



# **Criminal Justice**

An introduction to crime and  
the criminal justice system

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**Peter Joyce**

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# List of abbreviations

ABC	Acceptable Behaviour Contract
ACPO	Association of Chief Police Officers
APA	Association of Police Authorities
ASBO	Anti-Social Behaviour Order
BCS	British Crime Survey
BCU	Basic Command Unit
BVPI	Best Value Performance Indicator
CARATS	Counselling, Assessment, Referral, Advice and Throughcare Services
CCRC	Criminal Cases Review Commission
CCTV	Closed-Circuit Television
CDRP	Crime and Disorder Reduction Partnership
CHE	Community Home (with Education)
CJA	Commission for Judicial Appointments
CPM	Community Panel Member
CPS	Crown Prosecution Service
CRE	Commission for Racial Equality
CSO	Community Service Order
CSU	Community Safety Unit
DAT	Drug Action Team
DCA	Department for Constitutional Affairs
DHSS	Department of Health and Social Security
DLP	Discretionary Lifer Panel
DPP	Director of Public Prosecutions
ECP	Enhanced Community Punishment
GCHQ	Government Communications Headquarters
GIS	Geographic Information System
HDC	Home Detention Curfew
HMIC	Her Majesty's Inspectorate of Constabulary
ICCP	Intensive Change and Control Programme
IEP	Incentives and Earned Privileges Scheme
IP	Intensive Probation
IPCC	Independent Police Complaints Commission
ISM	Intensive Supervision and Monitoring
ISSP	Intensive Supervision and Surveillance Programme
IT	Intermediate Treatment
LAG	Legal Action Group

LSB	Legal Services Board
LSC	Legal Services Commission
LSP	Local Strategic Partnership
MACC	Mutual Aid Coordination Centre
MDT	Mandatory Drug Test
MPA	Metropolitan Police Authority
MPS	Metropolitan Police Service
NACRO	National Association for the Care and Resettlement of Offenders
NAFIS	National Automated Fingerprint Identification System
NCIS	National Criminal Intelligence Service
NCRS	National Crime Recording Standard
NCS	National Crime Squad
NIC	National Information Centre
NIM	National Intelligence Model
NOMS	National Offender Management Service
NOMIS	National Offender Management Information System
NPIA	National Policing Improvement Agency
NPS	National Probation Service
NRC	National Reporting Centre
OASys	Offender Assessment System
OCJR	Office for Criminal Justice Reform
OLC	Office for Legal Complaints
OSS	Office for the Supervision of Solicitors
PAC	Public Accounts Committee
PACE	Police and Criminal Evidence Act 1984
PAT	Policy Action Team
PCA	Police Complaints Authority
PCB	Police Complaints Board
PCSO	Police Community Support Officer
PDR	Performance Development Review
PNC	Police National Computer
PND	Penalty Notice for Disorder
POA	Prison Officers' Association
POP	Problem-oriented Policing
PPAF	Policing Performance Assessment Framework
PRT	Prison Reform Trust
PSIA	Private Security Industry Authority
PSNI	Police Service of Northern Ireland
PSU	Police Standards Unit
PSU	Police Support Unit
QC	Queen's Counsel
RIC	Regional Intelligence Cell

SARA	Scanning, Analysis, Response and Assessment
SEARCH	Selection Entrance Assessment for Recruiting Constables Holistically
SEU	Social Exclusion Unit
SGC	Sentencing Guidelines Council
SIA	Security Industry Authority
SIS	Schengen Information System
SITO	Security Industry Training Organisation
SOCA	Serious Organised Crime Agency
SOTP	Sex Offender Treatment Programme
STOP	Straight Thinking on Probation programme
UKADCU	UK Anti-Drug Coordination Unit
VOM	Victim–Offender Mediation
VORP	Victim–Offender Reconciliation Program
YOI	Youth Offenders Institution
YOP	Youth Offender Panel
YOT	Youth Offending Team

# Table of cases

*Bebb v. Law Society* (1913) 264

This was a decision by the Court of Appeal to uphold the refusal of the Law Society to admit women as solicitors on the grounds they were not 'persons' as defined in the 1843 Solicitors Act. This ruling was set aside in 1919.

*Chief Constable of Bedfordshire v. Liversidge* [2002] 496

This case was concerned with discriminatory actions taken by one police officer against another. In this case the Court of Appeal ruled that a chief constable was not vicariously liable for issues of this nature.

*Enever v. The King* [1906] 251

This was an important statement of the autonomy of police officers. Here the court ruled that the origins of discretion are legal, based upon the fact that a constable's authority 'is original and not delegated, and is exercised at his own discretion by virtue of his office, and on no responsibility but his own'.

*Ezeh and Connors v. United Kingdom* (2002) 384

This case concerned the powers of prison governors to add to a prisoner's sentence for disciplinary reasons. The court ruled that in doing this, governors had to comply with Article 6 of the European Convention on Human Rights.

*Fisher v. Oldham Corporation* [1930] 250

This ruling concerned the relationship between a police officer and a Watch Committee. It upheld the concept of constabulary independence by arguing that in executing the office of constable according to the law, the decisions of a police officer could not be overruled by a Watch Committee.

*Osman v. The United Kingdom* (1998) 287

This was a ruling by the European Court of Human Rights in connection with the state's duty to protect its citizens. The court ruled that Article 2 of the European Convention on Human Rights required the authorities (most importantly the police service) to take preventive operational measures to protect an individual whose life was threatened by the criminal actions of another. This ruling thus constituted an important limitation of constabulary independence.

*R. v. Chief Constable of Devon and Cornwall, ex parte Central Electricity Generating Board* [1981] 250

This was a ruling regarding constabulary independence. It concerned the refusal of the Devon and Cornwall Police to remove protesters from the site of a potential nuclear power station. Here Lord Denning ruled that while he believed the police should have taken this action he would not order them to

do so as this matter was a policy decision by the chief constable with which he felt the court should not interfere.

*R. v. Connor and Mirza* (2004) **240**

This case concerned the secrecy of jury deliberations. Here the House of Lords ruled that jury deliberations should remain secret after a verdict had been given and that not even an Appeal judge could inquire into jury deliberations.

*R v. Metropolitan Police Commissioner ex parte Blackburn* (1968) and

*R. Metropolitan Police Commissioner ex parte Blackburn* (1973) **250**

These two cases were concerned with constabulary independence and especially in connection with law enforcement. In the first of these judgements (which related to the failure to prosecute for gaming offences), Lord Denning stated that the responsibility for law enforcement rested on the chief constable who could not be told how to act by ministers or police authorities. In the second (which concerned the enforcement of the 1959 Obscene Publications Act) Lord Denning re-affirmed the principle of constabulary discretion in prosecution matters).

*R. v. Police Complaints Board, ex parte Madden* (1983) **212**

This case arose in connection with police misbehaviour towards a black 17-year-old youth. The Police Complaints Board declined to press for disciplinary charges to be brought against the errant police officers on the grounds that as the DPP had considered prosecuting these officers for a criminal offence it would constitute double jeopardy to latterly insist that a disciplinary charge should be brought using the same evidence. Here the Appeal Court queried this definition of double jeopardy then used by the Police Complaints Board.

*R. v. Ribbans, Duggan and Ridley* (1994) **484**

This case was concerned with the sentencing power of the courts in connection with racially motivated crimes of violence. Here Lord Chief Justice Taylor ruled that although the law did not then contain any specific offence of racial violence, judges could exercise their discretion and award an increased sentence in cases where a racial motive had been proven.

*Shaw v. DPP* (1962) **309**

This was an example of the ability of judges to effectively act as law-makers. Here Lord Simmonds proclaimed the existence of the common law offence of 'conspiracy to corrupt public morals' in the 'Ladies' Directory' case.



# Preface

The book provides an account of the operations of the criminal justice system in England and Wales, devoting particular attention to reforms introduced by Conservative and Labour governments after 1979. It anticipates little or no prior knowledge of the subject area, and seeks to provide an introductory text for those commencing their studies in the disciplines of criminology, politics, public sector studies and law for whom crime, law and order and the criminal justice system form important areas of study. For this reason the book includes a considerable amount of factual material which is designed to form the basis of more detailed and evaluative studies at later stages of study. The book will also be of interest to general readers and practitioners in the criminal justice system.

Each chapter contains some questions that are designed both to test the reader's understanding of the subject area and to encourage further investigation, perhaps drawing upon contemporary issues discussed in newspapers and journals. Each chapter also includes a date chart that is designed to highlight the main issues that have been raised and identifies some of the more specialised literature that can be consulted to obtain a more detailed understanding of the subject areas.

Chapters 1 and 2 provide the context for an examination of the criminal justice system, discussing the various explanations which have been put forward to explain why crime occurs, how it can be measured and what might be done to prevent it. Chapter 2 further considers the contemporary importance attached to community safety.

Chapters 3–8 are concerned with the role, functions and working practices of the main agencies that operate within the criminal justice system. Chapter 3 evaluates the methods that have evolved to deliver policing and analyses the reasons for changes that have been made to its structure and organisation. These have created a more centralised service since 1945, and resulted in some police responsibilities being delivered by private bodies. Chapter 4 examines changes to the control and accountability of the police service, analysing the key changes introduced by Conservative governments between 1979 and 1997 and by Labour governments after 1997.

Chapters 5 and 6 provide an account of the operations of the legal system. Chapter 5 discusses the workings of the prosecution system. It investigates the functioning of agencies that include the Crown Prosecution Service and the Criminal Cases Review Commission and the rationale for proposals to reform important aspects of the prosecution service such as trial by jury. Chapter 5 also examines the extent to which gender bias operates in the prosecution process and analyses the importance of discretion to its workings.

Chapter 6 focuses on the role of the judiciary. It examines the structure of the courts and the legal profession, discusses the role performed by judges in the judicial process and considers contemporary issues affecting the appointment of judges.

Chapters 7 and 8 are concerned with the punishment of offenders. Chapter 7 examines the concept of punishment and the diverse aims that punishment may serve. Significant attention is devoted to restorative justice which has been introduced into the juvenile justice system but which has the potential for adoption throughout the criminal justice process. It also evaluates sociological approaches to punishment that seek to explain why societies introduce changes to the methods that they employ. The final section of this chapter considers sentencing policy in contemporary England and Wales.

Chapter 8 focuses on the role of prisons. It examines the purpose of prisons and in particular assesses the problems that such institutions face in seeking to secure the rehabilitation of offenders. The contemporary significance of community-based penalties is also discussed, and the changing role performed by the Probation Service is examined. This chapter also discusses the rationale and implications of merging the prison and probation services into a unified correctional service.

Chapter 9 deals with the topic of juvenile justice, seeking to highlight the tensions inherent in this system between the welfare of juveniles and the punishment of those who offend. This chapter analyses in detail the proposals put forward by the 1997 Labour government to respond to juvenile crime (particularly the introduction of Youth Offending Teams and Youth Offender Panels and the policies which have been put forward to tackle its social causes).

Chapter 10 tackles a key issue affecting the operations of the entire criminal justice system, that of racial discrimination. This chapter concentrates on the background to the reforms put forward by Sir William Macpherson in his 1999 report, and the progress that has subsequently been made to implement them.

This book has explored a number of issues related to contemporary criminal justice policy and the operations of the agencies within the criminal justice process. The final chapter identifies a number of key themes that have been discussed in the book.

The book includes a brief section that is headed 'Keeping up to date'. This contains information on a number of organisations that play an important role in formulating or implementing criminal justice policy. Readers are encouraged to consult these organisations in order to keep abreast of the changes that are constantly being made to the delivery of criminal justice policy.

The idea for this book originated in connection with a course I have taught for some years in Criminal Justice Policy at Manchester Metropolitan University. I would like to record my appreciation to the students who have taken this course and also to my colleagues in the Criminology team with whom I have worked – Sandra Walklate (who now occupies the Eleanor Rathbone Chair of Sociology at Liverpool University), Helen Jones, Dan Ellingworth, Wendy Laverick, Jo Massey, Eileen Berrington, Graham Smyth, Ron Wardale and John Houghton.

I would also like to record my appreciation to my publisher, Brian Willan, for his constant support during the production of this work and also to the two reviewers of the manuscript (Rob Mawby at the University of Central England and the other who was anonymous). Both made detailed and helpful suggestions that have considerably improved the content of the book. All errors and omissions that remain are, of course, my responsibility.

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# The causes of crime and deviancy

There is no universally accepted explanation of why people carry out criminal acts, and as a result there are many different theories. This chapter seeks to analyse the main perspectives that have been adopted within criminology to explain the causes of crime and deviant behaviour.

In particular it will:

- discuss the key features associated with classicist criminology and identify the reforms associated with this approach;
- distinguish between classicist and positivist approaches to the study of crime: a more detailed consideration of the theories and theorists associated with positivism will be considered in the following sections dealing with biological, psychological and sociological explanations of crime;
- consider the wide range of biological explanations for crime dating from the findings of Cesare Lombroso in the late nineteenth century to more recent attempts to identify the existence of a criminal gene;
- examine psychological explanations for crime and deviance, particularly focusing on the contributions made by Sigmund Freud and Hans Eysenck;
- evaluate a wide range of sociological theories related to the causes of crime and deviance which seek to locate the causes of crime and deviance in the social environment in which it occurs;
- analyse the approaches associated with theories which place the operations of the state and the power structure underpinning it at the forefront of explanations for behaviour that is depicted as criminal: these approaches include new deviancy, Marxist, left idealist, left realist and critical criminologies;
- discuss conservative and new right opinions concerning the occurrence of crime;
- identify the key contributions made by feminist criminologies to the study of crime and deviance.

## Classicism

Classicism developed out of the Enlightenment movement of late eighteenth-century Europe. Its political expression was liberalism that viewed society as a contract voluntarily entered into by those who were party to it rather than being a structure handed down by God. Government emerged as

the result of a rational choice by those who subsequently accorded their consent to its operations, and this belief ensured that the rights of the individual were prominent concerns of liberal and classicist thinking. Crime was viewed as an act that infringed the legal code whose rationale was to safeguard the interests of those who were party to the social contract, especially the preservation of their personal safety and privately owned property. In such a contractual society, the equality of all citizens before the law and the presumption of the innocence of a person accused of criminal wrongdoing were viewed as cardinal principles to safeguard individual rights and liberties. The state was entitled to intervene in the lives of its citizens only when this would promote the interests of the majority.

A key exponent of classicist criminology was Cesare Beccaria, who put forward several views concerning crime and how the state should respond to it (Beccaria, 1764). These included the following:

- *Crime was an act undertaken by a rational being.* Individuals possessed free will and the decision to commit crime was viewed as the consequence of a logical thought process in which a person calculated the benefits to be derived from a criminal action compared to the personal costs it might involve. Classicists assumed that rational beings sought to maximise their pleasure and avoid inflicting pain on themselves. Accordingly, they advocated measures that guaranteed that crime would inevitably result in sanctions.
- *Crime required a uniform and consistent response.* Classicists argued that the most appropriate solution to crime was a clearly defined and consistently applied legal code and a criminal justice system that was predictable (and also swift) in its operations. This would ensure that potential criminals were aware of the inevitable personal cost of committing crime. In the United Kingdom, uniformity was promoted by giving central government an important role in the criminal justice system that it discharged through the process of inspection.
- *Discretion was to be avoided.* The emphasis on a uniform and consistent approach to crime inevitably rejected the exercise of discretion by professionals such as magistrates and judges. Beccaria argued that punishments laid down in law should never be exceeded and that the role of judges was to apply, but never to interpret, the law (or what a judge might subjectively view as the spirit of a law).
- *Punishments should fit the crime.* The harm which a particular criminal action did to society was the classicist yardstick by which they judged the appropriateness of punishments. Classicism focused on the act and not the person who carried it out, thus intent was deemed irrelevant. It was further argued that the degree of punishment to be inflicted on a wrongdoer should be no more than what was required to outweigh any advantage which the criminal action might bring.
- *Deterrence.* The main aim of state intervention against crime was to deter persons from committing wrongdoings rather than to punish them after they had transgressed.

In Britain, Jeremy Bentham was a leading classicist criminologist. The reforms with which he and his followers were identified included the following:



- *Reform of the penal code.* Classicists were opposed to the contemporary penal code in Britain which provided the death penalty for a very wide range of offences. They sought to adjust penalties to reflect the seriousness of the crime in the belief that the application of the criminal law was frequently disregarded because the penalties it prescribed were seen as unreasonable. The Criminal Law Commissioners (who were appointed in 1833) sought to limit the use of judicial discretion in sentencing: although their Draft Codes were not enacted, Parliament did remove the death penalty from a considerable number of offences in the early decades of the nineteenth century (Thomas, 2003: 52).
- *Police reform.* This entailed the abolition of the historic 'parish constable' system of policing which had been rendered ineffective by urbanisation following the agricultural and industrial revolutions. Towns were viewed as havens of crime and disorder, and classicists sought to introduce a more efficient and standardised policing system to increase the likelihood that those who broke the law would be apprehended.

These two reforms were underpinned by the principle of general deterrence: the belief that the certainty of arrest and subsequent conviction would enable citizens to make informed decisions not to offend. However, classicists accepted that some human beings failed to make these rational choices, so they sought to bring about the reform of the individual through the use of prisons in which those who committed crime would be encouraged to avoid such actions in the future through the development of rational thought processes. Accordingly, prison reform was also a major interest of classicist criminologists, emphasising the utilitarian belief that punishment was not an end in itself but the means to an end.

### Prison reform

Classicists viewed prisons as institutions where convicted prisoners could learn to make rational choices. The way in which this was to be achieved was based upon Bentham's 'pleasure-pain' principle whereby rewards became associated with conformity and sanctions (in the form of severe prison conditions) were linked with rebellion. The harsh environment within prisons was intended to act as machines which would 'grind rogues honest' by encouraging inmates to transform themselves into rational beings who were capable of performing useful tasks in developing capitalist society. Thus work and reflection were key aspects of the prison environment.

Surveillance played an important role in bringing about personal transformation. The possibility that an inmate's every action was being observed by prison guards was designed to bring about a transformation in their attitudes and behaviour. The 'internalisation' of controls affecting their behaviour resulted in the development of self-discipline that would transform them into conforming individuals able to perform a useful role in society upon release.

This approach was compatible with the view subsequently expressed that the power of prisons was the power to exert discipline over inmates in order to secure social conformity through subjugation (Foucault, 1977).