

Introducing Crime and Criminology

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WHAT IS CRIME?

The concept of 'crime' is a central and highly contested theme in criminology. Many of us have preconceived notions about the types of behaviour that should (or should not) be defined as crime. These preconceptions can be shaped by various influences, including depictions of crime in the daily news or popular film, television and other forms of entertainment, direct exposure to criminal harm as a victim, or through employment within the various components of the justice system, such as in policing, the criminal courts or the correctional system.

The fact that the term 'crime' is highly contested and there has been a failure to define 'crime' has led to a debate over what behaviours are to be considered a 'crime'. 'Crime' is most commonly associated with conduct that is clearly harmful to others and can lead to various formal penalties including fines, imprisonment and even the death penalty in some jurisdictions.

The task of criminology is to understand how these social forces help to shape our own ideas about criminal behaviour, and how these are either reinforced or contradicted by official crime control policies. In addition, how we define crime often influences perceptions of who might commonly engage in criminal behaviour. As this topic demonstrates, this can often lead to the disproportionate targeting of certain behaviours or population groups considered to deserve official scrutiny by police or the justice system more generally, while sidestepping other less obvious behaviors with the potential to cause greater social harm.

Individuals and agencies within the criminal justice system are part of a complex web of social institutions. The critical examination of the relationships between these institutions is crucial in examining why some forms of behaviour are automatically considered crimes, while others that clearly produce a variety of harms are often harder to classify.

Mainstream criminologists will usually let the state define what they consider a crime. Whereas critical criminologists will draw on human rights law and navigate through social impacts in order to decide what is considered a crime.

Crimes Change

Actions that are considered crimes change over time. Some things used to be legal but over time became criminalised:

- Heroin was legal through prescription until 1959
- Smoking on public transport and shared areas/around food
- Rape in marriage
- Solariums

Others were once illegal but are now legal:

- Unisex bathrooms
- Consensual homosexual sex and partnership
- Medical marijuana (Victoria)

Examples of activities that are considered crime in Australia but not a crime elsewhere:

- Recreational marijuana use (now decriminalised in The Netherlands, across much of South America, in multiple states in the US)
- Owning and carrying semi-automatic guns (legal in US but very restricted in Australia)

Differences across states:

- Safe injecting rooms
- Fireworks for domestic use

LEGAL DEFINITIONS

“Crime is an intentional act or omission in violation of criminal law (statutory or case law), committed without defence or justification, and sanctioned by the state...” (Tappan, 1947). Legality is not fixed, meaning through appropriate processes (through parliament) laws can be changed.

There are sometimes elements associated with committing a crime – *for example murder requires a guilty mind (mens rea) and a guilty act (actus reus) and murder will only be established if both of these elements are met beyond a reasonable doubt.*

The criminal law provides the basic starting point for defining crime. But, there is often disagreement about the types of behaviour that the criminal law should prohibit and punish. Such disagreements are often shaped by contested political or public views about what activities should be defined as crimes.

Each Federal, State and Territory Parliament has their own version of the Crimes Act; identifying behaviour that will be classified as a crime and the definitions of each type of crime.

In Victoria (Crimes Act 1958 Vic) – Divisions of Crime

<p>Division 1 - Crimes against the Person</p> <ul style="list-style-type: none">• homicide;• causing injury intentionally/recklessly;• stalking;• sexual offences (rape, child sex assault, bestiality etc);• kidnapping;• exceptions – self-defence; impairment	<p>Division 2, 3, 4 – Crimes against Property</p> <ul style="list-style-type: none">• theft/burglary/robbery• handling stolen goods• fraudulent investments• identity crime• money laundering• arson• criminal damage• contamination of goods
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Policing Crime

Much criminal law also specifies the rules governing police investigations. This helps to ensure allegations of crime are dealt with fairly, with the rights of the accused also in consideration. They include correct procedures for gathering evidence, questioning witnesses and certain rights given to people accused of crime, such as the right to an interpreter and the right to legal representation. These procedural requirements are linked to the ideas of “due process” and punishment (The Evidence Act, Criminal Procedure Rules, Supreme Court Rules etc.)

Note that not all crime causes harm, *for example graffiti or downloading music aren’t necessarily harmful but they are illegal acts.* Just as alcohol consumption isn’t necessarily illegal but it can be harmful.

Over-criminalisation is a significant problem associated with strict legal definitions of crime. A related concern involves the failure of the criminal law to define certain harmful behaviours as crimes (Ashworth & Zedner 2008).

Over criminalisation is the act of imposing unbalanced penalties with no relation to the gravity of the offense committed or the culpability of the wrong doer. It is the imposition of excessive punishment or sentences without adequate justification. *For example, crimes of business have historically not been incorporated into criminal law due to the complex nature of them, or punishment for swearing in public. Also, indigenous crimes and victims (explained later on).*

Under-criminalisation is the opposite, where something that should be considered a crime is not heavily policed. *For example, domestic violence was not overly policed due to the mind-set that it happens behind doors.*

There are some definitions within the criminal realm that have some problems. An instance of this is cyber-crime, this is due to the wide nature of the crime and the fact that the internet is ever-growing,

Limitations of the Legal Definitions of Crime

- According to the legal definition, everyone is a criminal. There is at least some crime you are likely to have committed.
- If the behavior doesn't come to the attention of authorities, did a 'crime' even occur? *Example - drug use or family violence?*
- The legal definition of crime gives no information about why, or for what reason, that behaviour is prohibited.
- It is often out-of-step with public opinion. Laws can be unpopular.
- Much of the law was developed by the most powerful groups. For example, property owners over workers; men over women; white and European Australians over non-white and Indigenous Australians – this impacts on what is and isn't criminalised (*example - state crime*)
- Its enforcement can be biased. For instance, an over-focus on street crime as opposed to white collar crime. Likewise, minorities can be targeted for disproportionate policing and enforcement;
- Highly variable between jurisdictions and nations.

CRIME AS A SOCIAL AND POLITICAL PROCESS

In contrast to the strict and often highly technical definitions of crime under the criminal law, social and political definitions of crime are much broader and more complex. As your next reading indicates, a range of factors are considered under these approaches, which can reveal bias in the practical application of the criminal law by police and other agents in the justice system.

Criminologists have long recognised “the study of criminal law alone cannot provide all the information necessary for a proper understanding of the phenomena of crime” (Radzinowicz & Turner 1945). This is due to the social process that influences complex relationships between offender and victims (as well as the justice system and the community). For this reason, relationships between legal definitions and factors contributing to crime, social processes must be considered.

The Example of Indigenous Australians

Indigenous Australians “are typically two to five times” more likely to be victims of violent crime than non-Indigenous Australian persons (Willis 2011). In most cases, the offender will be another Indigenous person. Chris Cunneen (2001) indicates that social processes are closely related to a long and problematic history of police relations with Australian Indigenous people. *For example, Indigenous women are usually mistreated when they report violence, the “failure to act, ... slow responses, disrespect, cultural insensitivity or laying blame on the victim” all contribute to this poor relationship between Indigenous people and the justice system.*

Recognising the social processes associated with criminal enforcement and punishment can help to explain the problem of **over-representation** in the criminal justice system of Indigenous persons. The disproportionate and repeat application of strict legal definitions of crime in many Indigenous communities is closely linked to broader problems of geographic remoteness and political disempowerment as well as historical conflicts, and the fact that there is a history of the police over using their power to restrict and oppress Indigenous people (Cunneen 2001). A social definition of crime when referencing Indigenous people will respect and point out the history of oppression.

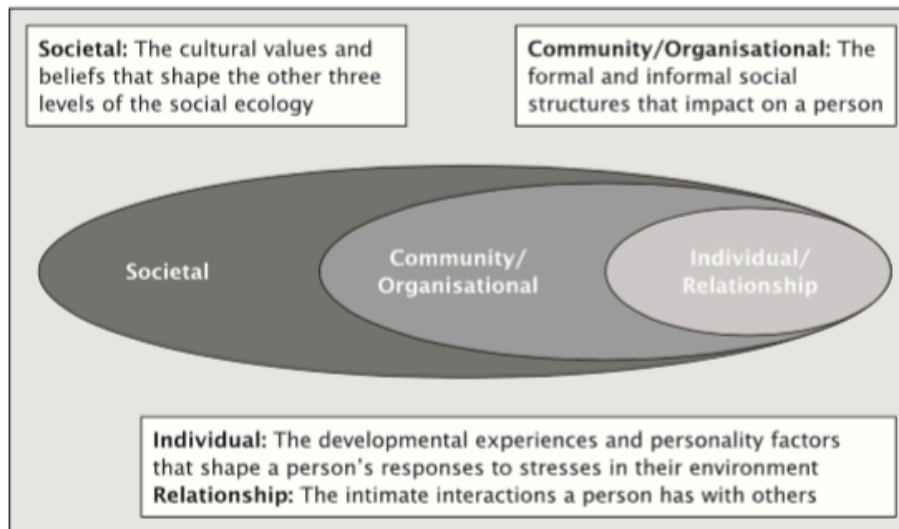
Limitations to Social and Political Definitions of Crime

- Defining crime reflects the distribution of powerful interests and cultural forces.
- Often disadvantages vulnerable and/or minority populations (*example - Indigenous Australians*), who are significantly affected by over-policing and resulting stigmatisation (or labelling).
- It focuses more on individual responsibility and psychology (the 'sick' person), and less on collective or social, political and corporate responsibility (the 'sick' society).
- Politically, crime is often about control, which can lead to over-criminalisation and net widening;

not irrational or meaningless; rather, it is commonly used to exercise power and control over others. The concept “coercive control” is used by some theorists to emphasise that physical abuse, intimidation, isolation and control operate at a personal and political level to deprive women of “rights and resources [that are] critical to personhood and citizenship” (Stark 2007: 5).

Indigenous writers differ in the extent to which they accept a feminist framework as helpful. Most Indigenous writers insist that violence in Indigenous communities must be understood with reference to the damaging impact of colonisation and ongoing racism.

Figure 7.2 An ecological approach to understanding violence



CONCLUSION

Responses to crimes in the home across Australia are not uniform. There are marked differences both within and between jurisdictions in responses to different forms of crime within the home.

The criminal justice system has begun to take crimes in the home more seriously. However, we also should be sceptical about the possibilities of criminal law to prevent or remedy crimes in the home. Theorists differ in their analysis of crimes in the home, but most point to the importance of inequality or marginality as key factors underlying patterns of violence. The criminal justice system and the law more generally offer few prospects for changing such factors.

The relationship between crime and the home is complex and multi-faceted. In contemporary Australian society, the idea of home is entwined with the legal concept of private property, and this has some negative consequences. In particular, those who do not own private property may suffer diminished rights in their homes.

Within the home the physically weak and the economically dependent, especially children and many women, can be vulnerable to many forms of abuse. Crime in the home of this nature presents many difficulties for the authorities: it tends to be concealed, and intervention is difficult and can actually make things worse.

