



CRIMINOLOGY

TIM NEWBURN

THIRD EDITION



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WEBSITE

ROUTLEDGE

"This book, now in its third edition, is still unsurpassed in terms of its depth, breadth and coverage for new undergraduate Criminology students. The addition of a chapter on politics and crime does what so few textbooks manage to do – locate criminology within its historical, social and political context. The live Twitter feed and Facebook page will complement the author's already well established position as the 'go to' criminologist on social media."

—Dr Sarah Charman, University of Portsmouth

"*Criminology* is by far the best, most comprehensive and authoritative textbook available. The third edition provides updated material on recent developments and an invaluable new chapter on the politics of crime control. The clarity of the writing, the breadth and depth of coverage, the links to further reading and to other relevant resources all make this a perfectly balanced introduction to the subject."

—Professor George Mair, Liverpool Hope University

"Comprehensive in its coverage and written in a manner that is accessible to all students, the third edition of *Criminology* underlines why it is *the* undergraduate textbook. The classic sections have been complemented by new chapters that help students understand how crime control does not take place in a vacuum (The Politics of Crime and its Control), as well as encouraging students to think critically about the crime information we consume (Crime Data and Crime Trends). The most valuable aspect of the text is how core research methods concepts are provided in the same books as criminological content, which helps students to see, and understand, the crucial link between theory and research. Without doubt, this textbook provides the starting point for any criminological discussion."

—Dr Vicky Heap, Sheffield Hallam University

"This is the most comprehensive, detailed and clearly structured introduction to Criminology and Criminal Justice on the market. It has already become a go-to textbook for Criminology undergraduates, and with the addition of new material tackling the leading-edge debates shaping the field today, Tim Newburn has managed in this 3rd Edition to raise the bar even further. Just about every conceivable criminological concept, theory, method and approach is contextualised, outlined and evaluated. With extensive reading lists, smart discussion and revision questions, and a dynamic website, this textbook is a must for students of Criminology and Criminal Justice."

—Professor Chris Greer, City University London

"Tim Newburn's *Criminology* continues to be a valuable resource to students seeking to engage with the capacious field that is criminology. The revised chapter on the politics of crime provides a neat, nuanced account of the politics of crime control over the past 50 years. In conjunction with the chapters on late modernity and penology (to take one set of examples), it will equip the inquisitive student with the tools with which to dive further into the murky depths of the politics of criminal justice. An enjoyable, engaging and authoritative text."

—Dr Harry Annison, Lecturer in Criminal Law and
Criminology, University of Southampton

"Newburn's *Criminology* is already an indispensable text for students trying to navigate and make sense of the diverse and fast changing field of criminological scholarship. This updated edition builds on the strengths of the first two. There are few texts on the market, if any, which balance comprehensive coverage and accessibility as well as this one."

—Professor Katja Franko, University of Oslo

Criminology

Comprehensive and accessible, Tim Newburn's bestselling *Criminology* provides an introduction to the fundamental themes, concepts, theories, methods and events that underpin the subject and form the basis for all undergraduate degree courses and modules in Criminology and Criminal Justice.

This third edition includes:

- A new chapter on politics, reflecting the ever increasing coverage of political influence and decision-making on criminology courses.
- New and updated crime data and analysis of trends, plus new content on recent events such as the Volkswagen scandal, the latest developments on historic child abuse, as well as extended coverage throughout of the English riots.
- A fully revised and updated companion website, including exam, review and multiple choice questions, a live Twitter feed from the author providing links to media and academic coverage of events related to the concepts covered in the book, together with links to a dedicated textbook Facebook page.

Fully updated to reflect recent developments in the field and extensively illustrated, this authoritative text, written by a leading criminologist and experienced lecturer, is essential reading for all students of Criminology and related fields.

Tim Newburn is Professor of Criminology and Social Policy at the London School of Economics. He is the author or editor of over 35 books, including: *Permission and Regulation: Law and Morals in Post-War Britain* (Routledge, 1991); *The Future of Policing* (with Rod Morgan, 1997); *Private Security and Public Policing* (with Trevor Jones, 1998); *Policy Transfer and Criminal Justice* (with Trevor Jones, 2007); *Handbook of Policing* (2008); *Key Readings in Criminology* (2009) and the *Sage Handbook of Criminological Theory* (with Eugene McLaughlin, 2010). Tim Newburn is currently writing the 'Official History of Criminal Justice' with David Downes and Paul Rock, and continues to work (with Andrew Ward) on a book entitled *Orderly Britain: How We Solve Our Everyday Problems from Dog Mess to Double Parking*.

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Preface

Much of my professional life is spent teaching criminology – often to people new to the subject or fairly early in their studies. It is these students that I have had most in mind when writing this book. My aim is that the text should be accessible and engaging. It shouldn't therefore be difficult to understand. It should also be easy to navigate. It contains lots of illustrations – both pictorial and graphic – to provide data in support of the arguments made, to bring themes to life and to ensure that the pages are as attractive as possible.

Within the confines of a single volume the aim is also to be as comprehensive as can be managed. What I mean by that is that I have attempted to cover as much of what I think an undergraduate student of criminology *needs* to know as I possibly can. The book therefore covers theory, history, sociological and psychological concerns, and as broad an introduction to policy as can be achieved. It considers all the main theoretical approaches, outlines in some detail the structure and operation of the criminal justice system and its primary agencies, and looks at each of the major forms of criminal activity. In addition to being updated this third edition contains some new elements. There is an entirely new chapter, for example, focusing on the politics of crime and its control. Of course, political treatment of crime and criminal justice appears in many other chapters also.

The other big issue in a field like crime, criminology and criminal justice policy is just how quickly it all changes. In recent times, governments have introduced more and more legislation, discussion documents, new proposals, and the like. Alongside them, non-governmental organisations (NGOs) and interest groups produce their own material, some of it directly challenging government policy. In addition to that there is the continuous publication of new academic research and new data from a whole range of sources. How is one to keep up? The answer in part is to use the internet. There are a variety of good sources of information, many of which are listed at the end of the chapters in this book. In addition, however, I will be posting regular updates and links via a dedicated Twitter feed for this book: @NewburnText. As I discover things that I think will interest readers of this book I will tweet details and links to websites, newspapers, government departments and the rest, so that anyone wanting to follow up the latest developments can do so. The links will be curated later and will also appear on the book's website. I will also update tables and other data sources as new material emerges.

The other major development in relation to the book is the revamping of the website. This has many new features. The link to the dedicated Twitter feed I've already mentioned. There will also be a question-and-answer feature. Students can post questions. Every couple of weeks I'll select questions, group them together, and answer them on the website. In addition, on the website students can find test questions and sample answers, and teachers can find sample PowerPoint slides that link to particular topics.

Good luck with your studies!

Tim Newburn

Twitter: [@TimNewburn](#) [@NewburnText](#)

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In these increasingly neoliberal times in which politicians, managers and assorted bean counters seem hell bent on squeezing every last drop of joy out of working in a university, students are a regular and timely reminder of what it is all about, or should be. I owe a huge debt of gratitude to all my undergraduates and postgraduates for their willingness to continue to behave like students rather than 'consumers'. Long may they continue to do so.

Naturally, my greatest debt is to my family. To the whole extended crew – from my Mum and Cathy in their 80s to Georgia, 3, Freya, 1, and the very imminent 'baby Laisby' – I send my love and thanks. The book is dedicated to Mary, without whom . . .

Acronyms

ABC	Acceptable Behaviour Contract
ABH	Actual Bodily Harm
ACMD	Advisory Council on the Misuse of Drugs
ACPO	Association of Chief Police Officers
ADHD	Attention Deficit Hyperactivity Disorder
ADR	Alternative Dispute Resolution
ASB	Anti-Social Behaviour
ASBI	Anti-Social Behaviour Injunction
ASBO	Anti-Social Behaviour Order
BAWP	British Association for Women in Policing
BCS	British Crime Survey (see also CSEW)
BCU	Basic Command Unit
BSC	British Society of Criminology
CAFCASS	Children and Family Court Advisory and Support Service
CAPI	Computer Assisted Personal Interviewing
CASI	Computer Assisted Self Interviewing
CCCS	Centre for Contemporary Cultural Studies
CCRC	Criminal Cases Review Commission
CDRP	Crime and Disorder Reduction Partnership
CICA	Criminal Injuries Compensation Authority
CICS	Criminal Injuries Compensation Scheme
CJ	Criminal Justice
CJS	Crime and Justice Survey
CPO	Community Punishment Order
CPRO	Community Punishment and Rehabilitation Order
CPS	Crown Prosecution Service
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CPTED	Crime Prevention Through Environmental Design
CRE	Commission for Racial Equality (see also EHRC)
CRO	Community Rehabilitation Order
CRP	Crime Reduction Programme
CSC	Close Supervision Centre
CSEW	Crime Survey for England and Wales (formerly BCS)
CSO	Community Service Order
CSP	Community Safety Partnership
DAO	Drug Abstinence Order
DAR	Drug Abstinence Requirement
DCA	Department for Constitutional Affairs (replaced by Ministry of Justice)
DRR	Drug Rehabilitation Requirement
DTO	Detention and Training Order
DTTO	Drug Treatment and Testing Order
DVU	Domestic Violence Unit

EHRC	Equality and Human Rights Commission
ELO	Europol Liaison Officer
FGC	Family Group Conference
FPN	Fixed Penalty Notice
FSS	Forensic Science Service
GBH	Grievous Bodily Harm
HDC	Home Detention Curfew
HMCPPI	Her Majesty's Crown Prosecution Service Inspectorate
HMIC	Her Majesty's Inspectorate of Constabulary for England, Wales and Northern Ireland
HMICA	Her Majesty's Inspectorate of Court Administration
HMIP	Her Majesty's Inspectorate of Prisons for England and Wales
HMI Probation	Her Majesty's Inspectorate of Probation for England and Wales
HSC	Health and Safety Commission
HSE	Health and Safety Executive
ICC	International Criminal Court
ICPC	International Criminal Police Commission
ICPO	International Criminal Police Organisation (Interpol)
ICVS	International Crime Victim Survey
IPCC	Independent Police Complaints Commission
ISSP	Intensive Supervision and Support Programme
JPPAP	Joint Prisons and Probation Accreditation Panel
LASCH	Local Authority Secure Children's Home
LSC	Legal Services Commission
MAPPA	Multi-Agency Public Protection Arrangements
MAPPP	Multi-Agency Public Protection Panel
MBU	Mother and Baby Unit
MoJ	Ministry of Justice (formerly DCA)
MPA	Metropolitan Police Authority
MPS	Metropolitan Police Service
MUFTI	Minimum Use of Force Tactical Intervention squad
NAPO	National Association of Probation Officers
NAPSA	National Association of Pretrial Service Agencies
NAVSS	National Association of Victims Support Schemes
NCA	National Crime Agency (formerly SOCA)
NCIS	National Criminal Intelligence Service
NCRS	National Crime Recording Standard
NDC	National Deviancy Conference
NDIU	National Drugs Intelligence Unit
NDPB	Non-Departmental Public Body
NFIU	National Football Intelligence Unit
NICS	Northern Ireland Crime Survey
NIM	National Intelligence Model
NOMS	National Offender Management Service

NoS	Notice of Supervision
NPIA	National Policing Improvement Agency
NPS	National Probation Service
NTORS	National Treatment Outcome Research Study
NW	Neighbourhood Watch
NYPD	New York City Police Department
OCJR	Office for Criminal Justice Reform
OCJS	Offending, Crime and Justice Survey
ONS	Office for National Statistics
PACE	Police and Criminal Evidence Act/Code
PAF	Postal Address File
PBA	Probation Boards' Association
PCC	Police and Crime Commissioner
PCSO	Police Community Support Officer
PICTS	Psychological Inventory of Criminal Thinking Styles
PITO	Police Information Technology Organisation
PMCA	Police and Magistrates' Courts Act (1994)
PND	Penalty Notice for Disorder
POA	Prison Officers Association
POP	Problem-Oriented Policing
PRT	Prison Reform Trust
PSNI	Police Service of Northern Ireland
RCOP	Royal College of Psychiatrists
RCS	Regional Crime Squad
RCT	Randomised Controlled Trial
RISE	Reintegrative Shaming Experiment
RJ	Restorative Justice
ROM	Regional Offender Manager
RUC	Royal Ulster Constabulary (see also PSNI)
SCO	Special Compliance Office
SCS	Scottish Crime Survey
SCVS	Scottish Crime and Victimisation Survey
SEU	Social Exclusion Unit
SFO	Serious Fraud Office
SOCA	Serious and Organised Crime Agency (now NCA)
SSO	Suspended Sentence Order
STC	Secure Training Centre
STOP	Straight Thinking on Probation
TIC	(crimes) Taken Into Consideration
TOC	Transnational Organised Crime
TWOC	Taking (vehicle) Without Owner's Consent
UNODC	United Nations Office on Drugs and Crime
VOM	Victim–Offender Mediation
VORP	Victim–Offender Reconciliation Project
VS	Victim Support

WIP	'Women in Prison'
WORP	Women's Offending Reduction Programme
YJB	Youth Justice Board
YLS	Youth Lifestyles Survey
YOI	Young Offenders Institution
YOP	Youth Offender Panel
YOS	Youth Offending Service
YOT	Youth Offending Team
ZTP	Zero-Tolerance Policing

Part 1

Understanding crime and criminology

Part outline

- 1 Understanding crime and criminology**
- 2 Crime and punishment in history**
- 3 Crime data and crime trends**
- 4 Crime and the media**
- 5 The politics of crime and its control**

Chapter outline

What is criminology?

An interdisciplinary subject

Defining criminology

Understanding crime

Crime and the criminal law

Crime as a social construct

Historical variation

Criminology in Britain

Further reading

1

Understanding crime and criminology



CHAPTER SUMMARY

In this chapter we begin the study of criminology. What is this subject, what are its origins and what is its focus? Having considered these questions we move on to look at what is meant by the term 'crime'. Although it might be tempting to think that the term is straightforward, and indeed that is how a lot of people talk and think, as we will see, there is a range of ways in which *crime* can be understood. It is, for example, both a legal concept (we have criminal laws which indicate which acts are illegal) and a socially constructed one (who becomes labelled 'criminal' and under what circumstances?). We examine these and other ideas. The chapter concludes by looking briefly at the history of criminology in Britain, its institutional origins and its recent expansion.

What is criminology?

This is a question that is deceptively simple in appearance, but really quite tricky to answer with great certainty. It is tricky partly because, as we will see, criminology is a mixture of different disciplines, differing objects of study and some dispute over where, precisely, its boundaries actually lie and should lie. Importantly, however, the fact that we begin with this question assumes that you are new to this subject. Indeed, that is the underlying assumption. This book is designed as an introduction for students who are studying criminology. I have endeavoured not to make too many assumptions about pre-existing knowledge of the subject and, wherever possible, I will hope to begin from basics and work progressively toward more complex ideas or arguments.

Criminology is a strange beast. With origins in applied medico-legal science, psychiatry, a scientifically oriented psychology and in nineteenth-century social reform movements, for much of the second half of the twentieth century British criminology was dominated by sociology or at least a predominantly sociological approach to criminology. Times are changing again, however, and a new strand of technical and highly policy-oriented 'scientific' criminology has been emerging more recently. During the course of this book you will meet all these variants and should learn how to assess their competing claims.

In a masterly analysis of the emergence and development of criminology in Britain, David Garland (2002: 8) introduced the subject in the following way:

I take criminology to be a specific genre of discourse and inquiry about crime – a genre that has developed in the modern period and that

can be distinguished from other ways of talking and thinking about criminal conduct. Thus, for example, criminology's claim to be an empirically-grounded, scientific undertaking sets it apart from moral and legal discourses, while its focus upon crime differentiates it from other social scientific genres, such as the sociology of deviance and control, whose objects of study are broader and not defined by the criminal law. Since the middle years of the twentieth century, criminology has also been increasingly marked off from other discourses by the trappings of a distinctive identity, with its own journals, professional associations, professorships, and institutes.

In this history, Garland argues that modern criminology is the product of two initially separate streams of work:

- *The 'governmental project'* – empirical studies of the administration of justice; the working of prisons, police and the measurement of crime.
- *The 'Lombrosian project'* – studies which sought to examine the characteristics of 'criminals' and 'non-criminals' with a view to being able to distinguish the groups, thereby developing an understanding of the causes of crime.

During the twentieth century, he suggests, these gradually merged and changed to form the basis for what we recognise these days as *criminology*. The term *criminology* seems first to have been used by Paul Topinard, a Frenchman studying the body types of criminals, though the invention of the term itself is generally credited to an Italian academic lawyer, Raffaele Garofalo. Both are associated with the second stream of work identified above – which Garland names after the Italian scholar, Cesare

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Lombroso (see Chapter 6). This work, in various forms, was concerned with attempts to identify physical and other characteristics that set criminals apart. Such work varied from the measurement of physical characteristics such as head shape and the shape and size of the jaw and cheekbones, through to work that focused more upon the environmental conditions that produced criminality. Though, by and large, crude attempts to identify and measure characteristics that distinguish criminals from others have largely disappeared, Garland's argument is that one very significant stream of criminology has continued to be concerned with identifying the individual, social and environmental factors that are associated with offending.

An interdisciplinary subject

Thortsen Sellin, an American criminologist writing in the 1930s, once observed that the 'criminologist does not exist who is an expert in all the disciplines which converge in the study of crime' (Sellin, 1970: 6). As a criminology student you will quickly discover just how many disciplinary approaches are utilised in studying crime and criminal justice. In this book you will come across work by psychologists, sociologists, political scientists, lawyers, historians, geographers and others, all working within the subject of criminology. That they do so is one of criminology's great strengths.

Different disciplines have been dominant at different points in the history of criminology, and there are differing orientations to be found within criminology in different countries. Nevertheless, as you will see as this book progresses, criminology is influenced by, and draws upon, psychology, sociology, legal theory, history and other subjects besides. This raises a number of issues. It means that not only will you find a number of different approaches being taken to the subject matter, but that sometimes these approaches will appear rather at odds with each other. This is one of the great challenges within criminology and, though it can occasionally seem daunting, it is one of the characteristics which I think makes the discipline attractive. Linked with this is the question of whether it is appropriate to use the word *discipline* at all. Criminology, as I have suggested, draws from disciplines such as psychology and sociology, and there has been quite some debate about whether criminology can lay claim to such status itself (I tend to think not).

This is not an argument we can resolve here. The British criminologist David Downes once described criminology as a 'rendezvous subject'. He did so

precisely to capture the fact that it is an area of study that brings together scholars from a variety of disciplinary origins, who meet in the territory called crime, and this seems to me a more than satisfactory way of thinking about it. Indeed, we do not need to spend a lot of time discussing the various positions that have been taken in relation to it. It is enough for current purposes that we are alerted to this issue and that we bear it in mind as we cover some of the terrain that comes under the heading *criminology*.

There is a further distinction that we must briefly consider, and it concerns *criminology* on the one hand and *criminal justice* on the other. Although the study of the administrative responses to crime is generally seen as being a central part of the criminological enterprise, sometimes the two are separated, particularly in the United States. In America there is something of a divide between those who think of themselves as doing criminology and those who study criminal justice. In fact, the distinction is anything but clear. Criminological work tends to be more theoretically informed than criminal justice studies and also more concerned with crime and its causes. Both, however, have clear concerns with the criminal justice and penal systems. In discussing this distinction, Lacey (2002: 265) suggests that criminology 'concerns itself with social and individual antecedents of crime and with the nature of crime as a social phenomenon', whereas criminal justice studies 'deal with the specifically institutional aspects of the social construction of crime' such as policing, prosecution, punishment and so on. We will consider what is meant by the social construction of crime in more detail below. Before we do so, let us look once more at the parameters of criminology.

Defining criminology

Even the very short discussion so far should have alerted you to the fact that criminology is a complex subject which has a number of historical roots and, as we will see, a number of quite different approaches in its contemporary guise. On this basis, coming up with a definition of our subject matter is almost not only a difficult task but, quite probably, an impossible one. However, in order to bring a tiny bit more certainty to this rather uncertain terrain, I will borrow an approach to our subject matter first offered by one of the towering figures of twentieth-century criminology.

Edwin Sutherland – someone who you will get to meet regularly throughout this book – defined

criminology as the study of the making of laws, the breaking of laws, and of society's reaction to the breaking of laws. Whilst this is by no means a comprehensive definition of criminology – criminologists may be interested, for example, in various forms of behaviour that do not involve the breaking of laws but, nevertheless, bring forth some form of social sanction – it does help point us in the direction of what are arguably the three great tributaries that make up the subject:

- The study of crime.
- The study of those who commit crime.
- The study of the criminal justice and penal systems.

Sutherland (1937) went on to argue that the 'objective of criminology is the development of a body of general and verified principles and of other types of knowledge regarding the process of law, crime, and treatment or prevention'. Now, having indicated that this is the general approach that informs much of what follows in this book, I want to pause and look briefly at work that is critical of the very enterprise that is criminology. I do so, not because I think the criticisms that are made are sufficient to make us abandon this project (as you can tell because there are another 1,000-odd pages to go before the end of the book), but because they should make us think very carefully about the assumptions that underpin criminology and should make us question the limitations of this particular enterprise.

The critique is associated with what we will come to think of as 'critical criminology' and can be found in various forms since at least the 1970s (see also Chapter 13). Hillyard and Tombs (2004), for example, argue for a change of focus away from 'crime' and toward 'social harm' (see also Dorling *et al.*, 2005; Davies *et al.*, 2014). They do so on the basis of four major lines of criticism:

- *Crime has no ontological reality* – The category 'crime' has no reality beyond the application of the term to particular acts. The acts themselves are not intrinsically criminal. Thus, to kill someone during peacetime may well be treated as murder; to do so on a battlefield will most likely not. We return to this below.
- *Criminology perpetuates the myth of crime* – Despite the criticism above, criminology tends to talk of 'crime' as if the category were relatively

unproblematic. The continued attempts to explain the causes of crime are illustrative of this.

- *Crime consists of many petty events* – A great many 'criminal acts' create little physical or financial harm and often involve no victim.
- *Crime excludes many serious harms* – Many things which result in fairly sizeable harm are not dealt with via the criminal law – i.e. are not treated as 'criminal'. One of these might be large-scale tax fraud, which is rarely prosecuted.

What is clear from this critique is that criminology's organising focus – *crime* – is potentially a highly contestable and problematic term. In studying criminology this is something we must try not to lose sight of. It was this, in part, that the well-known criminologist Stanley Cohen (1988: 46) undoubtedly had in mind, when he said:

[Criminologists] like leeches, live off a very large body on which they are wholly parasitic. In the same way that our courts, prisons, probation officers and police 'need' crime, so does the criminologist. The gap, though, between the real world of crime and the artificial world of criminology is enormous. One reason for this is that the mere existence of something called criminology perpetuates the illusion that one can have a general theory of crime causation.

Understanding crime

Crime, like so many things in our social world, has a certain taken-for-granted or common-sense nature. When we use the term, we assume the category is meaningful; that is, we assume that those to whom we are talking will understand what we're talking about and will tend to use the term in the same way as we do. This, of course, is the basis upon which the social world operates – on assumptions about the taken-for-granted meaningfulness of the vocabulary we use and the behaviours we enact. Yet, as scores of sociologists have illustrated, this shared meaningfulness has to be achieved; it is not *given*.

The apparent orderliness of our world can fairly easily be disturbed. This becomes clear when those with whom we are interacting do not share our assumptions or, alternatively, when they react to what we say or do in ways that we didn't predict, expect or perhaps understand. The word *crime* is used regularly in everyday conversation. That it is used in this manner implies that there is a sufficient

level of common understanding for it to be meaningful. On one level this is undoubtedly the case. However, this masks a number of complexities. As we will see, identifying the boundary between acts that are crimes, and acts which are not crimes is often far from straightforward.

To illustrate this let's consider a couple of examples involving things that might be thought of as *crimes*, both of which involve assault. The first occurs at night-time. It is dark and a person is walking alone and it is late. They are confronted by a

total stranger who asks for money. When refused, the stranger becomes violent. The stranger robs the pedestrian and leaves them needing hospital treatment. There is little doubt that most people, on having this situation described to them, would call what happened 'a crime'. Indeed, in many ways this example represents one of the most common fears that many of us have (Stanko, 1990).

The second example is more unusual. It arises out of the seizure of videotapes during a police raid. One of these videos shows a number of men

The Spanner case

During a raid in 1987 the police seized a videotape which showed a number of identifiable men engaging in heavy sado-masochistic (SM) activities, including beatings, genital abrasions and lacerations. The police claim that they immediately started a murder investigation because they were convinced that the men were being killed. This investigation is rumoured to have cost £4 million. Dozens of gay men were interviewed. The police learned that none of the men in the video had been murdered, or even suffered injuries which required medical attention.

The verdicts

In December 1990, 16 of the men pleaded guilty on legal advice to a number of offences and were sent to jail, given suspended jail sentences or fined. The men's defence was based on the fact that they had all consented to the activities. But Judge Rant, in a complex legal argument, decided that the activities in which they engaged fell outside the exceptions to the law of assault.

A number of the defendants appealed against their convictions and sentences. Their convictions were upheld though the sentences were reduced as it was felt they might well have been unaware that their activities were illegal. However the Appeal Court noted that this would not apply to similar cases in the future. The case then went to the House of Lords. The Law Lords heard the case in 1992 and delivered their judgment in January 1993. They upheld the convictions by a majority of three to two.

The evidence

The evidence against the men comprised the videotape and their own statements. When they were questioned by the police, the men were so confident that their activities were lawful (because they had consented to them) that they freely admitted to taking part in the activities on the video. Without these statements and the videotape, the police would have had no evidence to present

against the men and would have found it impossible to bring any prosecutions.

The law of assault

In law, you cannot, as a rule, consent to an assault. There are exceptions. For example, you can consent to a medical practitioner touching and possibly injuring your body; you can consent to an opponent hitting or injuring you in sports such as rugby or boxing; you can consent to tattoos or piercings if they are for ornamental purposes. You can also use consent as a defence against a charge of what is called Common Assault, where there is no significant injury involved.

The judgment

The Law Lords ruled that SM activity provides no exception to the rule that consent is no defence to charges of assault occasioning actual bodily harm or causing grievous bodily harm. These are defined as activities which cause injuries of a lasting nature. Bruises or cuts could be considered lasting injuries by a court, even if they heal up completely and that takes a short period of time. Grievous bodily harm covers more serious injury and maiming. Judge Rant introduced some new terms to define what he considered to be lawful and unlawful bodily harm. Judge Rant decreed that bodily harm applied or received during sexual activities was lawful if the pain it caused was 'just momentary' and 'so slight that it can be discounted'. His judgment applies also to bodily marks such as those produced by beatings or bondage. These too, according to him, must not be of a lasting nature. In essence, Judge Rant decided that any injury, pain or mark that was more than trifling and momentary was illegal and would be considered an assault under the law.

Source: www.spannertrust.org/documents/spannerhistory.asp

(If you want to follow up more recent case law in this area, you could start by looking at: www.publications.parliament.uk/pa/cm200607/cmpublic/criminal/memos/ucm40702.htm.)

engaging in fairly extreme sado-masochistic activities, including beatings and genital abrasions. The police launch an investigation (the men in the tape are clearly identifiable) which ends in prosecution despite the fact that the men involved all argued that they consented to the activities. Indeed, all freely gave statements to the police believing themselves not to have done anything *criminal*. Were they right? This, in fact, is a real case. In what subsequently became known as the ‘Spanner case’, 16 men pleaded guilty on legal advice to assault. Some were jailed, some received suspended prison sentences and others were fined. The judgment was upheld by the Court of Appeal, the House of Lords and the European Court of Human Rights.

So, how are we to approach the subject matter of criminology? What are the different ways in which we understand crime? An apparently straightforward way is simply to view crimes as being offences against the criminal law. However, even a brief analysis shows that such offences vary enormously historically and culturally, and that the formal application of the criminal law only occurs in relation to a small minority of behaviours that could, in principle, be treated as criminal.

Crime and the criminal law

In some senses the most obvious, and most commonly used, definition of crime is simply to view it as an infraction of the criminal law. Within the criminal law, a crime is conduct (or an act of omission) which, when it results in certain consequences, may lead to prosecution and punishment in a criminal court. Straightforward as this seems, there are a number of problems with it. As Zedner (2004) observes, ‘crime’ may be both a criminal and a civil wrong simultaneously. The legal classification doesn’t help tell us why certain conduct is defined as criminal; it merely helps identify it.

She continues: ‘To think about crime, as some criminal law textbooks still do, as comprising discrete, autonomous legal categories remote from the social world, is to engage in an absorbing but esoteric intellectual activity’ (2004: 61). At its most extreme, a crude legalistic approach to crime implies that if there were no criminal law, then there would be no crime. In its more extreme version it also suggests that no matter what acts someone may have committed, if they are not subject to criminal sanction, then they cannot be considered criminal.

Much of criminology, though aware of some of the problems inherent in legal definitions, nevertheless

proceeds on the basis of precisely such an approach to defining crime. Much of what criminologists do uses categories derived from the criminal law and, moreover, uses statistics taken from the operation of criminal justice agencies enforcing or administering the criminal law (see Chapter 3). This led the American sociologist Tappan (1947: 100) to argue that:

Crime is an intentional act in violation of the criminal law . . . committed without defence or excuse, and penalized by the state as a felony or misdemeanour [more or less serious criminal acts]. In studying the offender there can be no presumption that . . . persons are criminals unless they also be held guilty beyond a reasonable doubt of a particular offence.

Does this mean that there is nothing common to all those things that are the object of our study as criminologists other than they happen currently to be defined as ‘criminal’? Can we limit our attention solely to those things that might lead to a conviction in a criminal court? Edwin Sutherland (1949: 31), one of whose major concerns was ‘white-collar crime’ thought not:

The essential characteristic of crime is that it is behaviour which is prohibited by the state as an injury to the state and against which the state may react, at least as a last resort, by punishment. The two abstract criteria generally regarded by legal scholars as necessary elements in a definition of crime are legal description of an act as socially harmful and legal provision of a penalty for the act.

However, as we will see in relation to white-collar crime (see Chapter 19), he felt that our attention as criminologists should not be limited to those acts that would be punished by the criminal law. There are other forms of punishment and regulation and it is the fact that acts are ‘punishable’ that makes them fall within our view.

Crime as a social construct

Writers starting from this position see ‘crime’ as a label applied, under particular circumstances, to certain acts (or omissions), suggesting that crime is something that is the product of culturally bounded social interaction. As Edwin Schur (1969: 10) once noted: ‘Once we recognise that crime is defined by the criminal law and is therefore variable in content, we see quite clearly that no explanation of crime that limits itself to the motivation and behaviour of

individuals can ever be a complete one.’ Put a different way, Schur was simply observing that if we take the criminal law to be the thing that defines what is criminal, then the very fact that the criminal law varies – often very significantly – from country to country, makes it immediately clear that there is nothing *given* about crime.

Particularly influential in this regard has been labelling theory (see Chapter 11). Associated with a number of influential American sociologists such as Howard Becker, labelling theory, as its own label implies, places primary emphasis on the definitional power of the application of labels – in our case here, the label ‘criminal’. Labelling theory distances itself from the view that defining someone as criminal somehow represents some natural order of events and, rather, analyses such processes as illustrations of the use of power by the state, and others, to define people in particular ways.

In recent times, theorists within criminology have tended not to refer to symbolic interactionism

and phenomenology – the roots of labelling theory and related ideas – and it has become fashionable in this general area to talk of ‘social constructionism’: the idea that crime like other social phenomena is the outcome or product of interaction and negotiation between people living in complex social groups. Central to such an approach is the observation that the power to label certain acts, and certain people, as criminal is one which is restricted and, indeed, keenly contested. Because it involves the exercise of power, the process of labelling acts and people as criminal – generally known as *criminalisation* – tends to reflect power differentials, or particular interests, within society. As we will see in later chapters, there is a radical tradition in criminology, influenced by such insights, which views the criminal law and the operation of the criminal justice and penal systems as clear illustrations of elite or class interests. Put perhaps rather too crudely, it is one means by which the wealthy and powerful discipline and control the poor.

A radical version of social constructionism has been outlined by the Norwegian criminologist, Nils Christie (for more about Nils Christie, see Chapter 31). In his book, *A Suitable Amount of Crime*, he argues:

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)

Historical variation

Similarly, we can gain considerable insight into the socially constructed nature of crime by looking at how our treatment of certain behaviours varies, often considerably, over time. The 1960s in Britain are often referred to as the ‘permissive age’. This was intended to convey what was perceived to be a general loosening of moral codes in the period. It was also a time when a series of liberalising laws were passed. The Abortion Act 1967 made it possible for women, under specific circumstances, to have a pregnancy terminated. Prior to 1967 abortion was illegal. Similarly, prior to the passage of the Sexual Offences Act 1967, it was illegal in Britain for men of any age to have consensual sex together. On the other hand, it was perfectly legal

CH11



Signs limiting or banning alcohol consumption in public have become increasingly common.

CH31