CHAPTER 1

THE MEANING OF CRIMINAL LAW

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> [C]riminal law is the most important area of the law—given that it is in this forum that the community imposes its harshest measures against other individuals.[1]

1.1 Defining crime

At the beginning of the study of criminal law stand the questions 'What is crime?' and—just as importantly—'What is not?' How does one know what crime is? Who decides what it is? What makes crime different from other conduct?

Consider, for example, the following definitions of crime, which can be found in widely used criminal law textbooks. According to Michael Allen, '[a] crime may be defined as an act (or omission or state of affairs) which contravenes the law and which may be followed by prosecution in criminal proceedings with the attendant consequence, following conviction, of punishment.'[2] The *Australian Law Dictionary* defines crime as 'an activity that the state prohibits by law and punishes.'[3] A similar concept of crime and criminal law can be found in Eric Colvin and John McKechnie's *Criminal Law in Queensland & Western Australia*: 'Criminal law involves the use of penal sanctions to enforce the prohibitions which the state imposes on conduct. Conduct constitutes a criminal offence when it has been so defined by the law.'[4] Colvin and McKechnie go on to cite the case *Proprietary Articles Trade Association v AG (Canada)* [1931] AC 310 at 324, in which Lord Atkin held that: 'The criminal quality of an act cannot be ascertained by intuition; nor can it be discovered by reference to any standard but one: Is the act prohibited with penal consequences?'[5]

In contrast, Louis Waller and Bob Williams provide a very different approach:

> Normally the combination of two factors is to be found in the decision to treat a certain class of conduct as criminal. The first is what may be termed the publicness of the conduct. Normally, an act will only be labelled as a crime if it is thought to be more than an offence against one or more individuals. It must be injurious to the public in general. …
>
> The second element is that of moral wrongdoing. For conduct to warrant classification as criminal, it must involve moral wrongdoing. …
>
> Of course, not every transaction that can be considered morally wrong or injurious to the public interest is treated by our law as crime.[6]

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1 Mirko Bagaric, 'The High Court on Crime in 2016: Outcomes and Jurisprudence' (2017) 41 *Criminal Law Journal* 7, 7.

2 Michael Allen, *Criminal Law* (14th edn, 2017) 1; cf Andrew P Simester et al, *Simester and Sullivan's Criminal Law* (6th edn, 2016) 1; Glanville Williams, *Textbook of Criminal Law* (2nd edn, 1983) 27.

3 Trischa Mann (ed), *Australian Law Dictionary* (2010) 152.

4 Eric Colvin & John McKechnie, *Criminal Law in Queensland and Western Australia* (7th edn, 2015) 3–4 [1.2].

5 Cf Michael Eburn et al, *Hayes & Eburn Criminal Law and Procedure in New South Wales* (4th edn, 2014) 1–2 [1.2]–[1.3]; David Ormerod & Karl Laird, *Smith and Hogan's Criminal Law* (14th edn, 2015) 12–14.

6 Louis Waller & Charles R Williams, *Criminal Law* (11th edn, 2009) 4–5 [1.3]–[1.5]; cf Ormerod & Laird, *Smith and Hogan's Criminal Law* (14th edn, 2015) 5, 6: 'Crimes are generally acts which have a particularly harmful effect on the public and do more than interfere with merely private rights. […] Crimes, then, are wrongs which the judges have held, or Parliament has enacted, to be sufficiently injurious to the public to warrant the application of criminal procedure to deal with them.'

The law may also treat transactions as crimes that are neither morally wrong nor injurious to the public interest. Richard Card et al observe that '[t]he spheres of social morals and the criminal law are co-extensive up to a point, but many of the rules enforced by criminal law have nothing to do with social morality, and many rules of social morality are not enforced by criminal law'.[7]

In determining what crime is, two different approaches can be identified:

1. Determining crime by the (moral) quality/outlook of the conduct. This approach defines crime by reference to the wrongful quality inherent in the conduct. Seen this way, conduct is criminal when it is intrinsically wrong. Such crimes are sometimes referred to as *mala in se* 'because they are wrong in themselves, that is because they are immoral'.[8]
2. Determining crime by the (legal) status of the conduct. This approach defines crime by reference to legal norms (case law, legislation, and other legal principles). Crimes of this type are sometimes referred to as *mala prohibita* because 'we might say they are wrong by virtue of being declared wrong rather than by any immorality intrinsic to them'.[9] Here, the power of the sovereign (the state, the King, parliament, etc) to identify and punish conduct as 'criminal' is the defining and unifying characteristic of crime. Thus crime is whatever the legislators (or courts) at a particular time have decided to make punishable as a crime.

FURTHER READING

Anthony et al, *Waller & Williams Criminal Law* (12th edn, 2013) 4–5 [1.2]; Bronitt & McSherry, *Principles of Criminal Law* (4th edn, 2017) 6–11 [1.20]; Colvin & McKechnie, *Criminal Law in Queensland and Western Australia* (7th edn, 2015) 3–5 [1.2]–[1.5]; Eburn et al, *Hayes & Eburn Criminal Law and Procedure in New South Wales* (4th edn, 2014) 1–9 [1.1]–[1.24]; Morrison, 'What is Crime? Contrasting Definitions and Perspectives', in Hale et al (eds), *Criminology* (2005) 3–16; White et al, *Crime & Criminology* (6th edn, 2017) 4–10.

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1.1.1 Moral wrongness

Many concepts and definitions of crime make reference to the moral outlook of conduct. Thus it could be argued that the criminal law seeks to protect moral values and punish those that infringe upon them.

According to Simon Bronitt and Bernadette McSherry,

> [m]orality may be conceived either in religious or secular terms. In legal systems where religious and secular law is aligned—for example in jurisdictions applying Islamic or Shariah law—religious morality has legal force. In common law systems, the Christian religion (more specifically the canons of the Church of England) has exerted an influence on secular law through the ecclesiastical jurisdiction by exporting into the criminal law

7 Richard Card et al, *Criminal Law* (16th edn, 2004) [1.68].

8 William Wilson, *Central Issues in Criminal Theory* (2002) 18; cf Eric Colvin & John McKechnie, *Criminal Law in Queensland and Western Australia* (7th edn, 2015) 4–5 [1.3]; George Fletcher, *The Grammar of Criminal Law, Volume 1: Foundations* (2007) 29–32.

9 Wilson, *Central Issues in Criminal Theory* (2002) 18; see further, Andrew P Simester & Andreas von Hirsch, *Crimes Harms, and Wrongs* (2011) 24–29.

offences against God, such as perjury, blasphemy, sodomy and swearing and cursing, and the (now abolished) procedural defences of 'benefit of clergy' and marital rape immunity.[10]

The following examples from the current laws of Massachusetts, The Philippines, and Fiji illustrate how religion and morals can quite clearly influence the criminal law:

> Chapter 272, s 18 *General Laws of Massachusetts*: Fornication
>
> Whoever commits fornication shall be punished by imprisonment for not more than three months or by a fine of not more than thirty dollars.
>
> Art 202 *Penal Code 1932* (Philippines): Vagrants and prostitutes
>
> The following are vagrants:
>
> 1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling; …
>
> Any person found guilty of any offences covered by this article shall be punished by *arresto menor*[11] or a fine not exceeding 200 pesos …
>
> Art 232 *Penal Code* (Fiji): Witchcraft and Sorcery
>
> Any person who—
>
> (a) holds himself out as being able to cause by supernatural means, fear, annoyance or injury to another person in mind, person or property; or
> (b) pretends to exercise or who practises, whether on an isolated occasion or otherwise, witchcraft or sorcery,
>
> shall be guilty of an offence and shall be liable on conviction to imprisonment for five years.

Offences such as fornication, vagrancy, and sorcery clearly reflect the moral or religious beliefs of a given society. Such 'moral offences' are not unique to traditionalist communities or to developing nations. Witchcraft and fortune-telling, for example, were offences in Queensland until 2000[12] and in Victoria until as recently as 2005.[13] And even today, the *Criminal Code* of Queensland (as well as the Codes of the Northern Territory, Tasmania, and Western Australia) classifies certain offences under the heading 'offences against morality' (chapter 22), which include, for example, offences such as 'bestiality',[14] or 'using the internet etc to procure children under 16'.[15]

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10 Simon Bronitt & Bernadette McSherry, *Principles of Criminal Law* (4th edn, 2010) 60–61 [1.205].

11 '*Arresto menor*' (minor arrest) is a 'light penalty' involving imprisonment between one month and one day to six months: Arts 25, 27 *Penal Code 1932* (Philippines). It also involves the 'suspension of the right to hold office and the right of suffrage during the term of the sentence': Art 44.

12 *Justice and Other Legislation (Miscellaneous Provisions) Act 2000* (Qld), No 58 of 2000.

13 Former s 13 *Vagrancy Act 1966* (Vic)—'Fortune telling and pretending to exercise witchcraft etc: Any person who pretends or professes to tell fortunes or uses any subtle craft means or device by palmistry or otherwise to defraud or impose on any other person or pretends to exercise or use any kind of witchcraft sorcery enchantment or conjuration or pretends from his skill or knowledge in any occult or crafty science to discover where or in what manner any goods or chattels stolen or lost may be found shall be guilty of an offence.' Section repealed by *Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005* (Vic).

14 Section 211 *Criminal Code* (Qld).

15 Section 218A *Criminal Code* (Qld).

The literature supporting the view that criminal law serves to enforce morals is significant and long-standing. For example, the English judge Lord Devlin argued that morality—that is, Christian morality—is inextricably linked with the law and that morality is the organising principle for criminalisation.[16] According to Devlin, 'the law must base itself on Christian morals and to the limits of its ability enforce them […] for the compelling reason that without the help of Christian teaching the law will fail.'[17] Further, he argues that 'society may use the law to preserve morality in the same way as it uses it to safeguard anything else that is essential to its existence'.[18] Similarly, Gerald Abrahams submits that 'the notion of crime, properly understood, is a moral notion',[19] while John Finnis argues that the criminal law should be used to reinforce moral conceptions of right and wrong conduct.[20]

If crime is regarded purely in a religious context, then

> [c]rime is an action against the law of God, whether as revealed in the holy books, such as The Bible, Koran, or Torah or that we instinctively recognize as against God's will, irrespective of what the law books of a State say. If the State law books allow something that we know to be against God's will this does not change its status—it is still a crime.[21]

One of the problems associated with the notion of 'moral wrongness' is the fact that different cultures, different societies, and different times have different moral codes. 'What is thought right within one group may be utterly abhorrent to the members of another group and vice versa', notes James Rachels.[22] Viscount Simonds remarked in *Shaw v DPP* [1962] AC 220 at 268:

> The same act will not in all ages be regarded in the same way. The law must be related to the changing standards of life, not yielding to every shifting impulse of the popular will but having regard to fundamental assessment of human values and the purposes of society.

The legal philosopher Herbert LA Hart, a principal critic of Devlin's theory, was also doubtful that a common morality in fact existed in any one society.[23] The notion of a shared morality is questionable even within small communities and even in relation to such crimes as murder. The offence of murder, which appears to be universal in recognition and serves to uphold the most fundamental of moral principles, namely the right to live, is very controversial when it comes to the legality of suicide and euthanasia.[24]

But even if such a shared, 'positive' morality can be identified, using this morality as a standard to decide whether any conduct is right or wrong and ought to be punished is problematic and

16 Patrick Devlin, *The Enforcement of Morals* (1965).
17 Devlin, *The Enforcement of Morals* (1965) 25.
18 Devlin, *The Enforcement of Morals* (1965) 11.
19 Gerald Abrahams, *Morality and the Law* (1971) 87.
20 John Finnis, *Natural Law and Natural Rights* (1980).
21 Wayne Morrison, 'What is Crime? Contrasting Definitions and Perspectives', in Chris Hale et al (eds), *Criminology* (2005) 11.
22 James Rachels, *The Elements of Moral Philosophy* (3rd edn, 1999) 20.
23 HLA Hart, *Law, Liberty and Morality* (1963) 51.
24 See further, sections 7.1.2 and 7.1.3 below.

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dangerous. Morality can easily be used to discriminate against minorities and outsiders, as was done, for instance, in Nazi Germany to single out Jews, homosexuals, gypsies, and others. Or, to take another example:

> Suppose in 1975 a resident of South Africa was wondering whether his country's policy of apartheid—rigid racial segregation—is morally correct. All he has to do is ask whether the policy conforms to his society's moral code. If it does, there is nothing to worry about, at least from a moral point of view.[25]

Hart also questioned Devlin's notion that criminalising immoral acts is essential to preserve society from disintegration, and he found Devlin's proposition that 'a society is identical with its morality […] so that a change in its morality is tantamount to the destruction of society' unacceptable.[26]

Despite these concerns, morality has played a prominent role in the creation, evolution, and enforcement of the criminal law. Up until today, in the eyes of many, the law—and the criminal law in particular—serves to confirm and uphold shared values and morals of a society. Thus, perhaps,

> [t]he most important insight in relation to the role of morals in the criminal law is its symbolic and ideological effect […] [I]t is the symbolic and expressive function of criminal laws in upholding core moral values that are more important than their instrumental effects.[27]

Or, put another way,

> the criminal law's role in advancing society's moral concerns is simply the flip side of a proposition to which all can subscribe, namely that it functions to advance and secure the interests of its members, collective and individual, by punishing deviations from collectively agreed standards of behaviour.[28]

However, as seen in the criticism expressed by Hart and others, the enforcement of morals through the instrument of criminal law has the potential to discriminate, especially against minority groups. The image of a reasonably harmonious, uniform society bound by shared moral values and beliefs may work for isolated or isolationist communities, but this concept does not sit well with the realities of modern secular, pluralistic, and multicultural communities within which disagreement over the morality of issues such as abortion, euthanasia, pornography, prostitution, or drug use is widespread. James Rachels remarks:

> Since the time of Herodotus, enlightened observers have been accustomed to the idea that conceptions of right and wrong differ from culture to culture. If we assume that our ideas of right and wrong will be shared by all peoples at all times, we are merely naïve.[29]

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25 Rachels, *The Elements of Moral Philosophy* (3rd edn, 1999) 26.
26 Hart, *Law, Liberty and Morality* (1963) 51; cf Bernadette McSherry & Bronwyn Naylor, *Australian Criminal Laws* (2004) 20–21.
27 Bronitt & McSherry, *Principles of Criminal Law* (4th edn, 2017) 65 [1.210].
28 Wilson, *Central Issues in Criminal Theory* (2002) 18.
29 Rachels, *The Elements of Moral Philosophy* (3rd edn, 1999) 21.

Justice Harper in *Ferguson v Walkley* (2008) 17 VR 647 at 648 similarly noted:

> the majority should be diffident about imposing its view of morality on others. Behaviour, deemed unacceptable by some, may not trouble others at all. The danger therefore is that legislation which turns offensive conduct into a crime, and punishable accordingly, will be employed as a heavy-handed instrument for the imposition, by one segment of society on another, of the former's moral precepts.

It may instead be argued that in some liberal societies, morality has been replaced by tolerance:

> The moral code of our own society has no special status; it is merely one among many. […] It is mere arrogance for us to try to judge the conduct of other people. We should adopt an attitude of tolerance toward the practice of other cultures.[30]

Others, in contrast, may find that the only alternative to morality is immorality and anarchy. Thus, it is perhaps unsurprising that much of the 'moralistic debate' that emerged in the United Kingdom in the 1960s stemmed from proposals to decriminalise homosexuality and from arguments that 'the state has no place in the bedroom of the nation'.[31]

FURTHER READING

Anthony et al, *Waller & Williams Criminal Law* (12th edn, 2013) 8–10 [1.10]–[1.14]; Ashworth, *Principles of Criminal Law* (7th edn, 2013) 35–38; Bronitt & McSherry, *Principles of Criminal Law* (4th edn, 2017) 60–66 [1.205]–[1.215]; Carpenter & Hayes, 'Crimes against Morality', in Hayes & Prenzler (eds), *An Introduction to Crime* (2007) 151–163; Caruso et al, *South Australian Criminal Law* (2014) 8–13 [1.14]–[1.24]; Crofts & Burton, *The Criminal Codes* (6th edn, 2009) 33–35 [2.130]–[2.150]; Cutcheon, 'Morality and the Criminal Law: Reflections on Hart–Devlin' (2002) 47 *Criminal Law Quarterly* 15–38; Dine et al, *Cases & Materials on Criminal Law* (6th edn, 2011) 10–15; Fletcher, *The Grammar of Criminal Law, Volume 1: Foundations* (2007) 190–217; Ormerod & Laird, *Smith and Hogan's Criminal Law* (14th edn, 2015) 8–10.

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1.1.2 Legal positivism

The way in which Australian criminal law is generally conceptualised reflects a positivist approach to the law. In relation to criminal law, the positivist approach presumes that whatever is a crime can be objectively verified and is institutionally certain. 'Crime is dependent on the institutions and processes essential for its definition. Law is paramount among these. Could it be argued therefore that there is no crime without law?', asks Mark Findlay.[32]

As seen earlier in the definition by Allen, a positivist approach may define a crime as an act or omission prohibited and punishable by the criminal law, and this approach sees the criminal as the agent who carries out such an act or omission. This view is supported by Peter Gillies:

> Crime is, then, conduct which is recognised by the law (as made by the courts and legislatures) as being criminal. This conduct is criminal law when it is treated as criminal

30 Rachels, *The Elements of Moral Philosophy* (3rd edn, 1999) 23.

31 Pierre E Trudeau, then Minister of Justice of Canada, as cited in 'Pierre Elliott Trudeau 1919–2000' (2000) 44(1) *Criminal Law Quarterly* 4, 4; see further, Ormerod & Laird, *Smith and Hogan's Criminal Law* (14th edn, 2015) 8–9.

32 Mark Findlay, *Criminal Law: Problems in Context* (2nd edn, 2006) 19–20.

> by the machinery under the authority of the State. The definition of crime is, as has often been recognised, rather circular, but it is impossible to be more precise, for what is criminal at any given time does depend simply upon what is treated as being criminal by the State, acting through the machinery of justice.[33]

Section 2 of the *Criminal Code* (Qld) defines the term 'offence' in a similar fashion as 'an act or omission which renders the person […] liable to punishment'.

Andrew Simester et al identify 'three salient functions of criminal law':

> The first might be called criminalisation: the law sets out for citizens those things which must not be done. The second thing the law does is convict persons who are proved to have transgressed its prohibitions. Finally, it may punish those whom it convicts; and, more generally, the criminal law offers the prospect of punishment to reinforce its function of criminalisation.[34]

The concept and consequences of legal positivism have been the subject of controversial debate. A key problem is that these definitions of crime 'tell us that acts become criminal when the law says they are criminal, but shed little light on why or how.'[35] 'Why should some behaviour be criminalised, while other behaviour is permitted?' ask Simester et al.[36] The fact that some conduct is criminalised says nothing about the nature of that conduct:

> When Parliament enacts that a particular act shall become a crime or that an act which is now criminal shall cease to be so, the conduct does not change in nature in any respect other than that of legal classification. All its observable characteristics are precisely the same before as after the statute comes into force.[37]

According to Bernadette McSherry and Bronwyn Naylor, the positivist approach to crime and criminal law raises a number of problems:

> Some definitions fail to take into account differences in the nature and gravity of offences. […]
>
> If crime is an act or omission prohibited and punishable by the criminal law, then it is possible for a government to decree that any form of conduct is a crime. If a law is passed making it an offence to eat sandwiches at lunchtime, that will be a crime, despite its nonsensical nature. […]
>
> [I]f one accepts [the positivist] definition of crime, all that needs to be done is to abolish the relevant Criminal Code or Criminal Law Act […]
>
> If an act is prohibited, but the consequence is not punishment, but is some form of restitution or community service order, or a civil or administrative penalty, is it still a crime?

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33 Peter Gillies, *Criminal Law* (4th edn, 1997) 5.

34 Simester et al, *Simester and Sullivan's Criminal Law* (6th edn, 2016) 5–6.

35 Janet Ransley & Tim Prenzler, 'Defining Crime', in Hennessey Hayes & Tim Prenzler (eds), *An Introduction to Crime* (2007) 17, 18.

36 Simester et al, *Simester and Sullivan's Criminal Law* (6th edn, 2016) 7.

37 Ormerod & Laird, *Smith and Hogan's Criminal Law* (14th edn, 2015) 3–4.

> [The positivist] definition of crime fails to explain why certain types of behaviour are considered criminal and others are not. The positivist approach fixes clear boundaries to the criminal law and does not extend its analysis beyond case law and legislation.[38]

Simester et al observe that:

> The criminal law, then, is a powerful and condemnatory response by the State. It is also a bluntly coercive system, directed at controlling the behaviour of citizens. Criminalisation involves rules backed up by threats. In a sense, the criminal law is the means by which the State bullies citizens into complying with its injunctions.[39]

In his book *Outsiders*, Howard Becker argues that crime (or deviance):

> is created by society. […] Social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labelling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has successfully been applied; deviant behaviour is behaviour that people so label.[40]

According to scholars such as Becker and Emile Durkheim, crime is seen as normal in society because there is no extra social or natural dividing line between criminal activity and other—perhaps reprehensible, but more acceptable—activities.[41] 'In accordance with this reasoning', remarks Richard Sullivan,

> a heroin addict is no more abnormal or deviant than a nicotine addict. Through a historical accident, the act of possessing heroin has been declared criminal while the act of possessing the dangerous drug nicotine has not. The nature of the addictions is not so very different, in that, given our present knowledge, the heroin user is no less rational than the nicotine user. The law has simply driven up the price for the heroin addict's article of consumption, and, as a result, has often forced the addict to resort to illegitimate earnings.[42]

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FURTHER READING

Bronitt & McSherry, *Principles of Criminal Law* (4th edn, 2017) 11–14 [1.30]; Caruso et al, *South Australian Criminal Law* (2014) 7–8 [1.10]–[1.13]; McSherry & Naylor, *Australian Criminal Laws* (2004) 3–5.

38 McSherry & Naylor, *Australian Criminal Laws* (2004) 5.

39 Simester et al, *Simester and Sullivan's Criminal Law* (6th edn, 2017) 6.

40 Howard Becker, *Outsiders* (1963) 8–9; see further, Thomas J Bernard et al, *Vold's Theoretical Criminology* (6th edn, 2010) 227–231; Katherine Williams, *Textbook on Criminology* (6th edn, 2008) 420–433; Charis E Kubrin et al, *Researching Theories of Crime and Deviance* (2009) 198–217; Rob White et al, *Crime & Criminology* (6th edn, 2017) 95–112.

41 Emile Durkheim, *The Division of Labor in Society* (1964) 52. Cf Ransley & Prenzler, 'Defining Crime', in Hayes & Prenzler (eds), *An Introduction to Crime* (2007) 17, 18–19.

42 Richard Sullivan 'The Economics of Crime' (1973) 19 *Crime & Delinquency* 138, 140–141.

1.1.3 Observations

The previous sections have shown that there is no single or simplistic answer to the question 'What is crime?' Different individuals and different societies understand and define the term differently. Different disciplines (philosophy, law, criminology, sociology, politics, and so on) conceptualise crime differently. William Wilson observes that:

> No one explanation is capable of accounting for the large number of different criminal offences. We cannot say, for example, as once was fashionable, that the coercive norms of the criminal law necessarily embody collectively acknowledged moral standards. No doubt many of the rules of the criminal law do embody such standards. […] But the vast majority of criminal offences embody norms which are not direct reflections of underlying moral norms.[43]

Janet Ransley and Tim Prenzler note that:

> decisions about what behaviours should be criminalised change over time. This can occur because of:
>
> - social change (e.g. recognition of the rights of women led to the crime of rape in marriage);
> - techonological change (e.g. new crimes to do with computers);
> - evolving morality (e.g. the legalisation of homosexual acts); or
> - campaigns to update and reform criminal law (e.g. provisions to deal with new circumstances such as the spread of [HIV]).[44]

The definition, structure, and analysis of crime and criminal law warrant a high degree of suspicion and inquisitiveness. Throughout this book, readers are asked to approach the criminal law critically. Crime and criminal law are not things that are God-given or written in stone. They are subject to constant change. McSherry and Naylor remark:

> We accept that criminal laws are necessary to the proper functioning of society, but we do not have to unquestioningly accept the laws that do exist. …
>
> It is more realistic to think of crime as relative in both time and space and as being culturally defined. What is deemed criminal in one society may not be deemed criminal in another. New crimes may develop […] while others are taken out of legislation […]. Certain crimes and defences to them exist in some jurisdictions and not others.[45]

FURTHER READING

Bronitt & McSherry, *Principles of Criminal Law* (4th edn, 2017) 15–17 [1.40]; McSherry & Naylor, *Australian Criminal Laws* (2004) 3–4.

43 Wilson, *Central Issues in Criminal Theory* (2002) 17–18.

44 Ransley & Prenzler, 'Defining Crime', in Hayes & Prenzler (eds), *An Introduction to Crime* (2007) 17, 22.

45 McSherry & Naylor, *Australian Criminal Laws* (2004) 4–5.

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