

Crime: myth or reality?

Richard Garside considers definitions of crime in the myth making process.

In the course of everyday life men and women, children and adults, enter into social relationships with each other. These relationships enrich their lives and are at the heart of what it means to be human. They are the psychological foundations of what we call 'society'.

These relationships can also be marked by conflict. The persistent domination of women by men under the structures of patriarchy has marked most societies, modern and pre-modern. Hostility and suspicion of the 'other', justified by the ideologies of racism and xenophobia, have been common features. The exploitation by some of their social power against others – employees by employers, tenants by landlords, peasants by lords, slaves by slave owners – is seemingly perennial.

In some cases conflicts are accorded a specific and technical character: For instance certain interpersonal violence; certain appropriations of the property; certain breaches of regulatory rules. These acts, defined and prohibited by the criminal law, are referred to collectively as 'crime'.

Those who engage in crime talk they often think they are talking about the most significant or important forms of social conflict. But this is often not the case. 'Crime' as a unit of analysis is also slippery and subjective.

Law is the cause of crime

To say that an act is a crime if defined by the law is little more than tautological. Jerome Michael and Mortimer Adler concluded

some years ago that 'the criminal law is the formal cause of crime'. This is so, they argued, not because 'the law produces the behaviour which it prohibits', but because it gives certain acts their 'quality of criminality. Without a criminal code there would be no crime' (Michael and Adler, 1933). This may formally be correct, but there is something missing. As Michael and Adler acknowledge, criminal law *defines* acts as criminal. It does not, generally speaking, cause individuals or organisations to commit those acts. The acts themselves are *objective* social events. Their definition as 'crime' is *subjective*.

Crime defined

Definitions of 'crime' are also historically and spatially contingent. They are historically contingent because they change through time. In the UK acts that were once deemed criminal (for instance consensual homosexual sex) are now legal. Other acts that were once

legal are now criminalised. It was only in 1991 that rape within marriage was criminalised in UK. Definitions of 'crime' are spatially contingent because they vary across countries,

regions and jurisdictions. Acts criminalised in some jurisdictions are not in others, and vice versa.

What gets defined as crime and who gets to decide is also a political matter. In a simple sense the government and members of parliament set the parameters of criminal law, not judges, criminologists or the 'general public'. More significantly, definitions of

crime reflect and reinforce the underlying political settlement and the balance of social forces. Acts and omissions currently defined as crime in the UK largely amount to 'vast numbers of petty events which would score relatively low on scales of seriousness' (Hillyard and Tombs, 2008). Meanwhile many acts and omissions that are either very harmful, or widespread in their impact, or both, are either not defined as crime, or are subject to lax regulation: For example workplace health and safety breaches, environmental pollution and state violence.

So there is a distinction to be drawn between an objective act and its impact and the socially subjective act of defining it as crime. There is nothing intrinsic to those acts defined as crime (Hulsman, 1986).

This is not to say that some acts defined as crime do not cause harm. Homicide, sexual violence and the abuse of children, to name but a few, are profoundly harmful. Any civilised society should reflect this in the response made to such acts. Yet contemporary debates about crime, whether in politics or popular culture, the academy or policy making, are also a species of myth-making and mystification. It is the underlying act, its causes and harms, not the social definition, that ultimately matters. ■

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References

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