

PROBLEMS OF TRADITIONAL CRIMINOLOGY

sociological study of crime and delinquency. This comparison illustrates both the peculiar difficulties involved in the social scientific analysis of crime and also some of the ways in which the social sciences have tried to justify their claims to scientific status.

Criminology is an unusual discipline. It is the only human science which expressly takes as its subject matter a social and political problem. All the other disciplines take behaviour in general as their subject matter and select out a given level for intensive investigation. Criminology does not focus on one level of behaviour but nevertheless attempts to provide explanations of particular forms of behaviour, namely, criminal actions; as its subject matter is limited to highly particular forms of socially defined behaviour (crime), its theories and its methods are forced into the position of having to apply every level of analysis (chemical, physiological, psychological and sociological) to the phenomena which it is trying to understand. There are many problems which stem from this approach and which make the validity of criminological explanations difficult to accept. Because criminologists are often aware of the difficulties of validating their claims to provide explanations, they have to develop a rationale and justification for their activities; such a rationale has to be more than simply the interest in the drama of crime which they share with many other members of society. The criminological rationale is provided by the fact that crime in industrial societies is defined as a serious social and political problem, and the hope is that analysis of this social problem by criminologists could lead to more effective ways of dealing with it. However, the way that this rationale has been interpreted in traditional criminology raises crucial questions about its pretensions to certain kinds of objectivity and about its viability as an independent discipline. In this chapter, the

PROBLEMS OF TRADITIONAL CRIMINOLOGY

most fundamental of the analytical problems which face criminology are discussed briefly as a prolegomenon to the presentation of an alternative sociological perspective for the analysis of crime.

From a sociological perspective the short history of criminology has been a history of failure, and it is a failure to which sociologists themselves have made a considerable contribution. An understanding of this failure requires a critique of the kinds of questions asked by criminologists, the ways in which they try to answer them and the assumptions upon which criminology rests. Criminology, like other scientific disciplines, makes claims to objectivity, and yet it differs in one crucial respect from the other sciences: it is probably the only discipline whose subject matter is defined not by its own intrinsic qualities but by society at large and by those groups with authority in particular.

The scientist, whether natural or social, normally has the freedom to create and define his own terms, such definitions in themselves limiting his field of study. His definitions may undergo constant change in a rapidly developing science, but the changes arise out of the scientist's theories and research and not by external fiat; certainly particular interest groups in society, such as industrial or governmental, do attempt to control the direction of scientific research, but they cannot define its limiting concepts. Thus, while the area of the scientist's research can always be viewed as the product of the interplay of a range of values (stemming from the scientist himself, the scientific community, industry and government), during the course of his research the scientist's questions arise from the interests of his particular discipline and the nature of the phenomena with which it is concerned. His choice of certain styles of theories, concepts and methods, which actually define the

PROBLEMS OF TRADITIONAL CRIMINOLOGY

limits of his studies, arises out of the concerns of the discipline and the criteria used within it to evaluate his work.

The basic difference between criminology and other scientific disciplines is that the criminologist has his subject matter defined for him by non-criminologists; other people place the limits on his discipline. Very simply, criminology is the study of crime and the criminal; however, the sorts of behaviour defined as crime and those individuals convicted as criminal emerge out of social processes quite independent of the activities of professional criminologists. Criminal behaviour is defined by the criminal law, and law is created through a range of elaborate social processes within the political and legal institutions of industrial societies. Similarly, it is through such institutions that we set up, maintain and sometimes change the penal institutions which deal with the people who are convicted of breaking the criminal law. The criminologist thus has his subject matter given him by the society through its formal definitions of illegal behaviours – crime – and its identification of some of the people who commit criminal acts – the convicted criminals.

A recognition that the creation of the criminal law in contemporary industrial societies is a process of political conflict and compromise and that the penal system is only able to select out a proportion of all those who break the law, reveals three facts which have important implications for the explicit goals of criminology. Firstly, it is immediately clear that the legal definition of what is criminal behaviour changes over time within any society (for example, the recent changes in this country in the law relating to homosexual behaviour); secondly, different societies have different definitions of what is criminal behaviour (for example, many forms of gambling and drug use which are quite legal in this country are criminal offences in the

PROBLEMS OF TRADITIONAL CRIMINOLOGY

United States); thirdly, societies' reactions to crime, expressed in their penal apparatus and the institutions which 'back-up' the law, change according to time and place (for example, the abolition of the death penalty or changes in the ways in which prisons are used). This temporal and cultural relativity in relation to the social definitions of and the responses to crime mean that there is no one behavioural entity which we can call crime; there is no behaviour which is always and everywhere criminal. This crucial fact lies at the basis of the present criticism of criminology and is central to the subsequent discussion of sociological perspectives on crime and delinquency. Crime and the criminal result from social definitions and social processes. The study of crime and the criminal therefore makes criminology a 'normative' discipline, that is, one which rests initially on the evaluation by non-criminologists of what 'the problem' is; its subject matter is defined by particular social values.

Criminologists prefer to reject the suggestion that their discipline is normative (see, for example, Mannheim, 1965, I, p. 13) by asserting that the objective study of norms is not in itself normative. However, it seems possible to demonstrate criminology's normative character by showing how far its acceptance of the legal and social definitions of crime and the criminal limits its objectivity and precludes its achievement of its stated goals of explanation.

If the criminologist has his subject matter defined for him through social processes unrelated to scientific analysis, how does this impinge on the questions which he asks and the answers which he obtains? The central concern of criminology has been and still is (Mannheim, 1965; Walker, 1967; S. and E. Glueck, 1964) to locate 'the causes of crime'. This stated aim is very often accompanied by explicit and implicit suggestions that once we have located

PROBLEMS OF TRADITIONAL CRIMINOLOGY

these 'causes' we can do something about 'the problem' in the form of 'treatment' or 'prevention' (Mannheim, 1965, I, p. 20; Walker, 1967, p. 17). Thus, complementary to the search for 'causes' in criminology has been an interest in the reform, rehabilitation, change and control of the criminal. For example, criminologists have been very much concerned with the problem of evaluating the different penal sentences; evaluation here refers to attempts to measure the success of penal sentences in reducing levels of recidivism or re-offending among convicted offenders (Glaser, 1964; Mannheim and Wilkins, 1955). The two major areas of theory and research in criminology, then, are crime causation and the 'treatment' of offenders, the aims being to find 'the causes' and to improve 'treatment'.

Seen from a sociological perspective these aims and concerns of criminology are inappropriate because they are based both upon false assumptions about the nature of crime and the criminal and also upon implicit, and sometimes explicit, prescriptions about what society *should* do in relation to crime and delinquency; such value prescriptions are in themselves an immediate denial of criminologists' claims to scientific impartiality and objectivity. A brief examination of these assumptions may help to clarify the sociological case against traditional criminology and also suggest more appropriate perspectives for an analysis of crime and delinquency.

The key defining feature of criminology is that the criminal law is accepted as a given and becomes, therefore, the defining and limiting criterion of the discipline. In practice this has meant that criminologists have entirely ignored the study of the social processes by which the criminal law is made and changed, of the values on which it rests and their distribution in society, of the processes by which law is maintained and enforced and of the com-

PROBLEMS OF TRADITIONAL CRIMINOLOGY

plex relationship between societal reactions to crime in the shape of the penal system and the quantity and quality of crime in a society. Refusal to ask such questions about the criminal law and the values and processes on which it is based means that criminology rests upon an implicit acceptance of the legal 'status quo'; this is, in itself, a value position and a surrender of the criminologists' claim to objectivity. This unquestioning acceptance of the values upheld by the criminal law seriously limits the type of questions which criminologists ask and also the answers which they obtain to questions concerning, for example, 'the causes of crime'. In practice this has resulted in criminologists restricting their focus in the search for 'causes' almost entirely to individuals officially convicted of criminal offences. Perhaps this limited vision and the unwillingness to question the legal processes is unsurprising in view of the fact that criminologists have traditionally been drawn largely from two of the most conservative professional groups, the law and medicine, many of whose interests the law seems designed to protect. It is difficult for such groups to undertake disinterested research into some of the very values on which their social status rests. The basic premise of traditional criminology seems to have been, therefore, that it is possible to locate 'the causes of crime' by a study of the convicted criminal population.

The protagonists of this approach attempt to locate these 'causes' through the application, in principle, of natural scientific models of explanation and methods of measurement. The debate between proponents of the natural scientific approach (positivism or determinism) and the 'free will' approach (voluntarism or intentionalism) continues in sociology and concerns disagreements as to the most appropriate perspective and methods for the analysis of social life; in criminology, however, the argument seems

PROBLEMS OF TRADITIONAL CRIMINOLOGY

to have been decided, with very little debate, firmly in favour of positivism. In simple terms the criminological positivist argues that there are underlying causes for every criminal act and that his job is to define, find and measure them; he believes that there is an underlying pattern of events or factors historically antecedent to the criminal act which is its cause. This pattern of events is what the natural scientist calls the necessary and sufficient conditions for the occurrence of any given phenomenon. The criminologist is thus trying to find the laws according to which this pattern of conditions necessary and sufficient for criminal behaviour operates. In fact most of those criminologists who have applied this approach to criminal behaviour seem to have assumed that the acts of the convicted criminals could be explained by focusing on the convicted criminals alone and without reference to the encompassing social structure. The assumption is that 'the causes' can be found by an examination of convicted criminals' personal biographies and that the necessary and sufficient conditions for the commission of and conviction for a criminal act are located within these personal biographies.

If criminality is explained in terms of the biographies of individuals, a further assumption must be that convicted criminals are different in some ways not only from the few non-rule breakers in society but also from non-convicted criminals; this assumption is logically necessary, for if the constellation of biographical factors claimed to be causal can be found in some members of a non-criminal control group, they are obviously not sufficient and necessary for criminality. Assumptions about the differences between criminals and non-criminals have resulted in the predominance of certain kinds of methods in criminology; in particular, there has been much use of the comparison of samples of convicted delinquents or criminals with control

PROBLEMS OF TRADITIONAL CRIMINOLOGY

groups of non-delinquents matched on a limited range of variables (S. and E. Glueck, 1950). The attempt is then made through various methods to find factors which are present in the delinquent sample but absent in the officially non-delinquent control group; the differentiating factors, if found, are said to be 'the causal factors' in delinquency. No study to date has located a constellation of biographical factors which significantly distinguish convicted criminals from carefully matched non-criminals. In fact, the history of such investigations has been the successive abandonment of hypotheses which proposed that particular kinds of factors were effective discriminators (Vold, 1958); these hypotheses included the ideas that criminals were biologically inferior, mentally retarded, mentally ill, maternally deprived, economically deprived or a combination of all these plus others.

Implicit and occasionally explicit in the writings of criminologists who follow this tradition and methodology is the idea that if only such differences could be located, namely, 'the causes' of crime, then society could do something about the treatment or reformation of individual criminals; similarly, if we knew 'the causes', then we could begin to develop techniques for the prevention and elimination of crime. The kind of preventive actions or treatment programmes that would be developed would presumably be dependent on the sorts of factors said to differentiate criminals from non-criminals, but they would have one thing in common: they would all be particularistic in their restriction to a few factors. They would develop programmes aimed at 'correcting' the particular factors thought to generate delinquency or crime; if individual maladjustment were proposed as 'the cause' of delinquency, then individual counselling and psychotherapy would be the corollary treatment; if the poor physical and social

PROBLEMS OF TRADITIONAL CRIMINOLOGY

amenities of the community were seen as the delinquency generating forces then community projects aimed at the improvement of selected facilities would be seen as the answer; if the adolescent peer group were seen as the source of delinquency then perhaps new ways of working with youths would be proposed as ways of lowering delinquency rates. When such preventive and reformative programmes have been put into practice and carefully evaluated they have had no significant effects on community delinquency rates (McCord, 1959; Kobrin, 1959; and Miller, 1962).

The selectivity of treatment or preventive actions is the natural corollary of the highly selective and particularistic explanations of crime causation that have characterized criminology, and the failure of such remedial actions becomes understandable when viewed from the sociological perspective adopted here. Before outlining this alternative perspective, a brief review of the main stumbling blocks in the path of traditional criminological explanations is necessary.

The assumption that criminals are different from non-criminals fails to deal with the following problems. In the first place, by limiting its attention to the individuals found guilty by the courts, criminology becomes the study of the failed offender, that is, the offender who was unlucky enough to be caught and convicted. In fact, and even more narrowly, because of easy access for research, criminologists have largely concentrated on the failed offenders who have been placed in institutions. There are two basic problems of sampling here: firstly, is the convicted criminal population representative of all those committing criminal acts in a society; and secondly, is a sample of individuals drawn from selected penal institutions representative of all convicted criminals or even of all institutionalized

PROBLEMS OF TRADITIONAL CRIMINOLOGY

criminals? As the answers to both these questions are in the negative, it follows that the assertions or generalizations about causation proposed by those who ignore these questions are automatically invalidated. Such questions have either been completely ignored in criminology or they have received lip service only to be ignored in actual research practice.

A second issue related to the problem of sampling concerns those offenders who, although they are discovered by either the law enforcers or others such as employers, are dealt with informally, thereby escaping public identification and the official criminal label. Restriction of sampling and research to the officially convicted criminal thus falls a long way short of the statistically acceptable sampling criteria to which criminologists nominally subscribe.

A third barrier in the way of traditional approaches to explanation is encountered in their inability to deal with those forms of behaviour which are very similar to officially defined crime in terms of motives and consequences, but which are almost completely immune from the official detection, trial and labelling processes. Many occupations, for example, provide opportunities for a wide variety of property offences (Martin, 1962); employees often claim that systematic distortion of expense accounts or the removal of the organization's stationery for personal use are simply 'perks' that go with the job (Chapman, 1968). However, their occupational immunity means that only the smallest fraction of such offenders ever receive the official criminal label.

Finally, it is worth re-emphasizing that a recognition of the cultural and temporal relativity of the definition of crime and the reactions to crime calls into question the entire approach of traditional criminology and its assumptions and thus requires an abandonment of the search for univer-

PROBLEMS OF TRADITIONAL CRIMINOLOGY

sal causes of criminality. By creating new laws outlawing different forms of behaviour (for example, in relation to the use of motor vehicles in the twentieth century) and by removing or altering old laws (for example, in relation to abortion) society is constantly redefining what is criminal and at the same time actually creating and eliminating crime by definition; these continuous processes of redefinition require different approaches to the problems of explanation from those adopted by traditional criminology.

The result of ignoring considerations such as these has meant that criminology has been an adaptive or 'normative' discipline. To the extent that it accepts existing official definitions and practices as its defining criteria, it becomes little more than a covert tool of social policy and a conservative force in society. The situation is one in which contemporary criminologists make claims to the objectivity of an empirical science and then abrogate this claim by their willingness to undertake research into such social problems as the change of offenders, the evaluation of treatment methods or the development of typologies of treatment. Immediately criminologists undertake work of this kind, they move from the role of the impartial scientist and take up that of the political man; for example, in undertaking an investigation into the relative efficacy of imprisonment and probation for certain types of offenders, the criminologist, by his very willingness to carry out the project, is implicitly accepting that prison or probation are in themselves useful or appropriate for certain individuals convicted by the courts. Any research into the problems of changing offenders or preventing crime requires an implicit acceptance of both changing the individual as a value in itself and also the value of changing him or her in the particular direction required by the society at that point in time. Such an acceptance is a political act, for it rests on both an

PROBLEMS OF TRADITIONAL CRIMINOLOGY

agreement with the desirability of changing individuals and a satisfaction with the penal processes which sift out those who eventually receive the official stamp of criminality. In effect this kind of researcher says: 'those individuals sifted out by the penal system as criminals should be changed in some way, for their own good or for the good of society, and I can help to find the most effective form of change'. Acceptance of the need for change, the direction of change and the criteria for evaluating effectiveness of the processes of change all rest on values which are ultimately political in character; they are political because they reflect beliefs about how the society ought to be run and about the kinds of people society ought to contain. It must be pointed out that this is not to denigrate this sort of research in itself but rather to demonstrate its spurious claims to certain kinds of objectivity and impartiality; insofar as the criminologist undertaking this kind of research recognizes its implicit prescriptive character and hence his own part in the creation of social and penal policy, the criticism is redundant. In fact the extent of a society's willingness to undertake this kind of evaluative research may be taken as an index of its acceptance of the value of a limited rationality in social policy. Such an acceptance marks a radical break with traditional approaches to innovation in social policy in which we have acted first and thought afterwards; these issues are discussed in more detail in the last chapter.

A final problem which must be raised concerns the concept of legal responsibility. The legal systems of industrial societies are based on the concept of individual responsibility; after a series of complex legal procedures, accused individuals are found to be either guilty or not guilty of acts legally defined as criminal. Embodied in the concept of the 'guilty mind' are the ideas that the individual knew that

what he was doing (or not doing) was against the law and that he acted with intent. He chose to behave in a certain way knowing it to be wrong. The law itself allows that responsibility can be lessened by a range of mitigating circumstances (for example, when the victim is found to have severely provoked the attacker); this may result either in the individual being found guilty of a lesser crime, as when the person charged with murder, is found guilty of manslaughter or, at the court's discretion, in his simply being given a less severe sentence. There are, of course, a very small number of 'absolute liability' offences in which the concept of the 'guilty mind' is redundant.

The proportion of convicted persons who are found to be mentally abnormal in some way and not therefore responsible in the conventional legal sense is miniscule. Walker (1965, p. 282) shows that in 1961 they formed 0.65 per cent of all adults found guilty by the courts in England and Wales; there is a range of special court orders used for dealing with such cases. Clearly, then, over 99 per cent of convicted adult offenders were found to be legally responsible for their illegal acts. Once the court has established guilt 'beyond all reasonable doubt', it then goes on to punish the convicted offenders, choosing from the range of sentences available to it.

The penal processes involved in deciding on criminal responsibility and attached punishments enshrine beliefs about human behaviour which are rarely articulated in our everyday transactions with others; however, such beliefs seem to be so fundamental in our society as to be implicit in much of our social behaviour. These beliefs which are 'taken-for-granted' in most situations (Schuetz, 1967) concern particularly the individual's ability to choose from among a variety of projects of action; thus, in the penal system, in holding an individual to be responsible for the

commission of an illegal act we are saying that he could have chosen otherwise, he could have chosen not to commit the act. The public and ritual nature of legal dramas in our society effectively institutionalizes and constantly reinforces social beliefs about free will and choice. By upholding this belief in the crucial area of illegal behaviour we are granted automatic licence to extend it to the rest of our social behaviour. Thus, for most people their common-sense understanding of their world includes implicit beliefs about choice and responsibility: a man 'chooses' a wife, an adolescent 'chooses' when to pack up one job and take another or a housewife 'chooses' one brand of soap in preference to another. Our common-sense understanding of the world tells us that choice operates at all levels from our most far-reaching to our most trivial decisions.

Unfortunately, this common-sense view of social action is in fundamental contradiction to much research done in criminology and sociology, and a major problem facing sociological explanation is how to reconcile the common-sense view of the world held by the subjects of sociological investigation with the determinism of much of their theorizing and research methods. A prime characteristic of most criminological theory and research has been its acceptance of natural scientific assumptions about causation; as pointed out earlier, the core assumption seems to be that a given criminal act is simply a product of antecedent conditions — the act is determined by the preceding underlying biographical conditions of the criminal. According to this perspective the criminologist's problem is to locate the pattern of background factors which determined the commission of the criminal act; such factors could be chemical, physical, psychological or social in character. But this notion of partial determinism conflicts with the concept of legal responsibility and choice; the dilemma is this: if any in-

PROBLEMS OF TRADITIONAL CRIMINOLOGY

individual's criminal act is determined by antecedent conditions, then how can the individual criminal be held responsible? Taken to its logical conclusion, the determinist position is a denial of the relevance of the legal and punishment process; it states that the individual had no choice but to commit the act in question. This is naïve or partial determinism because it omits to apply the same logic to the activities of the police, the judge, the lawyers and the criminological investigator himself; the complete determinist would argue that everybody's acts were determined – the judge's and the criminologist's as much as the criminal's. In this view society becomes rather like the first rehearsal of a play in which the stage is set, the parts are cast and the actors stumble more or less haltingly through their predetermined lines. Proponents of this perspective in the human sciences argue that the determinants of behaviour exist, that they can be located by getting as close as possible to the implementation of natural scientific methods of investigation and that the aim therefore of such a criminology is the prediction of criminality. By extension the proponents argue that once we have managed to predict the 'who', the 'when' and the 'where' of criminality, then we will be able to do something about it.

The persistence of the criminological determinists' basic belief that crime in general can be explained by the analysis of convicted offenders' biographies is not as surprising as may initially appear. While the other social sciences have had since their inception ongoing and heated philosophical debates about the appropriate theoretical perspectives and methodological styles to adopt in their analyses of the social world, there has been a complete dearth of this kind of discussion within criminology. The continuous questioning of its philosophical basis and the assumptions on which it rests, which has characterized

PROBLEMS OF TRADITIONAL CRIMINOLOGY

sociology, is completely absent from criminology, and one can look in vain through the academic criminological journals for any fundamental debate about the assumptions on which it rests. This absence of internal philosophical debate within criminology has contributed considerably to the persistence of naïve assumptions about causation and prevention; the absence of self-questioning also reinforces the view that criminology, in claiming scientific status, is laying a thin veneer of academic respectability over its implicit ideology.

The way that the positivist perspective has been applied in criminology and the results of its application suggest that it is based on mistaken and limiting assumptions about social behaviour in general and criminal behaviour in particular. The alternative perspective adopted here is based on different assumptions, has different aims, has different methods and has a different subject matter to those of traditional criminology. The approach is, on the one hand, more encompassing in that it moves away from the narrow focus on the individual convicted criminals to the broader issues of situations, social processes and social structures and, on the other hand, less imperialistic in its rejection of the search for universal causes of crime with its implicit prescriptions for treatment and prevention. The broad outlines of this alternative are presented in the next chapter.