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WHAT DETERMINES A CRIMINAL TODAY?

Overview

Chapter 1 examines:

- The distinctions between crime and deviance
- The rationale why the law changes over time
- The changing nature of criminal offences
- The way criminal statistics are presented and interpreted
- The role of the victim in criminal procedure

The study of criminology today includes the understanding of the concept of globalisation of crime which examines the role that crime plays as an agent of social change. Linked to criminalisation and social development, you can begin to understand the political economy of crime and crime in transitional cultures, such as the war on terror, the globalisation of economies, and the increasing social diversity and division in our societies.

The boundaries between public and private life have become increasingly blurred with high levels of private surveillance, from CCTV in shopping malls to credit checks in mobile phone shops. Some see the increasing surveillance as a net result of 'joined-up government' and as an interference with civil liberties. Governments might see it as dealing effectively with a range of social problems and crime control. The result is a mass of new criminal justice legislation which is both civil and criminal in nature. This book seeks to make the link between civil and criminal law and the relevant court structures in all three jurisdictions, England and Wales, Scotland and Northern Ireland.

Not only can the police increasingly patrol public and private spaces in the name of 'terrorism' now, but local authorities have also been given increased policing powers to impose Anti-social Behaviour Orders (ASBOs), to prosecute for fly-tipping and to evict noisy neighbours. Lord Anthony Giddens links today's criminal activities to consumerism and economic deprivation but also to terrorism and the notion of a new world order. He argues controversially

that we live in a period of 'high modernity' (rather than in post-modernity) in which prior trends are radicalised rather than undermined. He links modernity to the post-industrialised world of the 1930s as that of a highly materialistic society and social control (Giddens, 1991a).

Giddens then comments on our 'surveillance society' with its 'visible supervision' models, such as the police, private security services and CCTV and links these to Michel Foucault who argued that the state will always monopolise the control of crime and violence (Foucault, 1977). Giddens also refers us back to what Jeremy Bentham called the 'all seeing state' (Giddens, 1991b: 13ff).

Taking Giddens' model of the 'risk society' we can link this concept to our post 9/11 era, namely the terrorism atrocities in New York, Washington DC and Pennsylvania on 9 September 2001 and the London bomb attacks of 5 and 21 July 2005, and see how governments are now dealing with terrorism threats and public fear of crime in a global agenda. The main facts surrounding these attacks are too well known to recall here, it is enough to record that they were atrocities on an unprecedented scale, causing many deaths and destroying property of immense value (see Section 8.8).

Ulrich Beck, one of Europe's leading social theorists, has also analysed the impact of our global 'risk society'. Beck re-examined the essentially negative concepts of 'post-industrial' and 'post-Enlightenment' theories and how 'risk' has impacted on current social developments of personal and public life. He argues that increasing legislation has changed the whole social strata. By recognising that diversity, individualism, scepticism and fear are now part of our Western culture, Beck calls our society a 'new cosmopolitanism' and encourages a form of global morality, shared risk and a communal responsibility to crime (1992, 1999) (see Section 7.2–7.5).

Putting these theories into context, whilst the UK has faced a variety of terrorist threats in the not so distant past, by the IRA or Al Qaida, a unique combination of factors has emerged, namely a globally united front by all members of society and within the European Union, or as the Labour Home Secretary, Jacqui Smith, put it in July 2007, that people in the UK will not be 'intimidated by those [terrorists] who wish to destroy our way of life and our freedoms' (Jacqui Smith's response to the terrorism threats to UK airports after the attempted bombing of Glasgow Airport on 30 June 2007).

1.1 Making distinctions between crime and deviance

As part of your criminological legal studies, you may well be asked to note down some typical criminal offences. You might then mention burglary, robbery, assault or possibly rape. But, would you have made a note of identity theft, river pollution or the killing of passengers on a crowded commuter train?

The *Oxford English Dictionary* defines crime as:

An act punishable by law, as being forbidden by statute or injurious to the public welfare ... An evil or injurious act; an offence, a sin; esp. of a grave character.

Crime then has multiple meanings and definitions and comes down to a social construct, that is, every society defines 'crime' in different ways. And what would you call a 'priority crime' – a favourite term now used by law enforcement agencies? Would it be mobile phone theft by children from children at school? Or having your front teeth kicked in by your husband? Or graffiti on bus shelters? Or an attack on a gay bar?

First, you need to distinguish between the strictly legal definition of a crime, that is in statute (Act of Parliament) and the contravention of certain codes, conventions, or morals, known as normative definitions (see Section 2.1). The latter ones would not be 'law' but would reflect moral or religious codes which usually define socially acceptable behaviour. What may be against the law in one country might well be acceptable behaviour in another state, such as bigamy.

It is generally believed that those who act involuntarily do not deserve punishment nor would their punishment serve any useful purpose. An individual who lacks control over his criminal actions is generally not regarded as being responsible for the consequences of those actions and incurs no criminal liability (see Section 5.3). To summarise, a crime could be defined as:-

- An activity that is classified within the criminal law of a country
- A strictly defined legal definition in form common law or statute in England and Wales
- Legally defined criminal acts
- An illegal act which deserves punishment by the state
- Criminal activity defined by the British Crime Survey (BCS)
- Some legally defined crimes in the UK may be legitimate acts in other countries (e.g. bigamy)
- An evolving social process in the criminal law, shaped by social forces and socio-political decisions made by individuals.

Deviance

What then is the difference between a crime and what criminologists call 'deviant behaviour'? Deviance is a classical theme, which explains the causes of crime. The study of deviance is concerned primarily with the construction, application and impact of stigma labels. For example, there are strongly perceived links between juvenile offending and the home (familial) environment (see Section 9.1). Other theorists discovered that deviance and delinquent behaviour are learnt through observing, imitating and 'modelling' others (refer to McLaughlin and Muncie, 2006).

Critical criminologists like Professors David Downes and Paul Rock established that penal policies and resulting changes in criminal legislation are usually consequences of wider social changes. These, in turn, have influenced law enforcement priorities and legislation such as policing (see Sections 6.2–6.4). Downes and Rock (2003) explained deviance as the difference between what is morally wrong and what is against the law – that is criminally wrong – within a given society;

The sociology of crime and deviance is not one coherent discipline at all but a collection of relatively independent versions of Sociology (Downes and Rock, 2003: 1)

To summarise, deviance is:-

- Reference to behaviour that is morally or 'normatively' wrong
- Delinquency which can (but not necessarily does) lead to criminal behaviour
- Dysfunctional family background and how this may lead to criminal culture and future criminal behaviour, such as the 'yob culture' or gang violence

Criminological studies have traditionally focused on subcultures, such as punks, rockers, skinheads or dance culture. Some of these phenomena have been linked to inequality and inner city deprivation. Cohen's (1972) definition of deviance is linked to economic deprivation – Marxist criminology – whereby not having a good career or owning consumer goods may lead some individuals to commit crime because they perceive that they are being deprived of something. Other criminogenic factors include gender – young males are more likely to offend than females – or inadequate parenting. How some agencies have taken positive steps to address particularly youth crime can be seen in Chapter 9.

One term you may have come across in your theoretical studies is anomie. This concept was first defined by the French Sociologist Émile Durkheim (1858–1917) who established the idea that when people find themselves in rapidly changing social conditions, they will lose the social guidelines (norms) of what is 'acceptable' behaviour. Durkheim's studies concentrated on how and why people break the law in society. He suggested that crime was 'normal' in a modern industrialised society and hypothesised that social change in conditions could lead to unacceptable behaviour and deviance (anomie), particularly in young people (Durkheim, 1893).

Durkheim coined the term 'anomie' or lawlessness (derived from the Greek *a-nomos* meaning 'lawless') whereby he explained that anomie resulted in the transition from the pre-industrial society to the industrial and mechanical society. He then argued that deviant and anomic behaviour can lead to exclusion from a given society and a collective punishment of that individual (see also Jones, 2006: 156ff).

Robert Merton (1938) took the anomie theory a step further, linking it to the social anomie of the post-depression years of the late 1930s in America. By looking at the 'American Dream', he portrayed the class struggle in American culture which could lead to crime. His anomic vocabulary included 'retreatism' and 'rejection'. He linked his theory to practical examples like Al Capone and the godfather-type gangster, whose rebellious and amoral behaviour became part of a celebrated culture in American society, that placed high value on economic affluence and social ascent (see Downes and Rock, 2003: 104–140).

Glueck and Glueck (1950) linked deviance and criminal behaviour to dysfunctional family background, when they compared 500 well-behaved schoolboys from a 'good' family background with 500 institutionalised delinquents from care and foster homes. The authors found that 66 per cent of the delinquents had a criminal father or brother, compared with 32 per cent in the 'goodies' control group (see Glueck, 1934: 235–237).

Bowlby (1944, 1979) concluded that maternal deprivation through rejection was linked to childhood antisocial behaviour (anomie) and delinquency and Hirschi (1969) in his 'control theory' found that children from larger families were harder to discipline and likely to receive less parental attention than small families.

The causes of crime (criminogenic factors) can be defined as:-

- Deviant and criminal behaviour influenced by societal and familial factors, known as 'the environment'
- Causes of crime, largely linked to life style, life-cycle and familial conditions in which the individual lives

You may find reference to the 'broken windows' theory, a term first used in criminology by the political scientist James Q. Wilson and the criminologist George L. Kelling, in an article in *Atlantic Monthly* (March 1982). The authors used the image of 'broken windows' to explain how neighbourhood communities can decay into crime and disorder if (factory) windows are not mended and are left broken. This would suggest to passers-by that no one is in charge or cares on the estate. With time, more windows would then get broken by rock-throwing deviants. Soon, only criminals and drop-outs will be present in that neighbourhood. This, in turn, will attract more anomie, including drug dealing and prostitution, until someone might even get killed. Wilson et al.'s point was that small disorders can lead to larger disorders and to serious crime (Wilson et al., 1998: 29–38).

The following list may assist you with some criminological terms regarding deviance:

- **Norms** are social sets of specified behaviour patterns, such as religious norms, legal norms, health norms, cultural norms, etc. Norms emerge in most social situations.
- **Deviance** is a pattern of norm violation. For example, there can be class deviance or situational deviance, where the norms emerging are transgressed.

- **Stigma** (pl. stigmata) – deviance can be highlighted as a ‘stigma construct’ or ‘label’ bestowed upon certain types of behaviour at certain times. A terrorist, for example, is a political martyr or freedom fighter on the one hand and a murderer on the other.
- **Norm violation** (stigma construct) – precisely who or what is deviant depends upon a positive understanding of the norms and labelling processes in particular social contexts.

In summary, deviance is a shifting, ambiguous and volatile concept.

1.2 The changing nature of criminal offences

Critical criminology asks questions on how the causes of crime vary in different social situations, societies and different periods of history. How and why do criminal acts suddenly change? Why are certain criminal acts suddenly ‘legal’ or decriminalised, such as homosexuality? Why do governments unexpectedly decategorise the possession of cannabis? (see section 6.8).

It is important for you to understand the social processes involved in changing the law and bringing about new legislation whereby criminal acts are defined in law, how they are prosecuted and how they lead to a conviction. This is known as the criminal process. Ultimately, law is shaped by social forces and shaped by choices and decisions made by individuals.

Beck (1999) recognises a changing relationship between social structures and social agents which, over the past 20 years, has led to the individualisation of society’s decision-making and law-making process. Beck argues that, although Western societies are facing terrorism threats on a scale not previously encountered, modern societies are showing an increased sophisticated resilience and an ambitious restraint towards terrorism organisations and that life must continue as normal. Postmodernists usually examine the way in which the law has been influenced by social change over time, which, in turn, affirms the power of human beings over the making and reshaping of the law (see Roach Anleu, 2005).

Given the changes in the law over time and having looked at the reasons for social change and the law, you begin to realise how Britain has seen the most rapid changes in criminal justice policies and therein a plethora of considerable new legislation (see Appendix 1). This has been driven by the public’s fear of crime, enhanced by the media (see Smartt, 2006c). The fact is that our society continues to be fascinated by crime. Just have a look at British daily newspapers, with an overabundance of daily crime stories, or TV drama series featuring human transgression, police or court scenarios. Often relatively exceptional crimes are hyped in the press, which means that members of the public tend to believe that there is ever-increasing crime ‘out there’. The upshot is, communities feel unsafe and under threat (see Smartt et al., 2002).

This, in turn, increases the demand for tougher penal policies, resulting in increased criminal justice legislation; this, again, influences law enforcement

priorities, such as policing. Since 9/11, there has been excessive legislation combating terrorism, with changes in PACE-Codes (*Police and Criminal Evidence Act 1984*) and terrorism acts (*Terrorism Act 2000*; *Anti-terrorism, Crime and Security Act 2001*; *Terrorism Act 2006*) (see also Section 6.10).

New offences have come about, such as issuing false cheques or the cloning of credit cards, yet old statutes – like the Theft Acts of 1968 and 1978 – prevail. ‘Joy riding’, which in law is the ‘taking a vehicle without the owner’s consent’ (or ‘TWOking’), contrary to section 12 of the *Theft Act 1968*, usually coupled with ‘dangerous driving’ within section 2 of the *Road Traffic Act 1988* has become increasingly unfashionable amongst criminal youths. This is due to the improved car security and may mean that TWOking could soon either be decategorised or disappear altogether from the statute books.

Most criminal offences have become statutory offences, that is, there is now an Act of Parliament in place of common law, for example, having sexual intercourse with children under the age of 16 or internet grooming (*Sexual Offences Act 2003*) (see Section 5.5). But many modern-day offences are still covered by aged legislation: graffiti is part of the *Criminal Damage Act 1971*; stabbing a prison officer with an Aids-infected needle comes under the ancient *Offences Against the Person Act 1861*.

Making the correct charge in cases of domestic violence can be difficult for the police and the Crown Prosecution Service, since there is no specific offence called ‘domestic violence’. There are a number of offences and statutes linked to crimes of ‘domestic violence’ and police need to make a distinction between an ‘assault’ (s. 47 *Offences Against the Person Act 1861* (OAPA)) and ‘common assault by beating’ (or ‘battery’) (s. 39 *Criminal Justice Act 1988*). This can be tricky (see Smartt and Kury, 2007: 1263–1280).

The English Crown Prosecution Service (CPS) introduced statutory charging for domestic violence crimes in 2004, making this a priority crime. This means in practice, even if the victim makes a withdrawal statement at the police station or even at trial stage, prosecutors may issue witness summons to force the (hostile) witness to come to court to give evidence against the perpetrator. Alternatively, the CPS can go ahead without the victim being present in court as key witness.¹

We know that domestic violence is a serious public health issue and that the statistics are shocking. For women aged 19–44 domestic violence is the leading cause of morbidity (and) ... 89% of the victims who suffer sustained domestic violence are female; however, we also know that domestic violence can affect ... male victims. (Home Office, 2005b)

But still, incorrect charging can make the difference between the perpetrator receiving a conditional discharge or a fine or a four-year custodial sentence. The distinction between a kick, a punch or a push of the woman by her tormentor is then left to magistrates or the jury to decide (see Kury and Smartt, 2006: 382–407). In this context, read the case of *Ahluwalia* at the end of this chapter.

1.3 Measuring crime and criminality

There are essentially two 'official' ways of recording crime statistics: recorded and reported crime. The British Crime Survey and the International Crime Victim Surveys (see below) help to identify those most at risk of different types of crime. They assist governments in planning new legislation in order to prevent crimes.

Recorded crime refers to official police reports, or 'notifiable' offences. Most of these comprise *summary* offences. Reporting a crime means that someone reports to the police that a crime has been committed or the police observe or discover a crime or crime-related incident. It is not necessarily the case that a reported crime to the police may result in the crime actually being logged or recorded. A crime report constitutes a crime record number, usually for insurance purposes. The Home Office issues 'Counting Rules for Reported Crime' to police forces; these are fairly straightforward, as most crimes are counted as 'one crime per victim' and the offence committed is obvious, such as domestic burglary. It gets more complex where more than one offence has taken place, maybe on several occasions over a period of time, or there is more than one offender or victim.

Recorded crime figures are important indicators of police workload in a region and their specific performance, known as 'clear-up rates'; they are then used for local crime pattern analysis. This does not mean all criminal offences are cleared up. Once a crime is recorded and investigated by the police and evidence is collected to link the crime to a suspect, it can be detected according to criteria contained in Home Office 'Detection Guidance'. In many cases, someone is charged or cautioned or the court has taken the offence into consideration (TIC) (see Section 6.2).

Reported crime involves victim surveys. Traditionally, crime victim surveys mostly concentrated on surveying traditional property crime, violent and street crime (robbery). Zedner argues that no surveys have as yet measured sexual aggression or intra-family violence (Zedner, 1999: 577–612). Since 1982, the Home Office's British Crime Survey (BCS) has measured the amount of crime in England and Wales by asking now about 40,000 people aged 16 or over anonymously about crimes they have experienced in the last year.

The British Crime Survey is considered to be the most reliable indicator of trends in violent crime as police recorded crime is susceptible to reporting and recording changes, especially in less serious offences. The BCS establishes the 'dark figure' that is unreported crime. It is an important alternative to police records. The British Crime Survey is about levels of crime and public attitudes to crime. The results play an important role in informing government policy and can be found on the Home Office and Ministry of Justice websites (see Appendix 4, useful websites). The British Crime Survey includes:-

- Personal experiences of crime
- Public attitudes to the criminal justice system, including the police and the courts

- Fears about crime
- Security concerns, such as home and vehicle security measures
- Violence at work, such as bullying and harassment
- Perceptions of equality and prejudice
- Volunteering and community activities
- Experience of household fires
- Illegal drug use
- Sexual victimisation including stalking
- Domestic violence

For the first time the BCS 2007 brought together police recorded statistics and victim surveys. This most helpful combined survey estimated that there were about 11 million crimes experienced by people over the age of 16 during the year 2006; this meant 8.4 million fewer crimes than in 1995. But the police recorded only 6 million crimes in 2005–6, of which around 73 per cent were acquisitive crimes such as burglary or theft (a decrease of 1 per cent in 2005) (see Section 6.7).

Whilst crime recorded by the police showed a decrease by 2 per cent compared with the same quarter in the previous year, the BCS 2007 showed a statistically significant increase in the risk of being a victim, from 23 per cent in the year to December 2005 to 24 per cent in the year to December 2006. Though it is worth noting that the risk of being a victim of crime is still significantly lower than the peak of 40 per cent recorded by the BCS in 1995. The domestic burglary rate has been steadily falling since 1999 and there has been a steady downward trend in car crime. Since the de-regulation of alcohol and pub licensing (from the magistrates' courts to local authority licensing), alcohol-related offences, involving 'violence against the person', have increased (ss. 47; 20 and 18 of the *Offences Against the Person Act 1861*) (see Section 5.4).

What about the fear of crime? The overall proportion of people who perceived a high level of anti-social behaviour in their local community remained stable (from 17 per cent in 2005 to 18 per cent in 2006). Perceived problems were noisy neighbours or loud parties, people being drunk or rowdy and people using or dealing drugs. There was a decrease in perceiving problems with abandoned or burnt out cars. The proportion of people who thought that the police in their area did an excellent or good job showed a statistically significant increase from 50 to 51 per cent in the 12 months to December 2006 (Home Office, 2007c).

How has crime changed? Crime in England and Wales peaked in 1995 and since then it has fallen by 44 per cent according to the BCS 2007. There have been large falls in domestic burglary and vehicle thefts over the last 10 years (burglary down 59 per cent, vehicle thefts down 60 per cent) and also in crimes of violence (down 43 per cent) (Home Office, 2007c).

What about violent crime? The BCS 2007 showed violent crime as remaining stable – a fall of 43 per cent, representing 1.8 million fewer crimes since 1995. Recorded crime has shown a different pattern, with the number of violent crimes

recorded by the police showing substantial increases, due to changes in recording practices, increased reporting by the public and increased police activity.

Who is most at risk? The BSC has repeatedly established that it is young males, aged between 16 and 24, rather than old people, who remain most at risk of becoming victims of violent crime.

The International Crime Victim Survey (ICVS) is the most far-reaching global victim survey programme that looks at householders' experience of crime, attitudes to policing, crime prevention and the fear of crime in a large number of countries; the results of which are internationally comparable (see Kury et al., 2002). The first round of 14 countries in the International Crime Victim Survey began in 1989 conducted by the Dutch Ministry of Justice, in cooperation with the Home Office and the Swiss University of Lausanne. The third ICVS-round was conducted in 48 countries in 1996, followed by the 2004–5 round in only 15 'old Europe' countries. In total, the ICVS has surveyed over 70 different countries (see Smartt et al., 2002: 133–150).

Another way of measuring victimisation is by measuring the costs of crime. Home Office researchers Brand and Price (2000) measured the costs by using the British Crime Survey and the Commercial Victimisation Survey; the latter measures industrial crimes, industry turnover and costs and their insurance and private security costs. It is difficult however, to measure emotional costs of the impact of crime on victims. The researchers found that the most costly property crimes are theft of or from vehicles, costing around £4,700 per incident in 1999. Burglaries cost an average of £2,300 and criminal damage around £500.

1.4 Victims

Victimology is the study of why certain people become victims of crime, including the emotional and psychological effects of crime (see Zedner, 2007), though the word 'victim' can be rather indiscriminately used today such as cancer victim, holocaust victim, accident victim, bullying at work or hurricane victim.

The term 'victimology' was first coined by the American psychiatrist, Frederick Wertham, in 1949, though the seminal text is by Hans von Hentig, *The Criminal and His Victim* (1948) which called for a study in victims. Von Hentig proposed a dynamic, interactionist approach that challenged conceptions of the victim as passive actor in the criminal justice system (see Fattah and Sacco, 1989). Von Hentig focused both on those characteristics of victims which precipitated their suffering and on the relationship between victim and offender, arguing:

The law ... makes a clear-cut distinction between the one who does and the one who suffers. Looking into the genesis of the situation, in a considerable number of cases, we meet a victim who consents tacitly, co-operates, conspires or provokes. (Hentig, 1948, quoted in Fattah, 1978: 198–213)

During the founding of victimology in the 1940s, victimologists such as Herrmann Mannheim (1889–1974) and Hans von Hentig (1887–1974) tended to use dictionary definitions of victims as hapless and tricked fools who instigated their own victimisations. The empirical approach of the victimological perspective in positivistic criminology became the lifetime study of Marvin Wolfgang. In his *Patterns in of Criminal Homicide* (1958), Wolfgang developed the concept of ‘victim precipitation’ to express the contribution of the victim in the realisation of the crime. Fattah (1999) argues that many victims of crime remain unaware of state compensation schemes and that such schemes like the Criminal Injuries Compensation Authority have made some ridiculously low awards in the past.

The subject of victim-proneness, first coined by Wolfgang and von Hentig, remains one of the most controversial sub-topics in criminology, linked to ‘guilt’ and ‘victim blaming’ and of being in the wrong location at the wrong time. By classifying victims into typologies based on psychological and social variables, Sebba (1996) suggests that certain individuals are more ‘victim-prone’ than others (see also Rock, 1994, 2004).

Victims were eventually put on a statutory basis by the provision of compensation or victim restitution with the *Crime and Disorder Act 1998*. There are now hundreds of victim support agencies that assist victims of crime either formally or informally to deal with the trauma and practical ways to come to court. There now exist the following in the criminal justice system:-

- **A code of practice for victims** which sets out the minimum standards of service that a victim can expect from the criminal justice system
- **National standards** to meet the needs of specific groups of victims, such as victims of road traffic accidents, rail or shipping disasters or human trafficking
- **Funding** to support the development of community-based services for sexual crime victims
- **Measures to prevent repeat victimisation** in domestic violence cases
- **Victims Advisory Panels** which enable victims of crime to have their say on how victims should be supported in the justice system

Some restorative justice measures have brought victim and offender together in some form of victim-offender-mediation. There now exist a number of restorative justice and reconciliation schemes, first introduced in Canada and the United States during the 1970s, followed by Austria and Germany, whose probation services led on victim-offender mediation (*‘Täter-Opfer Ausgleich’*) (see Wright, 1996; Marshall, 1999).

The Home Office regularly conducts studies into the cost of victimisation, amounting to an estimated £60 billion in 2000, with personal crimes, such as offences against the person or homicides, by far the most costly (Home Office, 2000). For this reason people are spending more on private security measures, such as private car or house alarms or ‘gated’ communities (see Anderson, 1999: 611–641).

1.5 Case study

R v Ahluwalia [1992] 4 All ER 889

There are times when domestic violence can lead to murder. The case of Kiranjit Ahluwalia is of enormous importance to criminologists who take a particular interest in gender and crime issues. *Ahluwalia* concerns an extreme case of domestic violence where the woman killed her husband. The case is important because it sets the precedent for the 'slow-burn effect' in relation to the defence of provocation available to women, also known as 'battered woman syndrome' (see also Section 5.3).

Facts of the case

Kiranjit Ahluwalia, aged 33 at the time of the killing, was born in India into a middle class family. She completed an arts degree followed by a law course, when she came under pressure from her family to marry. The marriage was arranged with Deepak, who came from a family of Kenyan Asians.

After their marriage in Canada when Kiranjit was 24, the couple moved to Crawley in England in 1981. Both had jobs. Their two boys were born in July 1984 and January 1986.

From the start, their marriage was a violent one. Deepak was a big man and Kiranjit was only slight. She complained to her GP about her husband's violence. She told her doctor in October 1981 that she had been hit four times on the head with a telephone and thrown to the ground; that in September 1983, she was pushed whilst pregnant sustaining a bruised hand. The GP also gave evidence that Kiranjit had made several suicide attempts between 1983 and 1986.

In 1983, the Croydon County Court had granted her an injunction in the form of a restraining order, to stop the husband from hitting her, but the violence continued until 1986, when she obtained her second injunction from the court after her husband had held her throat and threatened her with a knife. She learnt in March 1989 that her husband was having an affair with a woman who worked with him at the Post Office.

On 8 May 1989, Deepak arrived home about 10.15 p.m. after seeing his girlfriend. Kiranjit tried to talk to him about their relationship, but he refused, indicating that it was over. He demanded money from her to pay a telephone bill and threatened to beat her if she did not give him £ 200 the next morning. He then threatened to burn Kiranjit's face with a hot iron if she did not leave him alone.

Kiranjit had bought some caustic soda and a can of petrol a few days earlier. At about 2.30 a.m. on 9 May 1989, she got up, went downstairs, poured about two pints of the petrol into a bucket – to make it easier to throw – lit a candle on the gas cooker and went upstairs, equipped with an oven glove for self-protection and a stick. She went to the husband's bedroom, threw in some petrol from the bucket, lit the stick from the candle and threw it into the room. She then went to dress her son.

The husband, now on fire, ran to immerse himself in the bath and then ran outside screaming, 'I'll kill you.' Neighbours found the door locked and saw Kiranjit standing calmly at a ground-floor window clutching her son. They shouted to her

to get out of the house, but she opened a window and said, 'I am waiting for my husband'. They made her hand the child out and later she emerged herself.

Fire officers extinguished the flames and found a bucket still smelling of petrol and the saucepan with caustic soda.

The husband died from severe burns on 15 May 1989 and Kiranjit Ahluwalia was charged with his murder.

At her trial at Lewes Crown Court, she gave no evidence and no medical evidence as to her mental state was adduced. Her case was that she had no intention either of killing her husband or of doing him really serious harm. She only wished to 'inflict some pain' on him. Her defence counsel, Mr Robertson QC, strongly relied on a note which she had written to her husband, begging him to come back to her. But the trial judge reminded the jury of the rules on provocation: '*Bear in mind it is a sudden and temporary loss of self-control for which you are looking, not a thought-out plan how to punish him for his wickedness.*'

On 7 December 1989, the jury found Ahluwalia guilty of murder. She was sentenced to life imprisonment by Leonard J. She appealed.

Ahluwalia's appeal took nearly three years when she sought to adduce fresh medical evidence to support a plea of diminished responsibility.

Her appeal was heard in September 1992; it rested on the misdirection of the jury on the issue of provocation. But Lord Taylor of Gosforth confirmed that the trial judge had correctly directed the jury regarding the *Duffy*-defence of provocation, regarding the 'sudden and temporary loss of self-control'.

However, her defence counsel Geoffrey Robertson QC successfully argued that her mental state at the time of the offence, as well as her physical characteristics, ought to have been taken into account by the trial jury. This meant that the original trial jury should have been directed when applying the 'reasonable person' test as having the same characteristics of the accused of being a 'battered woman' over a long time and that they too would have lost their self-control given similar circumstances. Therefore the accused should have been able to avail herself to the defence of provocation. Counsel argued further that the jury direction on the phrase 'sudden and temporary loss of self-control' (the *Duffy*-defence) may have led the jury to think provocation could not arise, unless the defendant's act followed immediately upon the acts or words which constituted the alleged provocation. A retrial was ordered.

Ahluwalia's retrial in 1992

At her retrial, Geoffrey Robertson QC adduced fresh medical evidence on the appellant's mental state and that she could not be held responsible for her actions at the time she doused her husband in petrol. He submitted that women who have been subjected frequently over a period to violent treatment may react to the final act or words by what he called a 'slow-burn' reaction rather than by an immediate loss of self-control.

Mr Robertson surmised that the appellant had been suffering from 'battered woman syndrome', stating that not only had the appellant suffered mental and physical violence, abuse and humiliation over some ten years but that the course of ill-treatment had affected her personality so as to produce a state of 'learnt helplessness'. Counsel linked these arguments to a temporary state of diminished responsibility – within the meaning of the *Homicide Act 1957* – when Ahluwalia committed the arson attack on her husband.

Kiranjit Ahluwalia's original conviction was quashed and she was found not guilty of murder by means of diminished responsibility.

When Kiranjit Ahluwalia was finally freed on appeal in 1992, her case changed the face of British justice and the fate of other women, such as Sarah Thornton² and Emma Humphreys³ who were also successfully freed in 1992, following the Ahluwalia ruling (see Smartt and Kury, 2007).

In February 2003, Kim Galbraith walked out of Cornton Vale prison in Scotland, after serving four years for shooting her husband Ian dead at their home in Furnace, Argyll in 1999. Her release marked a victory for the 'Easterhouse Women's Aid' campaign group, who had fought tirelessly like the Southall Black Sisters had fought on behalf of Kiranjit Ahluwalia, to have the women's murder conviction changed to one of culpable homicide on the grounds of diminished responsibility.

Exam Questions

- 1 Illustrate what is meant by deviance in relation to criminological literature.
- 2 Give a detailed definition of what constitutes a crime and give examples from legislation and common law.
- 3 What is meant by 'fear of crime'? Give examples from criminological literature and popular media sources.
- 4 What is the difference between recorded and reported crime? Give examples by using research statistics.
- 5 Explain and discuss the difficulty when applying the *Duffy* defence of provocation to women who stand trial for murder by referring to the case of *Ahluwalia*.

Further Resources

Tim Newburn's volumous yet lively *Criminology* (2007) serves as an excellent introduction to all current themes in criminology. Chapter 1, 'Understanding crime and criminology' serves as a comprehensive introduction to criminology for students who are either new or relatively new to the subject. The textbook covers all popular areas found in criminology and criminal justice, illustrated by graphics, photographs and newspaper extracts.

Philip Smith and Kristin Natalier's *Understanding Criminal Justice* (2004) addresses the question we have raised at the start of this book: Why study the law and criminal justice? The authors provide an overview of the sociological approaches to law and criminology. The book focuses on how law, as both a jurisprudential concept and a set of specific rules, and the criminal justice system interact and affect each other and the broader social aspects. The book demonstrates the relevance of both empirical research and theoretical perspectives to critical and creative thinking whilst acquainting students with contemporary issues and debates: conceptual, policy related and topical. There is useful data from the UK, USA and Australia.

John Muncie and David Wilson's comprehensive edition of the *Student Handbook of Criminal Justice and Criminology* (2004) is a 'one-stop shop' for the study of criminology and the criminal justice system. The Handbook discusses crime and

criminology in relation to the media, race, Islam, gender and politics and considers all the relevant theoretical debates that dominate criminology.

David Downes and Paul Rock's comprehensive text *Understanding Deviance* (2003) provides the foundation to the sociology of crime and 'rule breaking' in society. It is an invaluable text for students studying criminology.

Geoffrey Robertson's *The Justice Game* (1999) is a good read, revealing the life of this celebrated barrister in some of the most newsworthy cases. The Australian born lawyer defended, *inter alia*, Cynthia Payne, Salman Rushdie, Kate Adie, Arthur Scargill and *Gay News*.

Notes

- 1 *Source*: e-circular sent to all lawyers and dedicated caseworkers in the Thames Valley CPS area on 24 July 2006: E CIRCULAR TV20060719: 'Getting Charging Back on Track: Violence and public order cases and Domestic Violence'.
- 2 *R v Thornton [1992]* 1 All ER 306, Court of Appeal.
- 3 *R v Humphreys [1995]* unreported, *The Times*, 7 July 1995.