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The Crime and Deviance Channel

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The Critique of Conventional Criminology

Crime, Deviance and Harm

Although the concept of a **postmodern criminology** is a matter of some debate it is clear that in recent times two distinct criminological trends have become apparent:

First, and possibly of more immediate significance, is the reinvention of "**conventional criminology**", where the focus is on criminal forms of deviance and the objective is to control crime, in a number of ways - from **situational crime prevention** initiatives, through **zero tolerance** forms of policing to policy initiatives based around the notion "**prison works**".

Bandyopadhyay (2012), for example, argues that although "The effect of imprisonment is complex, longer average sentences can significantly reduce crime" in relation to offences such as fraud or burglary, although the "prison effect" is more problematic in areas like theft and robbery. This "complex picture offers some support to the view that 'prison works' as an important way of reducing crime while warning that prison sentences can also be misapplied".

Secondly, a reinterpretation of the concept of deviance to focus on ideas about **social harm** - a position sometimes associated with the notion of **constitutive criminology**, a form that, it is sometimes argued, represents a newer form of postmodern criminology.

In order to understand this latter form of criminology it's useful to look at how it criticises conventional criminology for its "over-identification with the interests of social control agencies and its uncritical acceptance of legal definitions of crime".

Part One of this document, therefore, outlines the critique of conventional criminology, while **Part Two** develops concepts of deviance and social harm.

Which perspectives, writers or theories question the idea "crime is a quality of the act someone commits"?

Identify examples of how the same behaviour, at different times or in different cultures, is considered criminal / not criminal.



2. Criminology perpetuates the myth of crime

When sociologists talk about the "myth of crime" we need to be very clear about what this means: while "crime" occurs in all societies - people are murdered, things are stolen and so forth - crime is a "myth" in the sense that the meaning and significance of an act is always defined by the social context in which it takes place - something illustrated by the different interpretations surrounding the act of "killing someone"; an armed police officer shooting dead someone threatening them with gun is justifiable homicide; the same officer shooting dead their partner is murder.

Crime is a "myth", therefore, in the sense it only exists if people interpret behaviour as criminal / not criminal - which means concepts like "crime" and "criminal" are always **problematic**; always open to different interpretations. As **Hillyard and Tombs** argue, "There is still a belief within criminology that it is possible to explain why people commit 'crime' notwithstanding that 'crime' is a social construct".

"Crime", therefore, is not something fixed and unchanging - a constant variable in time and space; rather, it is fluid that continually changing in the light of different ideas about what is and is not "criminal".



Identify some of the agencies involved in the social construction of crime.

How does the idea crime is socially constructed challenge the "conventional criminological myth of crime".



3. 'Crime' excludes many serious harms

One aspect of the distinction between crime and deviance is that we tend to think of the former as involving the most serious forms of deviance. There is a tendency to see "crime" and "deviance" as being separate parts of a "sliding scale of seriousness", with low-level deviance at one end and high-level crime (such as murder) at the other. This idea is questionable for two main reasons:

Firstly, the vast majority of behaviours labelled as crimes in our society are relatively minor and cause little or no harm, alarm, loss or hardship to their victims.

Secondly, a range of seriously harmful deviant behaviours - by **governments** (such as human rights abuses), **corporations** (such as environmental and financial harms) and **individuals** (such as domestic assaults or data theft) are generally not considered or treated particularly seriously by the criminal justice system. These behaviours are, however, arguably more harmful to the vast majority - particularly those "already disadvantaged and powerless" - than more-conventional forms of criminalised behaviour.

The argument here, particularly in relation to **corporate** and **state crime**, is that "a focus on crime not only deflects attention from other more socially pressing harms; in many respects it positively excludes them", an idea illustrated by deaths at work. **Slapper** (2007) notes that, on average, around 1,000 people in the UK are killed each year "in commercially-related circumstances", as compared with an average of around 700 officially-defined murders. The majority of work deaths are prosecuted under **Health and Safety legislation**, where penalties are more lenient and involve fines rather than prison. In terms of work-related deaths, over the past 40 years 34 companies have been prosecuted for manslaughter (not murder) and, of these, only 7 were convicted.

In terms of **harm** there is little or no distinction between work-related deaths and murder since the outcome is the same - someone died. However, in terms of **crime** the distinction is more clear-cut; some behaviours, especially those of corporations, are treated very differently by the criminal law - and to understand why we need to consider how the concept of crime is socially constructed.

If crime was redefined in terms of harm, what kind of harmful, but not currently criminal, behaviours might become crimes?

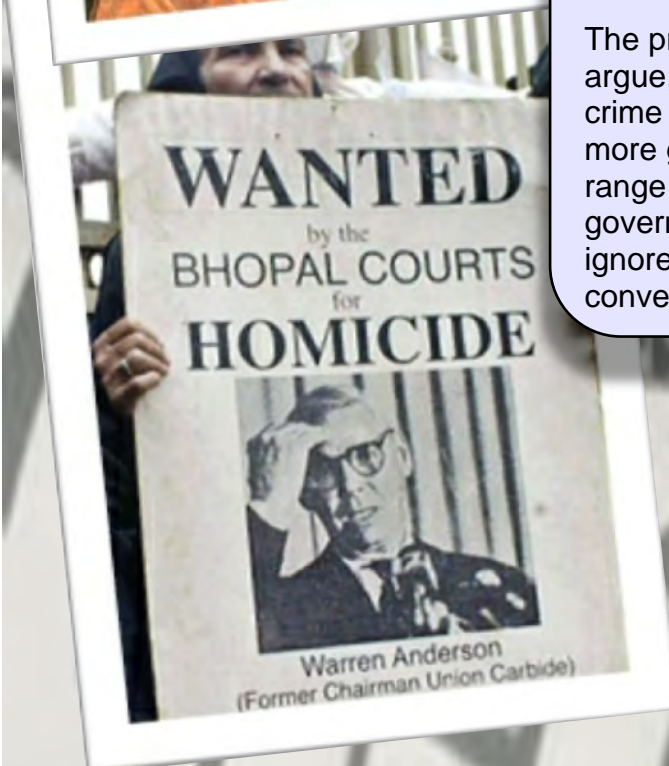
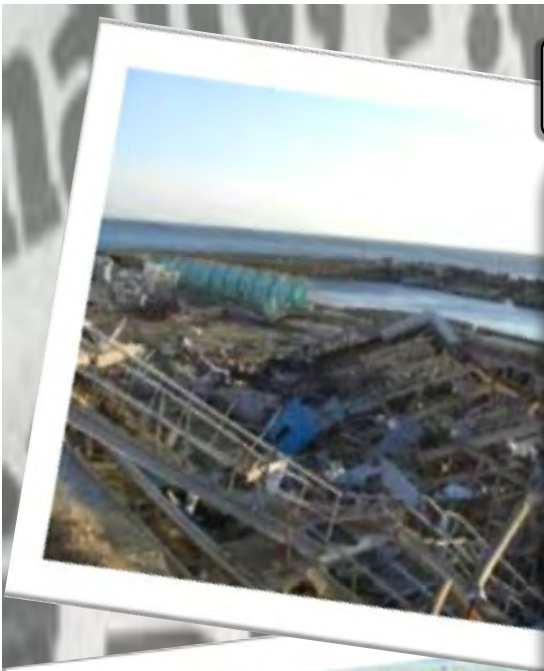
Similarly, what kinds of behaviour and practices that are currently criminalised might be decriminalised?



4. Constructing 'crimes'

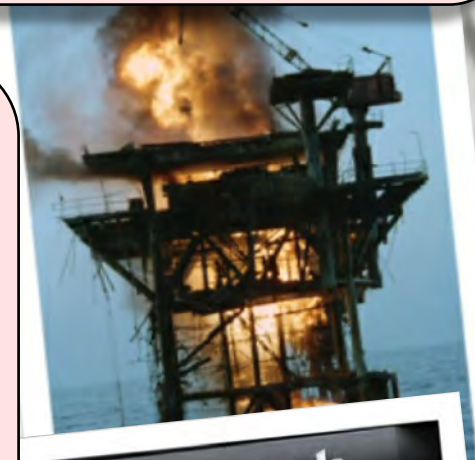
Conventional criminological analyses are based, for **Hillyard and Tombs**, on the principle of ***mens rea*** ("the guilty mind"). This holds that for an act to be considered criminal there must be some **intent** on the part of the perpetrator to "cause harm" (to "permanently deprive" in the case of something like theft or an intention to kill in the case of murder). In some ways this idea is useful since it allows us to separate something like murder from accidental death, but in others it **blurs the boundaries** by individualising the concept of crime; deaths at work, for example, are treated as "accidents" rather than "murder" since it is very difficult, if not impossible, to establish a clear intent on the part of the senior management of a corporation to intentionally cause the death of one of their workers - even though their disregard for Health and Safety legislation may have directly contributed to the death (on the basis that if safety procedures had been followed the death would not have occurred).

The problem, as **Hillyard and Tombs** argue, is that thinking specifically about crime and criminal **intent**, as opposed to more general notions of **harm**, a wide range of **collective harms** (corporate, governmental and individual) are either ignored or treated inadequately by conventional criminology.



Suggest examples of "collective harms" not currently treated as crimes in our society.

Suggest arguments for and against the idea of seeing crime in terms of "individual intent"



5. Criminalisation and punishment inflict pain

The main objective, for **Hillyard and Tombs**, of the criminalisation process is to inflict varying degrees of punishment and pain (both mental and physical) on convicted individuals, mainly through the imprisonment process. Although prison has variously had additional objectives, such as rehabilitation or deterrence, these are seen as, at best, subsidiary to the primary objective.

The problem, they argue, is that simple notions of punishment and pain have a range of undesirable individual and wider consequences that contribute to a cycle of offending and reoffending; as they argue, "these processes create **wider social harms** which may bear little relationship to the original offence and pain caused; they may lead to loss of a job, a home, family life and ostracism by society". In addition, the notion of prison as a "solution" to the "problem" of crime prevents the development of other, more effective, responses to crime.

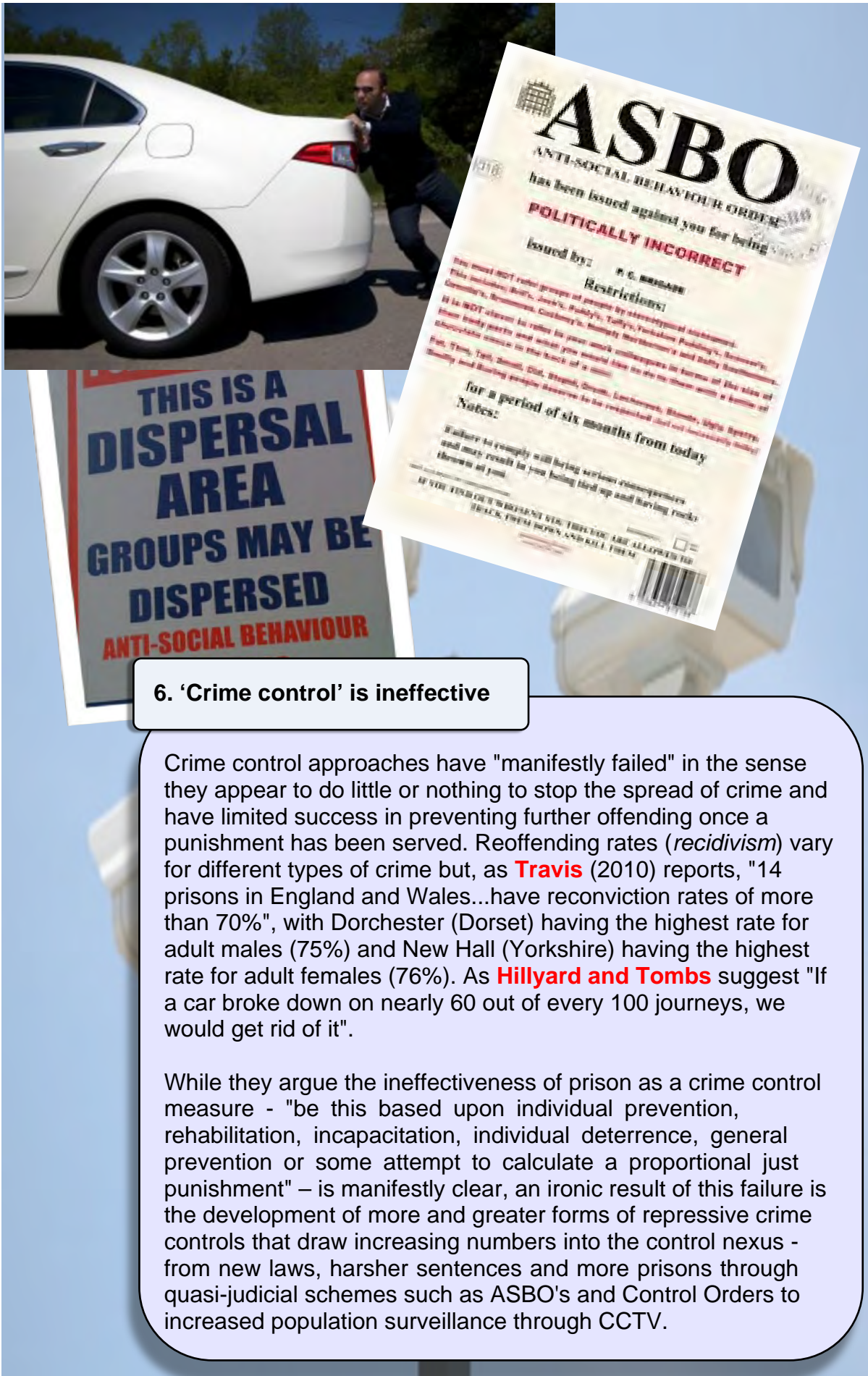
While conventional criminology sees prison as central to dealing with crime, harm theorists argue imprisonment is itself part of the problem - it contributes directly to the cycle of reoffending and addresses only the perpetrator; crime victims get little or nothing from imprisonment. For this reason, while some notion of punishment may be incorporated into harm approaches, punishment and pain are not, *per se*, central features.



Suggest arguments in favour of retributive (punishing offenders) justice.

Suggest arguments against the notion of retributive justice





6. 'Crime control' is ineffective

Crime control approaches have "manifestly failed" in the sense they appear to do little or nothing to stop the spread of crime and have limited success in preventing further offending once a punishment has been served. Reoffending rates (*recidivism*) vary for different types of crime but, as **Travis** (2010) reports, "14 prisons in England and Wales...have reconviction rates of more than 70%", with Dorchester (Dorset) having the highest rate for adult males (75%) and New Hall (Yorkshire) having the highest rate for adult females (76%). As **Hillyard and Tombs** suggest "If a car broke down on nearly 60 out of every 100 journeys, we would get rid of it".

While they argue the ineffectiveness of prison as a crime control measure - "be this based upon individual prevention, rehabilitation, incapacitation, individual deterrence, general prevention or some attempt to calculate a proportional just punishment" – is manifestly clear, an ironic result of this failure is the development of more and greater forms of repressive crime controls that draw increasing numbers into the control nexus - from new laws, harsher sentences and more prisons through quasi-judicial schemes such as ASBO's and Control Orders to increased population surveillance through CCTV.

Suggest two reasons why conventional crime control policies have “manifestly failed”

Briefly explain why the “manifest failure” of conventional crime control policies may lead to the development of more-repressive forms of crime control.



7. 'Crime' gives legitimacy to the expansion of crime control

The failure of conventional crime prevention policies has not resulted in a questioning of their basic assumptions about crime control; rather, it has led to an "expansion of the crime control industry", whereby "more and more peoples' livelihoods are dependent on crime and its control" - from police officers and prison wardens, through professionals such as psychologists and social workers, to low-level surveillance operatives who monitor populations through CCTV.

While the conventional argument is that "more criminals" requires more investment in crime control, the radical argument is the reverse; more investment - from governments through private corporations - creates the need for more criminals to justify the investment, which in turn creates a self-fulfilling prophecy of crime; more prisons require more criminals.

In America, for example, the increase in "private prisons" (institutions created and run by private companies but funded by the State) has created a situation in which "crime pays" for private companies; the more people imprisoned (and America has one of the highest rates in the world), the greater their income. The irony here is that private investment in crime pays off only if more and more people are criminalised and imprisoned.

In this respect the increasing "investment in crime" (it currently costs around £40,000 per year to keep an individual imprisoned in the UK) creates its own rationale, and self-justification, for more and greater forms of criminalisation. As **Henry and Milovanovic** (1996) put it when arguing for a redefinition of crime in terms of harm, "conventional crime control efforts fuel the engine of crime".

Suggest two ways "conventional crime control efforts fuel the engine of crime".

Briefly explain how conventional concepts of 'rime' gives "legitimacy to the expansion of crime control".



***Tough on crime,
tough on the causes of crime***

8. 'Crime' serves to maintain power relations

Hillyard and Tombs suggest four ways conventional definitions of crime contribute to the maintenance of power relationships and imbalances in contemporary societies.

1. The criminal law not only focuses on "individual acts and behaviours" but also disproportionately on low-level "street crimes" mainly committed by the poor, powerless and dispossessed. It fails to address "**collective harms**" perpetuated by the rich and the powerful, from individuals through corporations to governments. This reflects conventional definitions of crime and criminal discourses in our society.

2. By focusing crime and crime control on individuals conventional criminology ignores the deep-seated social and economic structures and practices "such as poverty, social deprivation and the growing inequalities between rich and poor, which lead to harmful events".

3. Increasing investment in crime and the rapid development of "the crime control industry" has created "a powerful force in its own right" that has "a vested interest in defining events as crime" and maintaining conventional crime control discourses - something from which conventional criminology has benefited "by its alignment with the interests of the powerful".

Fourthly, the notion that justice is synonymous with retribution (in the form of "painful punishments") is a deep-rooted discourse in our society - one repeatedly mobilised by politicians and the media to justify increasing crime control and expenditure. No politician, it could be argued, has ever lost support by arguing for more prisons.

Suggest two ways conventional criminology has benefited "by its alignment with the interests of the powerful".

Explain how the "crime control industry" has "a vested interest" in maintaining conventional crime control discourses.



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