The theory and politics of criminalisation

John Muncie argues that a critical understanding of criminalisation remains crucial.

The *Daily Telegraph* (18 April 2008) recently ran with the headline 'Teenage drinkers could be criminalised'. In 2007 the Chair of the Youth Justice Board resigned primarily in frustration that 'we are criminalising more and more children and young people' for relatively minor offences in order to meet a Home Office target of increasing the number of 'offences brought to justice' (*Independent on Sunday* 16 September 2007). In the wake of successive anti-terrorist legislation since 2000, the organisation CAMPACC (Campaign Against Criminalising Communities) was specifically formed in order to oppose the criminalisation of association with political organisations and to protect the civil liberties of those communities considered to be a 'threat' to public safety.

In each of these cases a concept of *criminalisation* is employed to draw attention to the way in which 'new criminals' can be 'created' through police targeting and criminal justice law reform. In the throes of a government that has legislated in this area more in the past decade than in the whole of the previous century, the idea of criminalisation has begun to take a firmer hold in some sections of the popular, media, and political imagination. Of note have been attempts to 'criminalise conduct' through hate crime and anti-social behaviour legislation. Recognition of processes of criminalisation is, however, far from new. In the nineteenth century the penal reformer, Bentham, for example, argued that certain social reactions to crime—the unreformed

prison, for example—were more likely to promote offending than curtail it. Mayhew, the social commentator, considered that over-zealous policing was a significant factor in the creation of juvenile delinquency in the mid nineteenth century. Such themes are now reflected in the perennial claims that prisons are 'colleges of crime' and that the more people are treated as different, deviant, or criminal, the more likely they are to act out those roles in the future (for example, in the way ASBOs are considered not to deter but to be 'badges of honour').

Interaction, social reaction and labelling

The concept of criminalisation, however, has a deeper and more precise theoretical legacy. Formative traces can be found in an interactionist school of sociology of the 1930s. Tannenbaum (1938), for example, argued that deviance, rather than being a self-evident behavioural entity, could only be created through a process of social interaction. While a majority commit deviant acts, only a minority come to be known as deviant. The known

> 'Deviance is not a property inherent in certain forms of behaviour; it is a property *conferred upon* these forms by the audiences which directly or indirectly witness them. Sociologically, then, the critical variable in the study of deviance is the social audience, rather than the individual person. . . .'
> Kai T. Erikson (1962) *Notes on the Sociology of Deviance*.

deviant is then targeted, identified, defined, and treated as such, even though their behaviour may be no different to those who have not been so identified. As a result, certain people 'become deviant' through the imposition of social judgments on their behaviour: they *become* the essence of what is being complained of. This approach underlined the importance of viewing rules and regulations, not as consensual 'givens', but as sites of negotiation and dispute. In the 1950s Lemert (1951) further developed this approach by distinguishing between primary and secondary deviation. He argued that primary deviance is often a temporary transgression in which perpetrators have no conception of themselves as deviant. Secondary deviance is created through the reaction of others to the initial deviance. Through name-calling, stereotyping and labelling, a deviant identity is established and confirmed. Often deviants resolve this personal crisis by accepting their deviant status and by reorganising their lives accordingly. They become more susceptible to criminalisation. In these ways the rigid separation of what constitutes the deviant and the conformist; the criminal and non-criminal was called into question.

The concept of criminalisation eventually found its feet in the formulation of social reaction theory and labelling in the 1960s. For the American sociologist Becker, the key to understanding the origins of deviance lay in the reactions of a social audience, rather than in the behaviour of individual actors themselves. Deviance was no longer viewed simply as a pathological act that violated consensual norms, but as something created through micro-level interactions between rule violator and rule enforcer. This process ensures that some people who commit deviant acts come to be known as deviants, whereas others do not. A number of ethnographic studies were also published in the 1960s and 1970s which revealed the processes of *becoming* a marijuana smoker, a prostitute, a homosexual, a prisoner and so on. In each it was the *stigma* attached to the label that was considered pivotal in informing

future behaviour patterns. Becker (1963) argued that when defined as 'outsiders', it is such groups that come to epitomise what is considered to be criminal. A self-fulfilling prophecy ensues. Criminality is continually sought only in those identified as criminal. And the power of the label of 'criminal' ensures that 'criminal careers' are exacerbated. This refocusing of criminology dramatically shifted attention from the behaviours of those commonly thought to constitute a problem for society to those who conceive those behaviours as problems. Lemert's (1967) conclusion that *social control causes deviancy* was a crucial turning point in the politicisation of the sociology of deviance. For many, social reaction and labelling effectively began the process of politicising the study of deviance, crime and social control.

'Deviance may be conceived as a process by which the members of a group, community, or society (1) interpret behavior as deviant, (2) define persons who so behave as a certain kind of deviant and (3) accord them the treatment considered appropriate to such deviants'.
John Kitsuse (1962) *Societal Reaction to Deviant Behavior*.

Critical imagination

Social reaction and labelling clearly opened up new lines of critical enquiry by posing definitional rather than behavioural questions—'who defines another as deviant?'; 'why are some behaviours and not others defined as deviant?'; 'who has the power to define another as deviant?'; and 'how are deviant roles subsequently adopted and played out?' To address such questions it was necessary not only to begin to study how rules and laws were created, but to ask in whose interests they were enforced. Attention was drawn to the complex process by which moral entrepreneurs and agencies of social and crime control are able to realise the public identification of certain people as criminal; how social reaction and labelling produce and reproduce a

'Deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has successfully been applied; deviant behaviour is behaviour that people so label'
Howard Becker (1963) *Outsiders: Studies in the Sociology of Deviance*.

recognisable criminal population. This 'politicisation of criminology' was indeed a logical extension of the critical questioning of social science and its role in research, teaching and policy making that had emerged at the time. Political developments growing out of the American civil rights campaigns, anti-Vietnam war movements and the radicalisation of student and countercultures had a direct impact on many academic disciplines and their role in defending the status quo. C. Wright Mills challenged the whole notion of scientific neutrality in academic research and Becker himself latterly brought such questioning directly into criminology by asking social scientists: 'Whose side are you on?' Mainstream criminology was charged with lending the state a spurious legitimacy and functioning as little more than a justification for oppressive power. This was the beginning of a critical criminological imagination in which questions of political and social control took precedence over behavioural and correctional issues. Central was an expose of the 'power to criminalise' through the systematic and consistent empowerment of some groups and the criminalisation of others.

Today the classic statements of social reaction and labelling are widely employed in most undergraduate sociological criminology courses. Yet 40 years ago they marked a radical departure in criminological (or rather more typically then 'sociology of deviance') studies. By drawing attention to the role of social reaction (and law enforcement in particular) they warn of the ways in which criminal justice may cause that which it is designed to curtail. A critical understanding of

criminalisation remains crucial in radicalising a discipline that in many of its guises simply seems to be content with being an adjunct of, and in collusion with, state agencies. Social reaction and labelling marked the first step in understanding why and how only certain troubling behaviours and acts are subject to criminalisation and why a host of other more serious social harms (such as workplace death and injury; illegal arms dealings; corporate frauds, state sponsored torture and so on) appear to be routinely practised with impunity or rarely considered as core elements of the 'crime problem'. These insights still retain their original power to challenge the politics of law and order and expose the processes of selective criminalisation. Perhaps for this reason they remain routinely ignored or dismissed by those of a more conservative, technocratic or administrative persuasion. ∎

'This is a large turn away from older sociology which tended to rest heavily upon the idea that deviance leads to social control. I have come to believe that the reverse idea, ie., social control leads to deviance, is equally tenable and the potentially richer premise for studying deviance in modern society'
Edwin Lemert (1967) *Human Deviance, Social Problems and Social Control*.

John Muncie is Professor of Criminology at the Open University.

References

Becker, H. (1963), *Outsiders: Studies in the Sociology of Deviance*, New York: Free Press.

Erikson, K. T. (1962), 'Notes on the sociology of deviance', *Social Problems*, 9, pp.307–314.

Kitsuse, J. (1962), 'Societal reaction to deviant behaviour', *Social Problems*, 9, pp.247–56.

Lemert, E. (1951), *Social Pathology*, New York: McGraw-Hill.

Lemert, E. (1967), *Human Deviance, Social Problems and Social Control*, Englewood Cliffs, NJ: Prentice-Hall.

Tannenbaum, F. (1938), *Crime and the Community*, New York: Colombia University Press.