, the fact that something is made a crime does not necessarily mean it is immoral. While in practice many crimes will be based on the shared perceptions of the people, arising from customs, religious beliefs, and common-sense conceptions of what is acceptable and unacceptable; crimes are simply posited by the rule-making power centres of the State. Third, it follows that to be called a criminal is a status conferred by the legal and political process of the State, there is no such thing as a natural criminal or a born criminal (cf Chapter 4). As Korn and McCorkle express it, this was forgotten by much individualist focused criminology, which took a naturalist view of the terms ‘crime’ and ‘criminality’.

The use of the term criminal to identify persons occupying a potential and removable status is in sharp contrast to the view that criminality is a sickness, a biological condition, or a type. The failure to distinguish between the ideas of status and type has led to costly errors and lost directions in criminology. It has led many to mistake the fact of a fairly clear legal category for the existence of an equally identifiable category of persons with similar characteristics. It has led brilliant investigators into life-long searches for common biological, social, or psychological traits. Despite the failure of these investigations to isolate within the offender a single characteristic not found in the law-abiding, the search for common factors continues to preoccupy those who are still unaware that the object of their quest is the product of a semantic confusion. (Korn and McCorkle, 1959: 48)

Those authors were also ‘realists’, saying that ‘irrespective of laws, an act is not a crime until the offender is caught, tried and punished’. The consequences for criminology were clear since the knowledge base requires first the achievement of political control by a State over territory, secondly institutional processes of recognition and interpretation of activity as criminal, and lastly the scholarly reflection upon that ascription and processes of dealing with those defined. By implication where the State has not instituted a situation of ‘continuous political control’ there can be no criminological reflection; criminology (at least in its conventional or mainstream forms) was the applied science of the nation state and where the nation state did not define crime, there was no criminological knowledge (see Hogg, 2002, and Morrison, 2005, for arguments for a contemporary criminology beyond the nation state).

Beyond nation-state definitions of crime

Modern western societies have largely defined crime in the terms laid down by the nation state. A crime is an act or omission that leads to penal sanction in accordance with the constitutionally valid procedures of that nation state. Thus nation state A will prohibit the smoking of cannabis, while nation state B may say that within specified areas (for example, the coffee shops of Amsterdam) it is allowed. The examples can be multiplied; thus relativism—and, say some, the holocaust. It does not take a great leap of the imagination to see the policy of the extermination of European Jews (and all others if the State could have power over them) written into the manifesto of Hitler and adopted when the legitimate sovereign of the German people. Hitler's aggressive expansionist policies brought about World War II and after it several of the surviving Nazis were tried for the crime of waging aggressive war and associated crimes against humanity. While we now see the Holocaust as the icon of crime in the twentieth century, at the time and today many commentators say that logically it would not have been a crime if the extermination of the Jews had remained an internal state policy. Perhaps no writer has expressed this better than George Steiner:

I wonder what would have happened if Hitler had played the game after Munich, if he had simply said, 'I will make no move outside the Reich so long as I am allowed a free hand inside my borders'. [The death camps of] Dachau, Buchenwald, and Theresienstadt would have operated in the middle of twentieth-century civilisation until the last Jew had been made soap. There would have been brave words on Trafalgar Square and in Carnegie Hall, to audiences diminishing and bored. Society might, on occasion, have boycotted German wines. But no foreign power would have taken action. Tourists would have crowded the Autobahn and spars of the Reich, passing near but not too near to the death-camps. (Steiner, 1967: 150)

Even if we were to agree with Steiner as a tragic matter of fact, this would clearly be an affront to notions of our common humanity. Hence it is essential that we engage in a movement to construct a framework for defining crime that is neither tied to any one particular view of religion, nor to the confines of the nation state.

Within criminology a well-known attempt was made by the Schwendigers who asked if criminologists were 'defenders of order or guardians of human rights'? They suggested that our individualist focused conceptions of crime needed to be broadened so that we could define whole 'social systems as criminal'. They argued that an expanded definition of 'crime as a label for social systems' become a 'warrant not for controlling atomistic individuals, or preventing an atomistic act, but rather for the regulation or elimination of social relationships, properties of social systems, or social systems as a whole' (Schwendiger and Schwendiger 1975: 136). Post World War II, a number of international conventions have tried to create a system for the recognition and processing of international crime under such titles as 'crimes against humanity' or 'genocide'. This is an expanding framework, though at present it is characterized more by words than actual deeds, and instances of international intervention are controversial (see Morrison 2004, 2005).

One other attempt may be noted, perhaps the most common within the sociological imagination, namely to replace crime by the concept of 'deviance'. Many of the works

published within the criminological enterprise from the 1960s focused on the ‘sociology of deviance’ in order that criminality might escape from legality and create its own frame of reference. The problem was that deviance was, and remained, a sociological construct. In the public consciousness crime was the dominant and seemingly the most useful category.

This failure of sociological criminology to create a discourse that could engage successfully with the public and the political power centres is reflected in *The Culture of Control* by David Garland (2001), one of the most respected writers in criminology and the sociology of punishment. Garland highlighted the current dilemma surrounding the question of ‘what is crime?’ by pointing out the practical ways in which crime is approached and perceived in contemporary society. Garland did not refer to crime merely as an increasing factual reality (which is in itself a contestable proposition), nor indeed did he refer to the more complex category of the social fear of crime and ask how we can distinguish the reality of crime from the public and media image of crime; his theme was that *crime was now a core category of governing*. In his narrative, the perception that crime had increased had given rise to a new culture particularly in the US and UK, which he termed the ‘culture of control’. His text was published shortly before the terrorist attacks of 11 September 2001, but those events—and the huge changes to notions of security throughout the western and Muslim worlds—have demonstrated the interdependence of the actions of defining events as crimes and modes of social governance. Some called the events of 11 September a great crime. Others called it an act of war, while still others, alternatively, said that the terms used were unimportant, for the real task was to inquire as to why certain people were motivated to carry them out? How one reacted to those events, however, was in considerable part a result of controlling how one defined their nature. Or put it another way: the consequences that the acts invoked were not predetermined, there was a range of possible reactions; once those events were defined in such or such a way, then the range of social reactions was constrained. Thus we end where we began, by re-emphasizing the diversity of opinions, definitions, perspectives, and complex interrelationships that surround what at first sight may seem a simple question: what is crime?

Given that the traditional frame of reference for doing criminology, including locating the processes whereby ‘crime’ was defined, has been the nation state, current scholarship that attempts to come to grips with globalization should revolutionize criminology (its impact so far has been minor). We are told that state sovereignty, the legitimate definer of crime in a territory, is being undercut. At its strongest the argument is that the State can no longer produce sovereignty—if so, this impacts on all aspects of the State’s performance. In the field of crime control this results in ambivalent tactics. State sovereignty asserts itself even when it lacks control over the economy by a wave of popularism in the arena of security seeking public support of its power displays in war on crime, or war on drugs, or war on terror. Consider the effect of defining the events of 11 September 2001 as war and not a crime. The choice of ‘crime’ would have allowed for an international policing action, working through (and building) international moves towards international criminal courts, and a board coalition. The struggle to bring the ‘terrorists’ to justice would have been a global justice and not the ‘justice of this nation’ as George W. Bush had stated. Declaring a war on terror has led to the

invasion of Afghanistan and Iraq, the destabilization of a number of countries, dramatically divided world opinion, and to the clear double standards concerning the treatment of civilian deaths in the US and those of the invaded countries. The events at the 'Abu Ghraib' prison in Iraq became shorthand for the abuse of power and the 'crimes' committed in several dozen detention centres in Iraq, Afghanistan, and at Guantanamo Bay. At last Pentagon count, no less than 27 detainee deaths were criminal homicides. The CIA has admitted to using 'water boarding' (near drowning), unmistakably a form of torture. And documents released in 2005 under the Freedom of Information Act have confirmed some of the more outrageous accounts of detainee abuse. In commenting on images of US soldiers killing a wounded insurgent, the war correspondent Max Hastings sums up the moral distaste the hypocrisy of this 'war for civilization' engenders:

This is a scene straight out of *Platoon* or *Full Metal Jacket*. A soldier gazing down on a prostrate enemy sees him move and shouts: 'He's f***ing faking he's dead.' Another soldier fires a single contemptuous shot into the wounded man's head, and says laconically: 'Well, he's dead now.'

On Saturday in Fallujah, that shocking melodrama was played out for real. US marines shot a wounded and helpless Iraqi—in a mosque, of all places—while an NBC television news camera recorded every detail. The images have flashed across the world, into the homes of thousands of millions of people, many of whom already hate what America is doing in Iraq.

... Here are the crusaders for democracy, as George Bush and Tony Blair portray themselves and their soldiers, acting like animals. Even before this atrocity, the world recoiled from the spectacle of Fallujah shattered in the name of freedom...

... Two months ago in Basra, a British officer said to me: 'We were appalled by those pictures from Abu Ghraib. They seemed to cut the legs off the whole moral basis for our presence here.' So they did. So, likewise, does the film footage from Fallujah.

Americans pursue a doctrine of firepower which causes Nato allies to think them unfit for any role in which 'hearts and minds' must be won. The fact is that the American way leaves few hearts and minds alive to parley with. American soldiers possess a contempt for people of alien races, which cost them defeat in Vietnam and could well cost them failure in Iraq.

... It is not enough for George Bush to declare from the distant citadels of Washington that the Coalition's forces are pursuing an honourable cause. On the battlefield, they must also be seen to be fighting in an honourable way.

... Not only have they abused Iraqis, they have been shown before the world to abuse Iraqis. The damning visual evidence is there.

... whatever happens afterwards to the Iraqi people, the way Bush has waged his war in Iraq has inflicted lasting injury on the cause of democracy. Who can again take seriously this President's claim to be fighting for freedom and virtue, when metaphorically he delivers such proclamations from the wreckage of Fallujah?

... I would suggest that what happened in Fallujah this weekend is arguably more the handiwork of Bush, Rumsfeld and Cheney than of the wretched marine who fired the shot.

... only a fool in the White House would suppose that he can win the War Against Terror through so much blood recklessly shed, such mountains of rubble so carelessly created.

Every frame of film of Saturday's murder in Fallujah is worth another legion of recruits to al-Qaeda.

... Why shouldn't people hate George Bush? (Max Hastings, 'Marine atrocities mock US cause', *The Daily Mail*, 17 November 2004)

Different States play the sovereignty games differently and what is crime in one area may not be crime in another, additionally the efforts of one State to fight crime or drugs may actively cause crime in another. In this negative argument the decline of the State as the body that laid out the conditions of territorial security means that the State is increasingly part of the 'crime problem' and not the solution; the need then is to go beyond the State in the process of locating the foundations for defining what is crime and what are proper and legitimate responses to it.

REVIEW QUESTIONS

- 1 'The criminal law is the source of crime; without the law we would not have crime'. Discuss.
- 2 What value is there in advocating an 'abolitionist' approach, such as that espoused by Nils Christie or Louk Hulsman?

CONCLUSION

Defining crime is not a matter of common sense or simply following an accepted procedure. In the examples given in this chapter we can see some of the complex political and economic forces that shape how what is a crime is defined in practice—such as US domestic political pressure to downplay knowledge of the events in Rwanda, and to ensure that the specific term that would have described them as a great crime, genocide, was not used, while other domestic political pressures were behind the desperate attempts to define Clinton's explanation of his 'personal' life as a crime. What can we learn? The case of the *Zong*, for example, may seem a long time ago, but:

On Boxing Day 1996, the crew of an old rusting freighter the *Yiohan* forced over 300 passengers off the ship and on to a small craft designed for a third of that number. Over 280 were drowned when the boat went down. Four years later, fishermen in Sicily were still hauling in corpses and body parts with their catches (*Observer*, 10 June 2001). The tragedy received very little press coverage: only the *Observer* ran the story, as an exposé of the ship's captain. (Webber, 2004: 133)

Webber's point is that of course this was not seen as a modern crime created out of the economic imbalances of the global system; rather the problem was that of the illegal immigrants and those individuals that preyed upon them (who were not apprehended or punished). In the case of the *Zong*, the demand for cheap labour fed the eighteenth-century slave system of enforced migration. Today we enforce barriers and impose the label criminal on those who seek to voluntarily migrate outside the strict 'legal' conditions governing official migration. In August 2008 the Italian Prime Minister Silvio Berlusconi, who also owns much of the Italian media outlets and has constantly used his political position to frustrate judicial investigations into his operations and tangled ownership relations, launched a crackdown on crime, which many Italians and his media associate with illegal immigration. A number of new 'crimes' were legislated, including making it an offence punishable by up to four years jail to enter the country illegally. Expulsions have increased but the Italian authorities often find the countries of origin of illegal arrivals reluctant to accept them back if they are deported. In a highly symbolic measure troops have been deployed in joint anti-crime patrols with police in some of Italy's major cities. Some 20,000 people out of the 55,000 prisoners currently serving sentences or awaiting trial in Italian jails are foreigners, a

number set to increase due to the expense and difficulty of executing expulsions ordered by the judiciary. This sense of national emergency is part of his political agenda, creating targets whereby he can show to the citizens that he can tackle the sources of their feelings of insecurity and unease. Yet in so doing the task of facing up to the global interconnections is downplayed.

We have a lot to learn from history in this area. Even if we can only conclude that in defining crime there is no easy answer, only controversy and struggle.

QUESTIONS FOR DISCUSSION

- 1 Why is it so difficult to agree upon a definition of crime?
- 2 'The crimes that the public are most concerned about are not the real risks that we face.' Discuss.
- 3 'The solution to the problems of defining crime will be found only by escaping from the confines of the nation state. We need some universal standards to use as our reference to define crime.' Discuss.
- 4 Take an area, such as drug prohibition, and follow through how and when this was prohibited. Ask whose interests are served by this criminalization policy? Is criminalization a cause of social harm?

GUIDE TO FURTHER READING

Most textbooks have either a chapter or a section on defining crime. These vary drastically in quality and can be repetitive.

The classic discussion is Keith Bottomley, 'What is Crime?', Chapter 1 of *Criminology in Focus* (1979, Oxford: Martin Robertson).

One of the better recent discussions is John Tierney, *Criminology: Theory and Context* (1996, London: Prentice Hall), Chapter 1 'Criminology, Crime and Deviance: some Preliminaries', and Chapter 2 'Measuring Crime and Criminality'.

Perhaps the best recent single chapter is Stuart Henry and Dragan Milovanovic, *Constitutive Criminology: Beyond Postmodernism* (1996, London: Sage), Chapter 5, 'Definitions of Crime and Constructions of the Victim'.

See also Chapter 2 'A Crime by Any Other Name ...' in Jeffrey Reiman's *And the Poor Get Prison: Economic Bias in American Criminal Justice* (1996, Needham Heights: Allyn & Bacon) for examples of industrial accidents and other events that cause great harm not being called crimes.

On the rise and fall of the sociology of deviance Colin Sumner's 'The Sociology of Deviance: an Obituary' (1994, Buckingham: Open University Press) is wonderful reading.

For an instructive and relevant essay on the contrast between mainstream criminology and more realist conceptions of harm see Phil Scraton's 'Defining "power" and challenging "knowledge": critical analysis as resistance in the UK' in *Critical Criminology: Issues, Debates, Challenges*, Kerry Carrington and Russell Hogg (eds) (2002, Devon: Willan).

Nils Christie's *A Suitable Amount of Crime* (2004, London: Routledge) is an excellent consistent analysis of the proposition that 'crimes are in endless supply. Acts with the potentiality of being seen as crimes are like an unlimited natural resource. We can take out a little in the form of crime—or a lot' (p. 10).

The best argument that crime needs to be replaced by concepts of social harm is *Beyond Criminology: Taking Harm Seriously*, Paddy Hillyard, Christina Pantazis, Steve Tombs and Dave Gordon (eds) (2004, London: Pluto).

For a counter argument which analyses why western societies appear to be treating every imaginable source of harm as a crime see *Crime in an Insecure World*, Richard Ericson (2006: Oxford: Polity).

For the need for criminology to move beyond the nation state see Wayne Morrison's, *Criminology, Civilisation and the New World Order* (2006, London: Routledge/Cavendish).

For an alternative criminology textbook that stresses the importance of meaning and power in the construction of crime and law, see Jeff Ferrell, Keith Hayward, and Jock Young's *Cultural Criminology: An Invitation* (2008, London: Sage).

WEB LINKS

Lexis ONE

<http://www.lexisone.com>

A free legal research site providing searchable case law and a whole host of other useful research aids.

The Emile Durkheim Archive

<http://durkheim.itgo.com/anomie.html>

A detailed website dedicated to the French sociologist.

Amnesty International

<http://www.amnesty.org>

Find out more about the campaign for international human rights legislation and human rights abuses.

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