Associated Concepts: causation, multivariate analysis

Key Readings

CRIME

Definition
Crime is not a self-evident and unitary concept. Its constitution is diverse, historically relative and continually contested. As a result an answer to the question 'what is crime?' depends upon which of its multiple constitutive elements is emphasized. This in turn depends upon the theoretical position taken by those defining crime.

Distinctive Features
Key elements in determining crime are: (1) harm; (2) social agreement or consensus; and (3) official societal response. 'Harm' includes the nature, severity and extent of harm or injury caused and the kind of victim harmed. 'Consensus' refers to the extent of social agreement about whether victims have been harmed. 'Official societal response' refers to the existence of criminal laws specifying under what conditions (such as intent and knowledge of the consequences) that an act resulting in harm can be called crime, and the enforcement of such laws against those committing acts that harm. These dimensions have emerged from and been differently emphasized by six basic theoretical traditions: legal, moral consensus, sociological positivism, rule-relativism, political conflict, power-harm.

In early formulations, a simple relationship was assumed between each of the three key dimensions, such that if an action caused harm, people would be outraged and enact laws that the state would enforce to penalize the perpetrator. Thus emerged what became known as the moral or consensus position on crime that states that crimes are acts, which shock the common or collective morality, producing intense moral outrage among people. In founding this view Durkheim stated that, 'an act is criminal when it offends the strong, well-defined states of the collective consciousness' (1984 [1893], p. 39). Specifically, crime was a term used, 'to designate any act, which, regardless of degree, provokes against the perpetrator the characteristic reaction known as punishment' (1984 [1893], p. 31). As a result, the basic definition of crime became behaviour defined and sanctioned by criminal law. Thus there is no crime without law, and law is based on the 'injury' or 'harm done'. In a seminal statement reflecting the Durkheimian consensus view, Michael and Adler (1933, p. 5) asserted that 'criminal law gives behaviour its quality of criminality' and that 'the character of the behaviour content of criminal law will be determined by the capacity of behaviour to arouse our indignation' (1933, p. 23).

Evaluation
Several flaws in the legal consensus view of crime led to various critical challenges that stemmed from those holding different theoretical positions. The first problematic is the issue of what harm has been caused and what counts as harm. Even classical thinkers of the eighteenth century disagreed about this. The concept of 'harm' according to Cesare Beccaria refers to restrictions on the freedom of individuals to accumulate wealth. Beccaria identified three categories of crimes based upon the seriousness of their harm to society. The most serious of these crimes were those against the state, followed by crimes that injure the security and property of individuals; last in importance, were crimes disruptive to the public peace. But for Jeremy Bentham, harms were behaviours that caused 'pain' rather than restrictions of freedom to accumulate wealth. Bentham discusses twelve categories of pain whose measurement was necessary in order to give legislators a basis on which to decide whether to prohibit an act. He believed that no act ought to be an offence unless it was detrimental to the community. An act is detrimental if it harms one or more members of the community. Bentham elaborated a list of offence categories that he considered to be of five classes: public offences, semi-public offences, self-regarding offences (offences detrimental only to the offender), offences against the state, multiform or anomalous offences. Each should carry a punishment determined by the circumstances. Bentham declared that only harms to others should be criminal offences; cases of public morality and transactional crimes where 'consent has been given' should not be subject
to the criminal law. In considering crime as defined in law therefore, the concern is not with those who commit crime, only with those acts that harm others.

A related issue is who should determine whether a consensus of outrage exists on whether harm has been committed. Those who have been termed 'sociological positivists' argued that the measure of such consensus or outrage was the purview of social scientists. Thorsten Sellin (1938), for example, advocated a science of criminal behaviour free from the politics of criminal law, legislators and lawyers. Instead scientists should employ their own value-neutral techniques to measure independently whether harm had been caused and to establish whether outrage existed and through these means establish scientific definitions of crime (1938, pp. 20–1). Sellin proposed to do this based on studying naturally existing 'conduct norms' rather than using legally constructed laws. Such study 'would involve the isolation and classification of norms into universal categories, transcending political and other boundaries, a necessity imposed by the logic of science' (Sellin, 1938, p. 30). The problem here is the assumption that science, and the scientific process itself, is any more free of influence than law (Schwendinger and Schwendinger, 1970).

Rule-relativists further argued that the meaning of what is defined in law or in moral consensus is not fixed but varies. They argued that what is defined as crime in law is historically, temporally and culturally relative. Their insight highlights the role of changing rather than absolute values about crime. Their challenge to the strict legal view of crime has been developed further by social constructionist arguments that show how what is harm depends on social context and situational meaning, itself shaped by the interaction between interest groups, such as offender, victim, community organizations, police agencies in the local setting. The emergence of an act as an 'offence' depends on these groups negotiate and honour claims that harm has been created.

The legal consensus position is also criticized because it ignores the politics of law-making. Radical conflict theorists claim that what gets defined as crime depends on having the power to define and the power to resist criminalizing definitions. Indeed, if interests influence the law creation process, then not all acts causing indignation or outrage will be legislated against. Only those harms that powerful interests deem worthy will be subject to criminalization. As Edwin Sutherland (1940) first stated, this would mean that many harms, particularly those perpetrated by powerful corporations, remain outside the criminal law, even though they may be subject to civil regulation. For Sutherland, an adequate definition of crime should be based on an expanded definition of harm that includes 'social injury'. Similarly, Quinney (1977) wanted to expand the definition of crime to include not only the legal harms resulting from economic domination in a capitalist society, but also the crimes of government and of their agencies of social control. However, legalists such as Paul Taupan (1947) vigorously disagreed with expanding the legal definition, arguing that without adhering strictly to law, the concept of crime was open-ended and meaningless.

But for those taking a critical conflict perspective an adequate definition of crime must be based on a definition of harm tied neither to law nor consensus but to an independent notion of 'human rights'. Without such independent anchoring of the definition of crime those victimized are subject to the tyranny of moral majorities or the bias of powerful interests who determine the law. Because of this the harms that result from racism, sexism, ageism, or from 'insidious injuries' perpetrated by corporations through harmful work conditions, or harmful products, were for years neither acknowledged in society nor in law (Schwendinger and Schwendinger, 1970).

Postmodernist criminologists have also developed the idea that harm must be related to a concept of humanity and they argue for a dynamic conception of the different ways that humanity can be harmed. The postmodernist constitutive approach to defining crime goes beyond powerful groups and classes to the total context of powerful relations in situational and global contexts. For example, Henry and Milovanovic (1996, p. 104) state that 'crimes are nothing less than moments in the expression of power such that those who are subjected to these expressions are denied their own contribution to the encounter and often to future encounters'. They argue that crime 'is the power to deny others . . . in which those subject to the power of another, suffer the pain of being denied their own humanity, the power to make a difference'. Henry and Milovanovic (1996, p. 103) distinguish between 'harms of reduction' and 'harms of repression'. Harms of reduction occur when an offended party experiences a loss of some quality relative to their present standing that results from another's action. Harms of
repression (or oppression) result from the actions of another that limit or restrict a person from achieving a future desired position or standing, though one achieved without harming others. Harms of repression have also been described as crimes against human dignity: 'acts and conditions that obstruct the spontaneous unfolding of human potential' (Tiff, 1995, p. 9).

The idea of criminalizing the use of power to reduce or suppress another is particularly important in order to expose the previously hidden crimes of gender oppression, sexual harassment, hate crime and racism that critical theorists have long complained are neglected in the legal and consensus definitions. It is also central to the unveiling of white collar, corporate and state crimes. Indeed, the analysis of power relations in the creation of crime highlights the intersecting forces of class, race and gender relations which coalesce in law and social institutions to legitimize harm and thereby render legalized relations, relations of harm. It follows, therefore, that law itself can create crime, not merely by definition but by its use of power over others and its concealment of the harms of others within the protection of law (Tiff, 1995).

Finally, there has been an increased recognition of the need to integrate each of the different dimensions of crime. This began explicitly with John Hagan’s (1985) notion of the pyramid of crime which was further developed by Henry and Lanier (1998) in their notion of the ‘prism of crime’. The aim of these approaches is to capture the multiple dimensions of crime simultaneously, rather than emphasizing any one element as predominant. Henry and Lanier’s prism, for example, affords a way of incorporating individual and social harm; crimes of the powerful and those of the powerless; crimes that are invisible as well as those that are highly visible; and crimes that are selectively enforced as well as those more consistently enforced. In this way they aim for a more comprehensive definition that transcends the politics of the lawmaking process.

Stuart Henry

Associated Concepts: conflict theory, constitutive criminology, corporate crime, crimes against humanity, hate crime, hidden crime, integrative criminology, labelling, organized crime, political crime, social harm, state crime, transnational organized crime, war crimes

Key Readings

CRIME CONTROL MODEL

Definition
A crime control perspective or model which stresses that the primary function of the criminal courts is to punish offenders and, by so doing, to control crime.

Distinctive Features
The ‘crime control’ model involves a system of criminal justice which has as its primary aim the need to repress criminal conduct. The courts are thus more guardians of law and order than upholders of impartial justice. The failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order and hence to the disappearance of an important condition of human freedom. That is, whilst crime and disorder remain inadequately checked then the law-abiding citizen may become the victim of all sorts of unjustifiable invasions of his or her interests. The security of person and property is diminished and therefore the liberty to function as a member of society. The inherent claim is that the