

Debating... Bad language in criminal justice?

Rebecca Roberts questions the use of language in criminal justice and introduces comments from Frances Crook, Jonathan Simon, Mike Nellis, Lizzie Seal, Simon Pemberton and Nils Christie.

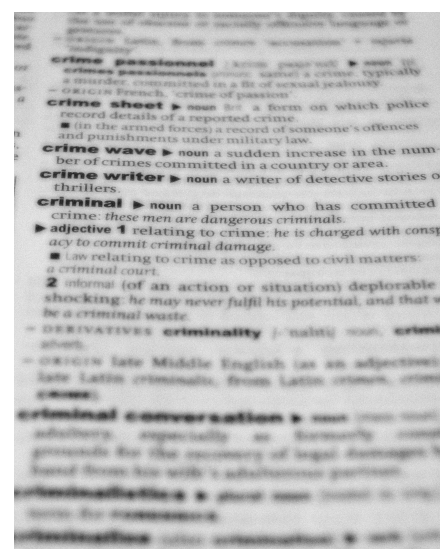
The proliferation of 'criminal justice talk' – the number of words that are spoken and written about 'crime' and 'criminal justice' – in politics, media outlets, academia, and public policy is ever increasing and ever more widely accessible. This 'debating' section attempts to kick off a discussion about the use of criminal justice language which we can hopefully continue within the pages of cjm as well as through our Works for Freedom website: www.worksforfreedom.org

The idea for this came from discussions at the Centre for Crime and Justice Studies about the language we use in our day-to-day work. Whether it is drafting a strategic plan or funding application, writing up research or, indeed, editing *cjm*, we have to think carefully about language in the communication of ideas and engaging in public debate. At one level, it should be easy – just say what you see and do it in simple and easily understood terms. However, this is more challenging when attempting to foster critical thinking about issues relating to crime and justice. In an arena so dominated by stereotypes, prejudices, and mystification about how the system operates and who or what it targets, it seemed relevant to open up a discussion on this. So, we approached a number of writers to ask for their views.

Frances Crook, Jonathan Simon, and Mike Nellis look at the uses and

abuses of the term 'offender'. Crook argues that the label is demeaning and counterproductive and calls on the voluntary sector to lead the way in challenging the use of language about people caught up in the criminal justice system. Jonathan Simon is also critical of the term 'offender' and takes issue with describing people by one aspect of their behaviour and discusses some alternatives. Mike Nellis defends the use of 'offender' in probation practice and highlights its popularisation in the 1960s as an alternative to terms such as 'criminal' and 'delinquent'. Nellis argues that 'treating people with respect and dignity regardless of what they have done, and finding words to match, is always important, but not necessarily straightforward'.

Lizzie Seal looks at representations of women accused of murder and how they are often framed in terms of 'perverse' sexuality in a bid to emphasise their apparent deviation from the 'norm'. **Nils Christie** and **Simon Pemberton** look at crime and harm. Christie highlights the increasing number of acts that are defined as criminal and the negative impact of social isolation and distance in terms of framing behaviour and actions, and how they are subsequently interpreted and dealt with. Simon Pemberton argues that we should look beyond individual acts and 'offences' and use a social harm approach to interpret and interrogate social structures and how they create and reproduce harm.



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It would be difficult to institute timeless and unchanging rules about what language can and cannot be used. New terms that may seem value free can soon become co-opted and value laden. The popularity of words and phrases will shift over time – for good and bad. In reflecting on the discussion in the debating section, the message that comes through is the importance of being searching and reflective in our use of language.

In conclusion, I offer three possible things to consider when engaging in discussion and debate about criminal justice. The first is the *human aspect* – remembering at all times that when we talk about offenders, victims, deviants, criminals, or research subjects – all are human beings first. Secondly, it is important to *encourage accuracy* in defining our terms of reference. For example, there is a strong tendency towards talking about crime and criminal justice in very loose terms. Are we talking about *all* illegal acts? If not, which ones are we particularly interested in, and why? Those that come to the attention of the police? Are we talking about shoplifting or sexual assault or widespread harmful and illegal practices of the banking sector? When we talk about 'offenders', *who* and *what* are we talking about? The final point is about how best to foster and encourage *critical understanding* – thinking critically about the implications of using certain terms and the assumptions underlying

them. Viewing certain social 'problems' through a 'crime' lens tends to imply the criminal justice system as the primary mechanism through which certain social 'problems' are viewed and dealt with.

Exploring and debating definitions is more than a merely 'academic' exercise. From an early

age we are given words and labels to

describe the world around us. They are important tools to help interpret and explain our surroundings and feelings – the concrete and abstract. At

one level, a common sense approach of using language that those around us understand needs no explanation. But, the words and phrases we use contain signals about gender, class,

power, and the nature of social relations. If we want to understand criminal justice it is also important to understand the way in which the public discourse about it is constructed – and to encourage reflective and critical discussion.

This is not a call for stripping away meaning from words. As emphasised by Stan Cohen (1985) in

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studying the professional discourse around social control, he calls for an exploration of what he describes as 'Controltalk' – and warns against overly sanitising the

language we use. Making coercive interventions sound non-coercive and 'nice', it can help to obscure the harsh realities of confinement and control. But ultimately, the point is to

be careful in our use of language, because as Cohen argues, 'such a project of self awareness might help to clarify the moral, tactical and political choices in working out a policy.... I would always prefer a form of justice in which values, conflicts and injustices become open and visible' (Cohen, 1985).

It's not so much the words themselves that are good or bad. It is their meaning and associations that matter. Social problems exist as do the people that experience them – how we name and frame these *problems* and the *people* involved is important and should be at the forefront of our thinking when engaging in research, policy, and public debate. ■

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Frances Crook: Labelling people as offenders is demeaning and counter-productive

A summer article in *The Guardian* reported on recent research from the UK Drugs Policy Commission that the use of stigmatising terms such as 'junkie' was a major obstacle to recovery for problem drug users. This can hardly be a surprise to anyone who has worked with people with any sort of health, mental health, or social problem, however, it may be a revelation to politicians. For too long it has been easy for politicians to treat certain sections of the population as 'other', implying that they are less than human. Insulting labels that define the action or illness as if it defines the whole person inhibit that individual from confronting the problem and moving on; just as importantly, the label prevents us from understanding as it becomes all we see.

The Howard League conducted in-depth interviews with young adults in prison a few years ago, and they told us clearly that the first step towards a crime-free life was no longer to be labelled an offender. They had to see themselves as something different, and other people had to help them make that transition.

Someone who commits an offence is not an offender; they are someone who has done something. The action does not define the whole person. They may also do good things and they will certainly fit into other

categories that can offer a different definition like parent or friend. By insisting that the offence overcomes all other parts of the person we are condemning them to a sub-human category for whom there is no hope.

The last government created a whole industry of services for offenders. There are skills for offenders, education for offenders, and work for offenders. Huge numbers of people are employed to deliver services at these unfortunate people. Of course, it was part of the scheme of things that offenders are not deserving of having any say in the quality or style of services, as they have had their citizenship diluted to the point of abstraction.

It is time to move away from this so that the criminal justice system itself and its terminology are circumscribed. People who have committed offences have just the same right to education and employment as anyone else, and whilst they do face additional and sometimes extraordinary challenges, redressing that should simply be built into all mainstream provision.

Just as the language about disability has been transformed and services have been adapted to include people with disabilities, so our language about people who have committed offences must change. It is up to the voluntary sector to lead the way. ■

Frances Crook is director of the Howard League for Penal Reform.

Jonathan Simon: A strategy for writing in criminology and law and society work

Anyone writing in criminology or law and society scholarship in the post labelling/Foucault generations is generally haunted by the problem of what to call the subjects of criminal justice processing and punishment (as you can see I'm fighting myself to delay the moment when it becomes incumbent). We know that when we move from an adjective for conduct to using that adjective for the name of the subjects we are associating with that conduct (whether by legal or scientific procedure) we are producing a potentially consequential 'truth effect' that we are, however modestly involved in what Ian Hacking memorably called 'making people up'.

The two most famous/infamous are criminal and homosexual. To take the latter first, the move from describing sexual conduct as 'homosexual', meaning between two people of the same sex, to talking about 'homosexuals' involves the assumption that the conduct defines a constitutive characteristic of the subject involved such that whether that person is an out Gay man engaged in full and open life within a big city Gay community, or a married Tory minister involved in an occasional and discrete liaison with a handsome young protégé, there is a continuity of character strong enough to be the defining identity of that person. When we move from describing conduct as 'criminal' to speaking of a person as a 'criminal', we are likewise assuming a sovereign character trait that can be traced into the subject's developmental past, and used to predict their future behaviour.

The fact that many and probably most contemporary social scientists would feel uncomfortable making this kind of transfer of meaning is a dramatic shift from the early and even mid-twentieth century forms of social science. It divides us from our ancestors who felt their job was making people up correctly (think about

Lombroso as well as his competitors) and it is a tremendous legacy for the generation of scholars that included Michel Foucault, David Matza, Howard Becker, and Jeffrey Weeks just to name a few. Yet, many of us do it in language.

The solution, promoted for years now by activists and lawyers is to talk about 'people engaged in homosexual conduct' or 'people engaged in criminal conduct'. This works fine enough conceptually, but it leaves us with a writing problem. Using the formulation, 'people engaged in criminal conduct' over and over again, in an article about people who commit crimes, is wearying.

Since I do not see a good conceptual way out of this problem, I prefer to adopt some writing strategies. Since 'people' or 'men' or 'women' etc. 'engaged in criminal conduct' deconstructs the very idea of a 'criminal type', it buys us some freedom to use other words for literary benefit, so long as we are careful not to choose words that affirmatively mystify but reinvesting in the made up subject of crime. Thus it seems fine to me to refer to 'defendants', 'convicts', or 'prisoners', when those more or less legal terms appropriately apply (throw in arrestee, detainee).

Unlike the dreaded 'al' terms, terms ending in 'ts' or 'rs' are a well know and comfortable way of referring to people by their 'occupations'. We talk about lawyers, doctors, dentists, and bankers at will, without fear we are making subjects up. Our culture retains the sense that one's occupation is an important but not defining source of identity. The productive sociological notion of a 'career' once again recommends this. We can think of someone's time in prison, or time engaged in criminal behaviour, as a part of a career in the sense of a body of experience that helps to structure their future but does not determine it. ■

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Mike Nellis: Using language in practice

When the term 'offender' was popularised by Nacro (the National Association for the Care and Resettlement of Offenders) in the 1960s it was talked up on the understanding that it was less moralistic and less stigmatising than 'criminal' or 'delinquent', less portentous than 'lawbreaker' and less condescending than 'probationer'. It wasn't new, but of the limited range of words around, it was relatively neutral in its connotations. It has remained surprisingly serviceable in this respect, relatively immune to the infusions of loathing and contempt that can indeed poison our penal vocabularies. The tabloids rarely use it; except when prefaced by 'sex', it's not a term that's easily freighted with outrage or hate. Like 'prisoner' (which has never been fully displaced by the euphemism 'inmate') 'offender' has retained a simple literal

meaning – someone who has committed an offence. As such, it provides minimal linguistic justification for the formal, court-ordered involvement of a probation officer in a person's life, in a way that both the old term 'client' and the newer term 'service user' shy away from.

From a probation standpoint, no one is ever an 'offender' and nothing more. It denotes what people are, not just what they do, but it's not a totalising identity. Other facets of their lives and personalities can remain in play around and alongside it – father, daughter, partner, comedian, mate, cook, dancer, builder, whatever – all as much if not more important than the often temporary status of 'offender'. To consider, or even call, someone an 'offender' does not intrinsically preclude thinking of them as a complex and vulnerable person or feeling warmly or respectful towards them. It

does not necessarily impede empathy or limit one's capacity to imagine what it might be like to be them, or even to imagine doing what they have done – though that does depend somewhat on what the offence was. It need not mean that someone who has offended may not also be, or have been, a victim or survivor.

Treating people with respect and dignity regardless of what they have done, and finding words to match, is always important, but not necessarily straightforward. Sentimentality and the anodyne, sanitising language that goes with it is as much to be avoided as the moralism which insidiously humiliates and imprisons people in roles and identities from which they need to distance themselves if they are to live good lives. There are probably no words that are entirely immune from debasement in some form or context – and some words that probation has toyed with, like 'perpetrator', were doomed from the start – but for now 'offender' retains its utility in the complex 'identity work' that probation

officers do with *people* who have committed crimes.

Different *people* need different responses. Some who come the way of probation shamelessly disavow criminal identities – rapist, for example – and need pressing to accept that aspect of who they are, as a precursor to taking responsibility for harm done. Others spend lifetimes sombrely regretting that they once committed murder, indelibly stained in their own eyes. Yet others may never have had – or had and rejected – conventional familial or occupational identities, and actually draw strength and purpose from an overriding criminal, sometimes violent, identity, preferring to be more feared than loved. They may resent and disdain the efforts of well-meaning probation officers to get them to think differently about themselves, and even if they do desist, may never fully repudiate what they have been in the past – anymore than the rest of us can. One can be an 'ex-offender' (or even an 'ex-con') without losing self-respect. ■

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Lizzie Seal: Women, murder and narratives of femininity

The language used to portray women accused of murder is frequently lurid and stereotypical. It can be especially shocking when women stand accused of such crimes as it violates idealised notions of femininity as conformist and nurturing. A recent example is the fascination sparked by the trial and conviction of Amanda Knox, a young American woman, for the sexual assault and murder of British exchange student, Meredith Kercher, in Perugia, Italy. Meredith was killed in 2007, although the convictions of Amanda and her Italian boyfriend, Raffaele Sollecito, were not secured until 2009. A story about Amanda Knox posted on the *Daily Mail's* website describes her as having a 'wild, raunchy past', which included drinking and soft drug use, and quotes university acquaintances who label her a 'man-eater'. Amanda's supposed sexual insatiability was also central to the Italian prosecution's argument that she stabbed Meredith to death after Meredith refused to participate in a sex game with Raffaele and another man, Rudy Guede.

The perceived link between abnormal or excessive sexuality in women and a capacity for violence is an enduring one. Martha Beck and her boyfriend, Raymond Fernandez, were executed in New York in 1951 for murdering two women and a child. They were known as the 'Lonely Hearts Killers' because they found their victims through the personal ads. Important to the trial was Martha's argued sexual perversity, evidenced by her enjoyment of oral sex. The 1958 English case of Yvonne Jennion, who was found guilty of murdering her aunt, revolved around discussion of her sexuality and whether as a 'female homosexual' she could be regarded as a psychopathic personality (Seal, 2010). The recurrence of sexual deviance as an explanation for violence by women means that it can be understood as a 'stock story' that perpetuates restrictive views of

acceptable female sexuality.

Although doubts surround the safety of Amanda Knox's conviction, the use of stereotypical narratives of femininity in the media and criminal justice system is not troubling solely because it may contribute to a wrongful conviction. In the case of Yvonne Jennion it was the defence that sought to prove she was a psychopathic personality in order to win a verdict of manslaughter instead of murder (it did not succeed). The stories told during and about cases of murder communicate the values and assumptions of the era in which they take place – in the 1950s, 'homosexuality' was considered abnormal. The language used in the cases of Amanda Knox, Martha Beck, and Yvonne Jennion provides us with information about norms of femininity – what is perceived as the correct and appropriate behaviour for women.

What counts as acceptable or deviant does, of course, change according to place and time. It would be unlikely that a woman's enjoyment of oral sex would be offered as an example of her 'perversity' in a murder trial in the present-day United States. Disagreement over the language employed to describe the gender of women accused of murder also highlights the shifting boundaries of appropriateness. The portrayal of Amanda Knox as sexually 'promiscuous' has been contested, with many arguing that her supposedly 'wild' lifestyle was neither shocking nor unusual, but normal behaviour for a 20 year old university student. Stories of women accused of murder are a cultural barometer of assumptions and arguments about the meanings of gender. ■

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Simon Pemberton: Social harm and the politics of capitalist crisis

Language is fundamental to how we reach an understanding of the harms we face in our daily lives. Indeed powerful ideologies, such as crime, exist to tell us exactly what and whom we should fear, with these discourses focused disproportionately on the

least powerful groups in our society. Such discourses serve to draw our attention from the very serious harms produced by the state and corporate organisations and the damaging behaviours of the powerful. Yet, as the current recession highlights, the very organisation of our society in accordance with specific vested interests, can also produce serious and widespread harms, such as poverty, unemployment, and homelessness. The language of responsibility constructed in relation to structural harms is crucial to our understanding of their causes and how we should

best respond to them. Such discussions, in the wake of the credit crunch have been inevitably highly politicised, as they necessarily entail subjecting the very organisation of our societies to scrutiny. The terms of this debate have shifted dramatically. Thus, whilst critiques surfaced following the credit crunch in relation to 'casino capitalism' these soon passed and were replaced by calls to reform a 'bloated and costly' public sector. Ironically, what began as a critique of neo-liberal forms of capitalist organisation, have been turned full circle to re-affirm the central tenets of this ideology providing the basis on which the social state may be dismantled – the very structures that could serve to ameliorate the impact of the harms detailed above.

Underpinning the prevailing neo-liberal language of responsibility is a set of assumptions about intentionality drawn from the liberal philosopher, Friedrich Hayek. For Hayek, market outcomes could not be considered unjust as the harms that result from them

are unintended; for example, poor business decisions that result in unemployment. Furthermore, Hayek argued, as no consensus could ever be reached over the reallocation of social resources to ameliorate the consequences of harmful market consequences, there

remains no just basis for a state to interfere in such outcomes. Whilst, Hayek's logic has not been followed to its ultimate conclusion in this instance, it clearly influences the current 'common sense' position toward the role of the state. An important critique of these ideas can be found in the work of Raymond Plant, which asserts that structural harms should be considered to be unjust, exactly because they are foreseeable and, therefore, preventable. To illustrate this point, in anticipation of the public sector cuts to be announced in the Comprehensive Spending Review, a number of

analyses have demonstrated the harms that will result, alongside those communities that will bear the brunt of these cuts (see, for example, the Institute for Fiscal Studies Briefing Note BN108 and the TUC report *Where the Money Goes*). Given the awareness of these analyses, these potential structural harms are entirely foreseeable and, indeed, avoidable. They are avoidable exactly because alternative policy options are available to the coalition. Rather, it would appear that these harms are considered the 'price worth paying' to satisfy the demands of the international credit rating agencies. However, we should remind ourselves that other nations are running larger public debts than our own and have not felt the need to acquiesce to such demands. Alternative policy options exist, however, the construction of the current crisis serves to promote the interests of the financial markets at the expense of the vulnerable. ■

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Dr Simon Pemberton is a Lecturer in Social Policy, School for Policy Studies, University of Bristol.

Nils Christie: Crime does not exist

Words can create bridges between people: beautiful and useful bridges that bring ideas, emotions, and understanding back and forth. But words can also function as barriers.

Some words are so big that they contain everything, and therefore nothing. We do not understand more when such concepts are used; we understand less and give thereby free room for manoeuvre to all sorts of political or professional authorities.

'Crime' is one of these words. We do not understand more by using this concept, we understand less. If we want to create a type of society where citizens participate, we need to describe deplorable acts in minute detail and with small words from the daily vocabulary.

Acts do not simply exist, they *become*. For all acts, including those seen by most people as unwanted, there are dozens of possible alternative ways of understanding

them – bad, mad, evil, misplaced honour, youth bravado, political heroism – or crime. The ‘same’ acts can thus be met within several parallel systems as judicial, psychiatric, pedagogical, theological – or simply by understandings valid among family and friends.

Social and/or physical distance is of particular importance in how we attach meaning to particular acts. Persons close to me are mostly not seen as criminals. I see them too well; understand the reasons for their acts. But family life is only one of several examples of social conditions of a sort that creates resistance against perceiving acts as crimes and persons as criminals.

To refrain from the use of big abstract terms is more important in our time than ever before. We have created types of social life where we know each other less and less as whole human beings. Where we earlier could evaluate and react towards unwanted acts, we must now in our ignorance call in state power in the form of police. Back in the 1950s, some 30,000 cases were officially handled as ‘crimes’ in Norway. Now it is close to 300,000. This does not necessarily mean that the amount of unwanted acts have increased in this period. But it means that we now live under social conditions where most of us have lost close contact with the acts and actors, and thereby also lose the possibility to create our own interpretations of what happens. In such a situation it is particularly important to be presented with simple concrete terms in the description of the occurrences. We need detailed storytelling, not references to empty categories as ‘crime’.

‘Crime’ and ‘criminals’ are strong terms with large

abilities to stick to persons. They etch other understandings of the acts and the humans behind the labels. They hide other understandings for interpretation of the acts and the humans behind the label. I have

never met people – when I come close to them – who are only criminals. They are, as most of us, a mixture of good and bad. Some, maybe all, are walking mysteries. But some might have committed and are serving sentences for something terrible, and then all other aspects are overshadowed by the concept of that act or for the personality type he or she is found to be.

Destructive words will often blossom among the many professionals so central in defining how humans are to be understood and governed: The psychopath, the paedophile, the manic-depressive,

the Attention Deficit Hyperactivity Disorder-child; the diagnostic manuals are filled to the brim. My alternative would be to tell the whole story.

And how would I like to have the supposed behavioural expert to describe those they work with?

As whole persons, described in old-fashioned, pre-professional terms. Described so thoroughly that they became unsuitable for categorisation. I want to know something, concretely, on what occurred, and about the persons. Small words put together in small stories are particularly well suited to give us such knowledge. The big words from the toolbox of various professionals will often close both for insight in what happened and for informed social participation.

But without their language, experts would lose both authority and efficiency!

Yes. ■

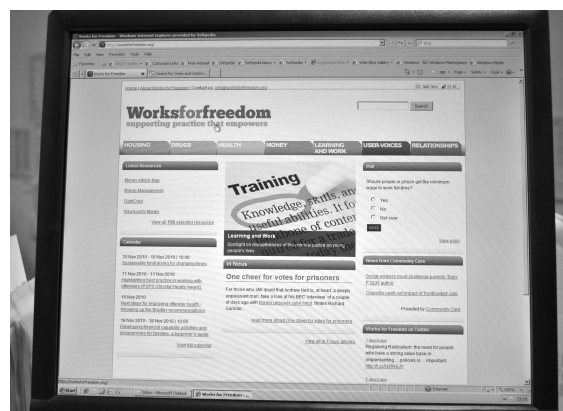
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