

Problems in defining crime

What are we going to study?

Criminological psychology is, broadly, the application of psychology to criminals and their behaviour. For us to do criminological psychology, then, there must first be some agreement about which people and which acts we are going to study. Since a criminal is, basically, a person who has committed one or more crimes, one starting point for defining the area of study for criminological psychology is to define what a crime is.

What is a crime?

Blackburn (1993; p.5) defines crimes as ‘acts attracting legal punishment [...] offences against the community.’ Crimes have consequences that are injurious in some way to the community at large or one or more people within it. These consequences range from the trivial to the severe. Blackburn notes that crimes are generally disapproved of by the society that so defines them and often involve the violation of moral rules. However, he also draws attention to some limitations of this way of defining crime. First, whilst it is true that defining an act as a crime indicates that *some* people disapprove of it, it is not true that all crimes are disapproved of by all people. For example, taking workplace stationery for personal use and exceeding the speed limit whilst driving are both criminal acts but ones which do not attract universal or even widespread social disapproval. Second, whilst many criminal acts, such as murder, violate moral rules, a subset does not. This includes the so-called ‘victimless crimes’ such as the possession of banned drugs for personal use and other circumstances such as consensual sex between 15-year-olds. These are illegal in the UK, but it is not clear which, if any, moral codes they violate.

The word ‘crime’, therefore, covers a diverse range of acts which apparently have little in common besides being defined legally as attracting officially sanctioned punishment if carried out. Are there acts that everyone can agree on for other reasons? Lemert (1972) compared a range of different societies and concluded that murder, rape and theft were universally condemned, whatever the prevailing legal system (although there was marked variation in how different societies responded to these acts). Feldman (1993; p.4) suggests that, comparing societies ‘the core of criminal law is the same, but the border moves’. So whilst murder, rape and theft are considered crimes pretty much everywhere, the definition of many other acts as criminal depends heavily on which societies you look at, and when you look at them. Feldman’s ‘moving borders’ might include laws about sexual conduct, drug and alcohol use and religious conduct. For example, in the UK laws about sexual conduct have in the past prohibited adultery and consensual sex between men, both of which are now legal in the UK but remain criminal acts in many countries. In the US, the sale, manufacture and transportation of alcohol were crimes between 1919 and 1933 but not before or after but in many other countries the possession and consumption of alcohol is illegal.

How does the law define criminal acts?

Since, in our society, it is the legal system that defines acts as criminal or not, it is useful to consider how criminal and non-criminal acts are distinguished legally. Beyond the fact that a crime cannot have been committed unless the act concerned violates a law, the legal tradition in the UK is that a crime has not been committed unless there is *actus reus* ('guilty act'), an act voluntarily carried out, and *mens rea* ('guilty mind'), an intention to commit the act.

In this view, acts that have not been chosen by the individual are not crimes. For example an injury cause by a person who was having an epileptic fit satisfies neither the *mens rea* nor the *actus reus* criterion. A person who acts under compulsion (e.g. a bank manager who opens the bank vault to a

gang who are holding close relatives hostage and threatening to kill them) does not satisfy the *actus reus* criterion since the act is not voluntary, even if it is intentional. Most people agree that this is reasonable and just. However, the legal picture is more complicated than it first appears. First, there is the question of people who commit acts they do not realize are against the law. We might argue that where there is no awareness that an act is illegal there cannot be a 'guilty mind'. However, a general principle of English law is that 'ignorance of the law is no excuse'. Second, there are some 'strict liability' offences where a person's intentions are considered irrelevant to their guilt (i.e. to have carried out the act is enough grounds for guilt). For example, in English law a man who has sexual intercourse with a girl under 13 years of age is guilty of rape regardless of what he believed her age to be (even if the girl told him she was older). Third, there is the issue of establishing *mens rea* where it is legally relevant. This is especially difficult in cases where it is claimed that a person could not have prevented themselves from acting in violation the law (e.g. through mental illness).

This example illustrates the problem of criminal responsibility, which is one of several areas where the fields of legal and psychological knowledge may come into contact and conflict. For example, under the M'Naghten rules, which govern the use of the insanity defence under English law, a person may be found not guilty of a crime by reason of insanity if at the time they carried out the act they suffered from a 'disease of the mind' such that they either did not know what they were doing, or did not know it was against the law. From the point of view of many psychologists these criteria 'set the bar too high' and therefore impute criminal responsibility to people who should not be held responsible for their actions. In partial recognition of this English law allows a mitigating circumstance of diminished responsibility which reduces the crime of murder to manslaughter if a defendant can show that their mental capacity in relation to the crime was 'substantially impaired' when they carried it out (NB. they are still guilty of a crime, only a lesser one).

A more fundamental area of conflict between legal and psychological understandings of crime arises from the fact that the legal view of human behaviour is predicated on the idea that people choose how they act and their choices are the causes of their actions. There is, therefore, an explicit endorsement of the idea of free will in the legal view of crime. However, most psychologists take a deterministic view of behaviour where every action has a cause and each cause has causes of its own. Since the chains of causation that determine a person's actions ultimately extend outside the person it could be argued that no-one actually chooses how they act, which undermines the legal conception of criminal responsibility.

So what should we study?

All that can easily be agreed is that crimes are acts that violate the criminal law of a particular society at a particular time. Beyond a core of acts that are (almost) universally condemned, 'crime' is a social construction – it means different things to different people in different societies and at different times. Crime is not a natural category of behaviour. This leaves open the question of what it is that criminological psychologists should study. There are two choices. The first is to stick to a legal definition of crime and therefore to study those acts and people the law declares criminal. This is unsatisfactory because, as a scientific discipline, psychology must study natural phenomena; the law, changing as it does, cannot define the subject matter of a scientific discipline. The alternative is to adopt a broader definition of crime, which includes harmful and antisocial behaviour which may fall outside the legal definition of crime. Blackburn (1993) suggests that what tends to unite the people and acts of interest to criminological psychologists is the conscious breaking of rules. That is, there are people who understand that an act they are contemplating is a crime, know that it attracts punishment if detected and yet carry it out anyway. Looked at this way, criminological psychology encompasses the study not only of lawbreaking but of other types of rule breaking (e.g. cheating) and other acts, such as aggression in children which, whilst not in themselves criminal, are related to criminal behaviour.