

## WHAT IS CRIME AND WHO IS THE CRIMINAL: DEFINING CRIME

The definition of crime changes over time and varies from place to place. Notion there is a right and wrong. There is a grey area in between black and white. Sometimes it's obvious and can be inexplicable as to why. Crime is often cultural and political.

### CRIME CHANGES OVER TIME:

Used to be legal but now criminalised:

- Some drugs (heroin was legally available on prescription until 1953)
- Smoking on public transport (smoking in enclosed spaces criminalised 2007)
- Rape in marriage (criminalisation only began in 1981 with NSW the first state to legislate)
- Operating a tanning salon (criminalised in 2014)

Used to be criminalised but now legal:

- Mixed bathing (men & women) was only permitted from the 1940s
- Consensual homosexual sex (illegal until 1980s [Tas not until 1997])
- In QLD and WA, it was illegal to drink under 21 until 1970 and 1974 respectively
- In Victoria, marijuana for medical use

Guilty mind + guilty act = crime.

### CRIME CHANGES FROM PLACE TO PLACE:

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 of the US etc)
- Owning and carrying semi-automatic guns (legal in US but very restricted in Australia)

### Differences across Australia states:

- Safe injecting rooms
- Fireworks for domestic use

### WHAT IS CRIME?

Crime is not simply what causes harm. Some things are harmful but not necessarily criminal. E.g. industrial pollution, alcohol consumption. Some things are also criminal but you may not necessarily consider them harmful e.g. illegal downloads, trolling or free speech, assisting suicide etc.

"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, 1947:100)

- A strict legal definition allows whatever legislators and judges - or the 'state' - deem as criminal to be labelled as a 'crime'.
- While it is *legal*, it is not fixed - the law can change, influenced by community attitudes and populist opinion;
- Requires two elements to be proved: mens rea (guilty mind) and actus reus (guilty act).

### TYPES OF CRIME:

According to the Crimes Act 1958 (Vic.), these are types of crimes and their divisions:

- **Div. 1: Crimes Against the Person**
  - Homicide;
  - Causing injury intentionally/recklessly;

- Stalking;
- Sexual offences (rape, child sex assault, bestiality etc.);
- Kidnapping;
- Exceptions - self-defence; impairment
- **Div. 2, 2a, 2aa, 3, 4: Crimes Against Property**
  - Theft/burglary/robbery
  - Handling stolen goods
  - Fraudulent investments
  - Identity crime
  - Money laundering
  - Arson
  - Criminal damage
  - Contamination of goods
- **Div. 8: Items Used for Other Crimes**
  - Possession of explosives
- **Div. 9: Driving offences**
  - Causing death/injury
- **Div. 9aa: Dangerous dogs**
- **Div. 10-12: Planning offences**
  - Conspiracy (planning a crime);
  - Incitement (encouraging others);
  - Attempts

There are also 'due process' requirements of administering criminal justice:

- Div. 5-7: Crimes Against Justice Processes
  - Tampering with evidence
  - Perjury

Also, breaches of bail and other orders.

Criminal Code Act 1995 (Cth.) sets out broad definitions and standards and a number of Commonwealth offences (such as conspiracy and treason)

#### LIMITATIONS OF LEGAL DEFINITION:

- According to the legal definition, everyone is a criminal. There is at least some crime you are likely to have committed.
- If the behaviour doesn't come to the attention of the authorities, did a 'crime' even occur? E.g. 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 (e.g. 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.

#### HUMAN RIGHTS DEFINITION OF 'CRIME':

A human rights definition of crime includes your right to personal safety, individual freedom, fairness, just punishment, privacy, food, shelter, medical care, and freedom from violence.

Henry & Milovanovic (1996)'s view on human rights and social harm:

- Crime is redefined in terms of the 'power to create harm (pain) in any context';
- A radical shift compared to legal definition.

#### **PROBLEMS WITH ENFORCING HUMAN RIGHTS:**

- Compliance based and voluntary (no UN police force)
- Largely rhetorical? Symbolic?
- Ineffective? Critics point to genocide in Rwanda and Serbia as evidence of its weakness.
- Human rights definitions of crime are occasionally at odds with local definitions of crime and justice.
- The UNDHR is not universally accepted, adopted or implemented.

#### **SOCIAL AND POLITICAL DEFINITIONS OF 'CRIME':**

This approach to defining crime looks beyond the law to consider the social and political processes of:

- Why certain behaviour or actions are 'defined' as crime;
- Why certain behaviour or actions are prioritised in the public consciousness more than others e.g. street crime vs. white collar crime, pollution vs. terrorism.
- How criminal laws are made and why they focus on certain behaviours or actions;
- How laws are enforced;
- Why certain groups in society might be more disadvantaged than others in relation to each of these processes.

#### **LIMITATIONS:**

- Defining crime reflects the distribution of powerful interests and cultural forces
- Often disadvantages vulnerable and/or minority populations (e.g. 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 or corporate responsibility (the 'sick' society).
- Politically, crime is often about control, which can lead to over-criminalisation and net widening.

However, crime is a social process that reflects who we are and what we value (and, conversely, what we don't value) e.g. Rosie Batty said there needed to be 'definitive campaigns', similar to TAC's drink-driving and speeding messages, to make people aware of the impacts of domestic violence).

#### **WHAT IS CRIMINOLOGY:**

A 'rendezvous' subject where sociology, psychology, philosophy, economics, biology, media studies, law and many others, crossover and interact. The goal is to explain either:

- The nature, extent, and causes of crime in a given society or population, OR
- The nature and characteristics of how criminal justice is enforced in any given society.

These are different and diverging goals, but help to define what crime is and who commits it. Despite the disagreements about what criminology is, few in this discipline would argue that crime is a 'random' phenomenon. There is structure and patterns to either its incidence or how powerful social actors construct it. Criminology, therefore, is the study of those patterns, as well as the understanding of who we are and what we value as a society.

## NOTES FROM CHAPTER ONE

- 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.
- Behaviours that involve some degree of moral blame that warrants investigation, prosecution and formal punishment implemented by the state and its institutions counts as a crime.
- Punishment is involved to deter others from engaging in the same or similar conduct in the future.
- Much criminal law also specifies the rules governing police investigations. These help to ensure allegations of crime are dealt with fairly such as correct procedures for gathering evidence, questioning witnesses, and certain rights given to people accused of crime. These include the right to an interpreter and the right to legal representation.
- The criminal law therefore sets many limits on the police and other justice agencies to balance their formal investigative powers against certain rights aimed at protecting those accused of crime.
- Expanded legal definitions of crime prohibit an increasing number of less serious or harmful behaviours, which extends the stigma of a criminal conviction to encompass more people. As more people are charged, convicted and sentenced to a wider range of illegal behaviours, it becomes harder for these people to "reintegrate" into society.
- The law of murder applies to intentional or deliberate killings, while the law of manslaughter applies to negligent, reckless or accidental conduct that leads to death.