

Introduction: Explaining crime and deviance

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LEARNING OUTCOMES

After reading this chapter, you should be able to:

- outline definitions of crime and deviance
- comment on the 'politics' of social control
- identify the difference between implicit and explicit theories.

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INTRODUCTION

The fascination with and interest in crime and deviance in contemporary society are palpable. We are living during a time when crime documentaries, crime news and crime TV shows are easily accessible via mobile devices and with the aid of Wi-Fi connectivity, granting a direct connection to an insatiable desire for crime stories. There has been a perennial fascination with the criminal and deviant, one often linked to the ‘abnormal’. But, ask yourself, what is normal? What is crime? What is deviance? Who is a criminal? Who are deviants? Understanding the terms crime, deviance and norms is an essential starting point for anyone wishing to engage with the wide range of explanations for the causes and by extension the responses developed by societies to address behaviours categorised as ‘criminal’ or ‘deviant’. In this chapter we will explore the following assertions: that crime and deviance are social constructs; that explanations for crime and deviance are best understood as theories; and that ‘social control’, that is, responses to behaviours categorised as criminal or deviant, are politicised. Those behaviours that end up receiving ‘punishment’ or social disapproval are not always the behaviours that cause the greatest ‘harm’ to societies.

This book begins from the premise that ‘crime’ and deviance are relative phenomena. This means that they have different significance to different people in different contexts. Due to the multidimensional and complex nature of both crime and deviance, criminology is not a discipline that offers a singular nor concise definition of either term. Indeed prominent scholars have argued that criminology has three key focus areas that expand its remit beyond a definitional anchor for such complex social patterns as occur through examinations of crime and deviance towards an account of criminology as the study of ‘the processes of making laws, of breaking laws, and of reacting toward the breaking of laws’ (Sutherland & Cressey 1974: 3). While this is a useful starting point in demonstrating the reach of the discipline and its potential contribution to societies, the definition of criminology offered is linked to the law and to criminal justice processes and systems as the core business of criminology. In contrast, this text is concerned with expanding the focus of criminology from law and order towards a critical treatment of what have become dominant explanations for what is ‘law-breaking’ (Sutherland & Cressey 1974) – we do this by infusing the concept with what Adler and Adler (2011) have referred to as the ABCs of deviance – attitudes, behaviours and conditions. Thus, the text offers an engagement with the concept of crime and the sociology of deviance. Social deviance as understood by sociologists of deviance enriches criminology by breaking it from the shackles of ‘crime’, opening the imagination to an examination of deviations from social norms, of which laws are but one type. Importantly, this connection

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enhances criminology's concerns as identified by Sutherland and Cressey (1974) around law-making – but rather than processes of criminal justice, this text looks at broader social and political concerns that determine why some social norm violations become laws and others do not. Similarly, reactions to law-breaking are examined, but again not in terms of criminal justice systems alone, but rather in terms of *explaining* what impact social reactions have on certain groups and peoples locally and internationally.

Therefore, what is presented in this text is a criminology that considers the marriage between theories or explanations emerging from the sociology of deviance and criminology, providing an understanding of the development of an infant tradition, criminology, with a broader and more established theoretical tradition, sociology. The various chapters in this text highlight how theorising about crime needs to also include 'deviance' as a central, related concept, without which criminology may end up in the trappings of a purely administrative rather than critical context.

DEFINING CRIME AND DEVIANCE

Defining crime and deviance is no easy task. In place of a one size-fits-all approach, the sociology of crime and deviance offers instead a kaleidoscope of conceptualisations that range from legal definitions to harm-based approaches. As you read through the chapters in this book, you will be exposed to the numerous ways in which commonly used terms, such as 'crime', and less commonly used terms, such as 'deviance', have been approached by thinkers writing, witnessing and living through distinct social periods, and influenced by ways of 'seeing' their social world. The only truism we can draw on is that crime and deviance are socially defined.

The approaches we will cover include individual-level explanations for crime and deviance, such as those presented in Chapter 2. These are marked by a central concern with 'criminality' and 'deviance' as pathological and inherent within the bodies and minds of certain groups of people. This problematic conception of crime and deviance as biologically or psychologically linked is explored, particularly in relation to the consequences of such approaches for marginalised populations such as people of colour and people with disabilities among the many who have had problematic interventions into their lives. Genocide and sterilisation are examples of such interventions.

An examination of crime and deviance and social pathologies and the social factors that may facilitate individual and group-level criminality and deviance is the focus of a number of early chapters. The explanatory frameworks include place-based social ecology theories (see Chapter 3), where neighbourhood and community-level factors are presented as linked to crime and offending 'opportunities', particularly for young

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people. Similarly, the pathological nature of culture and its pervasiveness is covered when we explore theories that view crime and deviance as explained by the ‘strains’ that societies exert upon their members as well as upon members’ ‘coping strategies’ (see Chapter 4). At the core of these explanations is the concept of ‘opportunity structures’. This concept is also helpful in explaining group-level response to social conditions, as discussed in Chapter 5 where we focus on youth subcultures.

As we journey through Chapters 2–5 you will notice a unifying conceptualisation of crime and deviance, and that is that the approaches presented in these chapters to understanding attitudes, behaviours and conditions of crime and deviance assume that crime and deviance exist – they are a matter of fact; this occurs as a legal definition of crime is emphasised. However, there have been glimmers of challenges to this matter-of-fact approach to crime and deviance in the British strand of subcultural theory (see Chapter 5), which draws heavily on the ideas of symbolic interactionism and social constructionism. Likewise, labelling theory signals a departure from the positivistic perspective that crime and deviance exist and can therefore be observed and measured, and instead claims that these categories are socially constructed through interactions with authorities (see Chapter 6).

The contest to crime and deviance as ‘social facts’ that just exist has signalled the rise of what are broadly known as ‘conflict theories’. These theories draw attention to how the power to determine the parameters and definitions for ‘deviant’ and ‘criminal’ repositioned these terms as products of social divisions. These include class conflicts and a foregrounding of criminality and deviance by ‘the powerful’ (see Chapter 7), and gender conflicts giving rise to both feminism, which critiqued the ‘maleness’ of criminological theorising (see Chapter 8), and critical masculinities studies that emphasised the need to explore the uniqueness of the social factors affecting men’s central positioning as both victims and offenders (see Chapter 9).

Chapters 10–14 are very contemporary in their nature. We explore the concept of surveillance and its contribution to criminological thought in Chapter 10; what surveillance means and its consequences for social control of populations are explained through the concept of the ‘surveillance society’. Chapter 11 considers criminology in relation to those who hold positions of power in society. Then in Chapter 12 we examine green criminology, which focuses on harms against the natural environment. Cultural criminology and notions of power knowledge and discourse as constructing definitions around cultural behaviours and practices that draw condemnation (e.g. graffiti) and those that escape it are the subject of Chapter 13. We conclude our journey in the final chapter (see Chapter 14) with consideration of the global dimensions of crime and deviance and how the global context has influenced criminological thought, including

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the challenges to crime control at various levels. Crime and deviance are presented as political and cultural constructs, affected by global power relations.

As outlined, the book considers a range of perspectives for understanding crime and deviance, each of which deploys a distinct means of defining these terms. As such, the treatment of these two concepts offered in this chapter is necessarily preliminary; further details about how each approach has theorised or explained crime and deviance, what questions they have focused on and what questions they have sidelined are unpacked within individual chapters. The definitions presented in this chapter aim to ‘set the scene’ and provide some preliminary discussion and context for the rest of the book.

For our first step we begin with defining the term ‘norms.’¹ You might wonder why not start right away with definitions of crime and deviance? The reason is that norms feature substantially in conceptualisations of both crime and deviance as constructs for social investigation. Starting our journey with norms will assist in understanding why crime and deviance are distinct yet overlapping concepts.

Norms and their role in defining crime and deviance

One of the most commonly cited definitions of deviance is that offered by Clinard (1975: vii) who argued that deviance could be understood as ‘deviations from social norms which encounter disapproval’. In order for us to understand deviance we need to consider two key dimensions that appear as central to Clinard’s definition. The first: what are ‘norms’? How do they come about? Are norms static or fluid? That is, are norms permanent or can they change across space and time? A second key set of questions arise in considering the assertion that deviance is tied up with social ‘disapproval’. We might wonder: how and by whom is ‘disapproval’ determined? Does disapproval mean deviants should be punished or would a warning suffice? These important questions require a focus on norms as an initial step.

So, what are norms, you ask? Norms are defined as shared expectations of behaviour that identify for members of a society or group what is considered culturally, morally and legally desirable and appropriate. Norms can be formal and informal in nature. Given this definition we can assume that norms exist in all social groupings, whether they are small, such as family units, or large as in societies and communities. Norms play both

1 While this term is considered as the starting point, note that the very term is problematised within the disciplines of sociology and criminology because it assumes consensus and ignores the plurality of social norms. It is presented here nonetheless as a starting point not only for its foundational role in the sociology of deviance and contemporary criminological theories, but also because it is a useful concept from which we will then be able to proceed to ‘de-objectification’, a path to critical thinking that leads to questioning the basis for many of the social control measures currently used in contemporary society (see Dellwing 2014 for a debate about the use of the term ‘deviance’ for students of criminology).

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Social order: The way a group or society is organised, including the norms, values, social structures, and institutions that have been established to maintain it.

prescriptive (what to do) and proscriptive (what not to do) functions and thus guide, conduct and inform the **social order**. For example, think for a moment about your experiences with education, and classroom norms. How do you know to raise your hand, and wait for the teacher to call on you in order to speak during a class interaction? Or that you should not talk when someone else in the class is speaking? This is likely because in your early days of education you were instructed by a teacher (an authority figure) that this was the norm for participation in classroom discussions. This is an example of an informal social norm or what sociologist William Graham Sumner referred to as folkways. For Sumner (1940: 3) folkways are informed by a society's or group's habits and day-to-day customs; these habits and customs are said to impact on individual conduct, giving 'folkways' a degree of power to 'regulate':

The operation by which folkways are produced consists in the frequent repetition of petty acts, often by great numbers acting in concert or, at least, acting in the same way when face to face with the same need ... It produces habit in the individual and custom in the group ... By habit and custom it exerts a strain on every individual within its range; therefore it rises to a societal force to which great classes of societal phenomena are due.

Sumner's (1940) definition of folkways draws attention to informal social norms as being the product of repetition; the repetition of the social act solidifies it as a 'habit' among the social group and, by extension, as required ways of being in order to secure successful social function. Folkways as informal social norms links to Clinard's (1975) claim that the breaking of norms often results in social disapproval. This may take the form of a specific sanction, exclusion or marginalisation, and in this way norms perform a 'boundary-making' role, determining inclusion and exclusion. Additionally, Sumner argues that folkways can evolve into a different type of norm, namely 'mores'. Mores are norms that contain elements of social philosophy and social welfare. Mores for Sumner are a type of norm that is closely aligned with morality and ethics. Mores are said to be connected to societal rules that most members in a society or group believe to be essential to the maintenance of 'civility' and 'order'. They are often, though not always, reflected in legislation – transforming some mores into 'legal norms'. These are formal social norms as they attract a form of response from an authority or agent of social control, such as the police.

Legal norms are but one example of formal norms; another would be religious norms. For example, in some world religions sex outside marriage, abortion, homosexuality, and extramarital affairs are viewed as violations of core religious mores. These behaviours and the people that engage in them are viewed by members of the religious group as deviant or sinful, and violation of the religious mores is often met with social disapproval. The sanctions are often handed down by someone in authority, such

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as a minister, rabbi, priest or imam, and could include penance, withholding rites or excommunication (expulsion from the group). An example in recent Australian history is that of Israel Folau. A devout and conventional Christian, Folau was sacked from the Wallabies by Rugby Australia when he posted a biblical passage on his Instagram account that condemned to hell a range of groups, including adulterers, drunks, liars and homosexuals. The post resulted in a legal battle that was settled in December 2019, but not before debates highlighted that Australians adhering to secular social norms condemned Folau and those who adhered to religious norms, particularly Christian norms, supported Folau, to the extent that his legal battle received a \$100 000 donation from the Australian Christian Lobby (Australian Broadcasting Corporation 2019). Further, many other Australians supported his 'GoFundMe' campaign before it was brought down by the site's operators as being against its terms and conditions (Zhou & Martin 2019). What this example shows is that norms are contested.

Sumner's conceptualisation of informal social norms as folkways and folkways into mores offers an understanding of norms as socially constructed, in the processes of human interactions. Norms remain relatively consistent but there are periods in the history of the social group or community that will bring about change, particularly as they grow. However, you would have noticed that the concept of norms suggests a degree of consensus within society because by their very nature norms assume that societal expectations can be 'fixed' or set, at least for a period of time. This is one of the most significant weaknesses of this concept. Sociologists and criminologists criticise the concept of norms on the basis that it ignores that in pluralist liberal societies, such as Australia, norms are contested.

This contest is evident even when it comes to legal norms. Consensus assumes that it is possible to identify a collective morality, where there is undivided agreement about what is right and wrong. However, consensus is not plausible. Turning back to our previous examples of mores, we mentioned legal norms and religious norms that are both based on mores as ascribed by two distinct groupings. In the one case the state or nation determines legal norms, and in the other religious leaders and their interpretations of religious texts determine religious norms. Yet, individuals like you and me can at once be citizens of Australia governed by legal norms, and members of a religion or other social groups with their own mores. The legal norms of Australia may not always align with the religious norms. Consider for example that sexual relationships outside marriage are not illegal in Australia. No criminal sanction is ascribed to those, of legal age, who enter into sexual relationships without first entering into marriage (see Case Study 1.1 for more details). In contrast sex outside marriage may be positioned as sin, when viewed from the perspective of religious mores. Thus, not all Australians agree on whether or not sex outside marriage is 'right' or 'wrong'. Similarly, some

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Australians believe possessing and consuming cannabis is inappropriate and should be criminalised, attracting criminal sanction. On the other hand others believe possessing and consuming cannabis should be decriminalised and even legalised as the drug is a ‘soft’ drug. Proponents of the decriminalisation of drug use often refer to the greater ‘harms’ caused by consumption of ‘legal drugs’ such as alcohol. Clearly, there is debate among Australians about what behaviour and conduct are acceptable and unacceptable and what, if any, should be the sanctions when norms, even current legal norms, are violated (see Case Study 1.2 for another example of this contest).

In reading this you might be saying to yourself, hold on but surely there are behaviours that society has always seen, and always will see, as wrong and therefore have been formalised into law across the globe, making the behaviour criminal by way of consensus. A common example given to support this claim is homicide. But even when you examine this offence from a socio-historical perspective, the behaviour was not always ‘criminal’ in the way that we understand it to be today. Homicide did not originate as a violation of a ‘collective morality’ and was not initially subjected to a society’s or a group’s collective sanction; its shifting position through time and across cultures illustrates the fluid nature of norms, whether folkways or mores, as societies grow and their structure shifts.

Normative and reactivist definitions of crime and deviance

Normative definition:

An approach to understanding crime and deviance as violations of socially prescribed norms.

Reactivist definition:

An approach to understanding crime and deviance as relativistic, defined not by the actions of the person but instead by societal reactions. Crime and deviance are only possible if there is a negative social reaction that creates them.

Social construct:

A concept, idea, category or phenomenon that is created and developed through interactions within groups, communities and societies.

At a basic level the distinction between crime and deviance is made through the ‘type’ of norm that the behaviour is viewed as having violated, and the status of that norm among the group or society. Within a normative framework crime is an act of deviance that violates a norm that has been codified by law. Therefore, crime is a form of deviance and deviance can range in severity: from minor infringements such as cutting the queue when waiting for the bus through to more serious acts, like committing homicide. Definitions of crime and deviance are often linked to both specified norms (i.e. **normative definitions**) and reactions to the violations of norms (i.e. **reactivist definitions**). Howard Becker, guided by a reactivist definition of crime and deviance, has argued that: ‘The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label’ (Becker 1963: 9). The reactivist definition of crime and deviance has acquired much focus primarily because it highlights the inherently social nature of these two constructs (see Chapter 6 for more on this perspective). For this reason it is often said that both crime and deviance can be understood as socially constructed. **Social constructs** are characterised by an

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understanding that what we call society is actively created by human beings in interaction with one another, their environment and social conditions. This means that the various components of a society, including the laws of the land and other institutions of social control, as well as informal expectations of behaviour are fluid and variations are to be expected across time, space and culture. However, we are still left with the question: how do some norms acquire the status of mores, and in particular how do mores become legal norms? To help us with this, following the case study we turn to the concept of social control, and explore the law as an example of formal social control.

Case Study 1.1

SEXUAL ORIENTATION LAWS

The status of sexual orientation laws across place, time and culture illustrates the socially constructed nature of crime and deviance. Currently, sexual relationships between individuals of the same sex are legal in Australia. However, there was a time when sexual relations between people of the same sex was positioned as behaviour that violated legal norms. For example, the Australian states and territories, as colonies of Great Britain, inherited its laws, which included the British Act of 1898, which was anti-homosexuality. In adopting the British law on sexual intercourse between same-sex people Australian jurisdictions made some amendments, leading to variations in law across Australia. Legal sanctions for the then ‘crime’ of ‘buggery’ (anal intercourse) ranged from life imprisonment in New South Wales (NSW) to, in some circumstances, the death penalty in Victoria (for sexual intercourse with a person under 14 years of age or with the use of ‘violence’). These sanctions were gradually altered over time, with sentences reducing in NSW from life imprisonment to 14 years’ imprisonment. Eventually, in 1984, sexual behaviour between consenting, adult males was decriminalised via an amendment to the *Crimes Act 1900* (NSW), resulting in the *Crimes (Amendment) Act 1984* (NSW), No. 7 of 1984 (Carbery 2014). Despite this decriminalisation, the age of consent was higher for same-sex sexual intercourse, set at 18 years of age, while the age of consent for heterosexual intercourse remained at 16. The legislative change that aligned the age of consent to 16, irrespective of sexual orientation, was introduced in 2003 when the *Crimes Amendment (Sexual Offences) Act 2003* (NSW) amended the *Crimes Act 1900* (NSW).

In more recent times, differences across jurisdictions are also identifiable at a regional and global level. In 2019 the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) released the 13th edition of the report *State-Sponsored Homophobia 2019*. The report found that sexual orientation laws were used to



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Criminalise: Assigning the status of 'illegal' to any given action (e.g. drug use) or to the actions of a group of people, turning them into 'criminals' (e.g. asylum seekers).

criminalise homosexuality in 68 of 193 UN Member States (2019, p. 47). As Figure 1.1 shows, in countries and states where sexual orientation laws were enforced, sanctions included non-specified penalties, imprisonment for either a fixed period of time or life imprisonment, and even death. Iran is one such jurisdiction where homosexuality is punishable by death. In 2013 the New Zealand Parliament voted (77 to 44) to legalise gay marriage in New Zealand, making it the 13th country to do so and the first in the Asia-Pacific region. In Australia, reforms were passed in 2008 and 2009 that provided equal entitlements and responsibilities for same-sex couples in areas such as social security, employment, taxation and superannuation. In 2017 the Australian Bureau of Statistics was directed to conduct the Australian Marriage Law Postal Survey, to collect 'statistical information about the proportion of electors who wish to express a view about whether the law should be changed to allow same-sex couples to marry' (Parliament of Australia 2018). Of the 79.5 per cent of Australians who participated in the survey, 61.6 per cent responded 'Yes' to the question 'Should the laws be changed to allow same-sex couples to marry?' (Parliament of Australia 2018). In November 2017 the Marriage Amendment (Definition and Religious Freedoms) Bill 2017 was introduced to Parliament to amend the definition of marriage, as defined within the *Marriage Act 1961* (Cth), from a union of 'a man and a woman' to a union of 'two people'. The Bill was passed by the House of Representatives on 7 December 2017 and commenced on 9 December 2017, affirming the legal recognition of same-sex unions in Australia.

THE POLITICS OF SOCIAL CONTROL

Social control: The means and methods by which groups and societies deal with the violation of norms, with the aim of securing conformity (e.g. the use of imprisonment for some crimes).

Within the concept of **social control**, politics and power feature as important ideas informing social responses to norm violation. Social control includes all means by which societies and their institutions attempt to ensure that individuals and groups adhere to particular behaviour and the means through which it deters other behaviours. Social control can be formal (e.g. law enforcement) and informal (e.g. discipline administered by a parent).

Importantly, social control is linked to norms in the sense that norms consist of both subjects and objects. Subjects are those who determine what the limits are and the sanctions to accompany any violation of the norm, and objects are the targets of the sanction. The subject and object positions are imbued with power relations because as we have seen norms are contested. In this section we will explore how the law as a prominent example of formal social control is far from objective; it is instead a political product.