

## LAW3471-CRIMINOLOGY

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# Module 1- Crime & Criminology and the Criminal Justice System

## 1.1 Criminology

Making, breaking and reacting to laws. It is the development of a body of general and verified principles and of other types of knowledge regarding this process of law, crime, and treatment” (Sutherland and Cressey, *Principles of Criminology* (6th ed. 1960, 3)

A **sub-discipline of sociology** which aims to systematically explore the definition, forms, underlying causes but also the reactions of different actors towards crime and criminal behaviour and consequences

Biological science, psychology, philosophy, law forensics, education, history and political economy.

Criminology differs from other social science disciplines as it has a heavy emphasis on law.

### “Crime vs Deviance”

- **No** single definition of crime and as society’s perceptions of criminal behaviour constantly changes no universal definition of crime will likely evolve in the future.
- Deviant behaviour is behaviour that is outside the range of normal societal toleration. Criminal behaviour, on the other hand, is behaviour that formally violates written laws (laws are intended for social control)

## 1.2 Criminal Justice System (CJS)

Australia has overall 9 criminal justice systems

- **PURPOSE:** to trail and punish offenders
- **KEY AIMS:** Retribution, Restitution, Deterrence, Incapacitation, & Rehabilitation
- **INSTITUTIONS** (work separately/ separation of powers):
  - 1) **POLICE**  
Responsible for prevention of crime, keeping public order and providing emergency assistance (patrol officers; detectives; specialist squads)
  - 2) **CRIMINAL COURTS**  
Adjudication of criminal matters (higher and lower courts; indictable offences and summary offences)
  - 3) **CORRECTIONS**  
Administration of sentences and rehabilitation programs (custodial corrections and community corrections)
- **PROBLEMS:** public confidence, jurisdictions, laws & sentencing differs between 9 CJS, speed, miscarriage of justice and effectiveness; **ARUGMENTS:** alternatives outside of CJS, CJS itself needs to be more efficient

### 1.3 Separation Of Powers Doctrine

The **doctrine** of the **separation of powers** in Australia divides the institutions of government into three branches: legislative, executive and judicial. The legislature makes the laws; the executive put the laws into operation; and the judiciary interprets the laws.

### 1.4 Ethical Formalism

**Ethical formalism** is defined as an **ethical** theory that defines morals based off of logic and reason which says that if something is defined as wrong or right, it is defined as wrong or right all the time. An example of **ethical formalism** is saying that abortion is wrong all of the time without exception.

### 1.5 'Coward Punch'

Introduced in 2014 it refers to **"One Punch Can Kill"**

## Module 2-Defining and Measuring Crime

### 2.1 Deviance

Deviance refers largely to the violation of society's norms. Norms are understood as behavioural codes of what society understands as acceptable and that regulate people's conduct and actions. Cohen defines deviance as "...the behaviour that violates the normative rules, understandings or expectations of social systems" (Cohen 1968, p 148).

### 2.2 Crime

- **Dictionary definition:** Starting point for definition but obvious limitations
- **Formal legal definition:** defined by state, proscribed by criminal law, subject to sanction-- A **formal legal definition** considers crimes to be 'acts or omissions that are prohibited under appropriate penal provisions by authority of the State' (*Proprietary Articles Trade Association v Attorney-General (Canada)* [1931] AC 310, 324).
- **Social harm/harm (broader):** criminal and civil offences. All causing harm should attract a penalty
- **Cross-cultural universal norms:** crime does not vary, cut across culture & time, e.g., murder
- **Labelling:** Only exists where there is a social response to an activity or behaviour
- **Human rights (broader):** any violation of a human right, regardless of whether state-recognised/ expansion to racism, sexism, class exploitation

- **Human diversity:** deviance = a normal response to oppressive or unequal circumstances... Power relations, dominant group suppresses the 'other'

## 2.3 Categories of Criminal Law

- **CRIMINAL OFFENCES** (breach of criminal law)
- **REGULATORY OFFENCES** (breach of certain regulations including tax and traffic laws)
- **CIVIL WRONGS** (wrongs under civil law, eg breach of contract)

### Standard of Proof

- The standard of proof in criminal proceedings for the Crown is '**beyond a reasonable doubt**'
- the standard in civil proceedings is the lower standard of '**on the balance of probabilities**'
- Criminal proceedings are brought by the Crown and the defendant may be incarcerated at the end of said proceedings
- in Australia criminal law is mostly a matter of the states and territories.
- Some States are '**code jurisdictions**' & mainly codified their law in a single code
- others are referred to as '**common law jurisdictions**' and rely on precedent as well as a number of statutes. For this reason criminal laws in Australia vary to a great extent.

### Problems of Criminal Law

- 1) **Discretion of the court-** certain conduct is criminalised in legislation, it may not be enforced or not enforced sufficiently by criminal justice authorities e.g police being criticised by not enforcing laws.
- 2) **Sentencing-**judges have a variety of different sentencing options available( *the Penalties and Sentences Act 1992 (Qld)*) and must exercise them in light of the goals of sentencing and the situation of the individual accused at hand, the media often portrays sentences given as too lenient. This is especially the case where the offender does not serve jail time or does not serve the full term of jail time.

## Module 3- Explaining Crime: Criminological Theories and Psychological Theories

### 3.1 The Role of Criminological Theories

- Foundation of criminology
- Ideas about crime/criminal behaviour

- Theories aim to explain why people carry out certain acts and frequently identify why crime occurs and why it varies or changes over time
- interpret observable facts and provide ideas about the nature and underlying causes of crime and criminal behaviour and to encourage dialogue.
- nature of criminal behaviour which is subsequently rigorously tested by applying the theoretical concept
- research findings to a scientific method

## Theory Groupings

- **Set-of-laws theory:** Derived from the consistency of research findings over time which give rise to generalisations and, in turn, an established theory with validity and reliability (not very frequent in criminology)
- **Axiomatic theories:** Interrelation of different phenomena including relationship between specific characteristics or criteria (see, for example, 'differential association'=interactions with others; see also Study Module 4)
- **Causal process theory:** Relationship statements between concepts and causal mechanisms between phenomena (see, for example, 'strain theory'; see also Study Module 4)
- **General theories:** Contain statements about general causes for most types of crime committed most of the time-'one size fits all'. Provide dominant explanation for the occurrence of crime (see, for example, Gottfredson and Hirschi (1990), Study Module 4)
- **Typological theories:** Statements as to why specific offenders commit specific crimes=unique explanations (see, for example, Moffit's theory of offending behaviour)

## 3.2 Theories and History

### 1. Classicism

- Italian **Cesare Beccaria's 1764** work "On Crimes and Punishment"
- Beccaria's theory humans had free choice and reason to engage in criminal behaviour and made choices to maximise self-interest.
- Argued that criminal law should lay down rules that govern society's behaviour as crime injured society rather than the individual victims (utilitarianism)
- Beccaria promoted more human punishment and the abolishment of torture to achieve the best possible outcomes for society
- focuses largely on the criminal law and its administration.

### 2. Positivism

- early 19th century and promoted the scientific study of criminology by applying scientific methods
- In 1876, the Italian medical doctor Cesare Lombroso published "Criminal Man"