

Current Criminal Law

SALLY RAMAGE®

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Criminal behaviour

Sally Ramage

Introduction

Everyone who has taken an introductory psychology course is familiar with the basic principles of operant conditioning described by B.F. Skinner (1938, 1953). Many have employed learning principles in their empirical study of delinquent and deviant behaviour. A critical feature of learning theory is the understanding of how organisms acquire new behaviour through interactions with their environment. Today cognitive behaviour therapy in correctional treatment settings is the evidence of that behaviour analytic approach to criminology.

Personality

In 1968, in his book *Personality and Assessment*, Walter Mischel issued a challenge to the conventional perspective on personality organization that viewed individual traits as relatively stable underlying characteristics with causal influences on behaviour. A key assumption of a traditional trait perspective on personality is that generalized traits lead people to behave consistently across diverse situations.

Moral conduct

Data from the classic Hartshorne and May (1928) study on moral conduct, in which thousands of children were exposed to diverse situations and settings in which they could lie, cheat, and steal. Hartshorne and May found that children's responses depended heavily on the exact features of the test situation, and that the more dissimilar the situations, the lower the correlations between their responses. The situational specificity of the children's behaviour is indicative of complex learned discriminations and casts doubt on the utility of a global trait such as "honesty" as an explanation for that behaviour. In their "cognitive-affective system theory of personality," Mischel and Shoda (1995) assert that what is stable about an individual's approach to the world is not a set of global traits that predispose behaviour across time and situations, but rather particular patterns of behaviour-situation contingencies. Their theory focuses on "if-then" statements about the individual that clearly relate that person's behaviour to particular environmental circumstances. Empirical support for meaningful and distinctive individual situation-behaviour relations comes from an observational study they and their colleagues conducted in a summer residential camp for children identified as having significant social adjustment problems, including aggressive behaviour (Shoda, Mischel, and Wright, 1994).

Self control

In recent years, self-control has been the dominant trait-like characteristic to be given causal priority in our thinking about criminal behaviour. Self-control is an excellent concept for thinking about the power of stimulus control because many of us are aware of how different our self-control can be across situations. To use an example, it is worth noting that some people who overuse alcohol do so only in the evenings and never during the workday, some only in social situations but never when alone, and some only when they go out of town to conferences. And lest we think that those who have been involved in crime must be those who lack self-control in every arena, it is important to observe that many who have committed serious offenses have also held steady jobs, getting themselves to work on time every day, and many have supported families. Many drug dealers do not use drugs because they know the negative consequences the drugs would have for them. The dependence of our behaviour on particular situations frequently makes us all appear to be walking contradictions. Yet, if we accept situational specificity of behaviour as a natural product of learning that is shaped by context, the supposed contradictions in self-control can be seen instead as examples of stimulus control that reflect complex learning environments.

Behaviour

What would it mean for criminologists to take seriously the situational specificity of individual behaviour? Most empirical research on situations has involved the event as the unit of analysis, with no link to individual histories or individual patterns of behaviour.

Studying individuals

To proceed with such an approach, we need to define situations. From the various situational perspectives on crime, there has not yet emerged a consensus as to how situations should be conceptualized. Noting the difficulty in generalizing from nominal situations, researchers stressed the importance of defining situations in terms of psychological features that may occur across many nominal situations and settings. In the summer camp study, they constructed interpersonal situations that could be characterized by two dimensions they believed to be psychologically salient for the children: whether an interaction was with an adult versus a peer and whether it was a positive or negative interaction. Thus, they looked for interpersonal situations in which peers either initiated positive contacts or teased, provoked or threatened, and situations in which adults praised, warned, or punished the child. An individual's behaviour would be considered situation ally clustered if his or her proportion of violence directed at strangers deviated substantially from that mean. Similarly, we could use the same approach to assess situational clustering with regard to location (for example, at home, school, work, bars, or on the street). Evidence of situational clustering could point to the situations serving as discriminative stimuli for violence for particular individuals.

Environment

In addition to requiring the study of situations linked to individuals, an appreciation of the situational specificity of behaviour would lead us to look for environmental consistencies in individual lives. If traits are assumed to predispose people to criminal behaviour and to be relatively stable across the life course, there is then a strong inclination to attribute observed stability in behaviour to the existence of such traits. We even find consistency in inconsistency by relying on the concept of heterotypic continuity, a term used to refer to different behavioural manifestations of an underlying trait. This concept is particularly useful when looking across broad age spans when behavioural repertoires are changing. Thus if we believe that very young children develop personality traits that will govern their adolescent or adult behaviour, we look for different, age appropriate behavioural manifestations of those traits at different stages of the life course.

Crime and criminality

Taking the alternative psychological perspective on personality advocated by Mischel and Shoda (1995) would recast the way we think about crime and criminality. Criminality is viewed as an underlying disposition that provides motivation to offend, and crime as the behaviour that results when opportunities (or situations) exist that allow that disposition to manifest itself. Briar and Piliavin (1965) many years ago wrote about "situationally induced motives to deviate." However, as Birkbeck and LaFree (1993: 130) have observed, "criminologists find it easier to conceive of situations as opportunities than as motivating factors." This observation accurately reflects the dominance of a traditional trait orientation in criminology. In contrast, if we take seriously behaviour-situation regularities as representing the basic structure of personality, then we would view dispositions as the inextricable linkage between situation and behaviour, and crime and criminality become inseparable.

Criminology

John Laub (2005) has proposed the life-course perspective as the new paradigm for criminology. The relatively recent ascendance of developmental and life-course approaches to the study of crime has significantly influenced our thinking about temporal stability and change. Shifting the methodological emphasis from cross-sectional to longitudinal data collection, these perspectives have highlighted the dynamic nature of criminal behaviour across the life course.

The life-course perspective has played a critical role in pointing to the possibility of long-term change in criminal behaviour.

Age is an important consideration in discerning broad patterns of behavioural change because role transitions fairly consistently associated with age are also linked to considerable situational change, and thus behavioural change follows for many individuals at about the same point in the life course. Understanding individual behaviour, however, also requires appreciation of the day-to-day situational control of behaviour that exists as an individual moves across various social contexts, not just appreciation of long-term changes occurring across the life span.

Through the current emphasis on concepts such as onset of crime and desistance from crime, the developmental and life-course perspectives still encourage a unitary view of crime that tends to draw attention away from its situational specificity.

Behavioural complexity

There needs to be an appreciation of the basic principles of stimulus control. People learn to navigate a complex social world with a set of learned discriminations that produce what may appear to be personality contradictions if one's perspective leads to an expectation of consistency. Great literature and drama often exploit these seeming contradictions in showing us the complexity of human nature. An alternative psychology of criminal behaviour comes from Walter Mischel and Jerome Kagan. In the conclusion of *Personality and Assessment*, Mischel (1968: 301) wrote:

'Global traits and states are excessively crude, gross units to adequately encompass the extraordinary complexity and subtlety of the discriminations that people constantly make. Traditional trait-state conceptions of man have depicted him as victimized by his infantile history, as possessed by unchanging rigid trait attributes, and as driven inexorably by unconscious irrational forces. This conceptualization of man, besides being philosophically unappetizing, is contradicted by massive experimental data.'

It behoves criminologists to take into account human complexity as we construct our theories of crime and delinquency.

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Community Treatment Order: Mental Health Act 2007

Sally Ramage

The 2007 Mental Health Act inserts into the 1983 Act (ss.17A–G) the Community Treatment Order (CTO), which will replace after-care under supervision. The CTO differs from the latter in that it carries a power of recall to hospital. CTOs are different from s.17 leave, which will remain appropriate in respect of short-term absences from hospital. Clinicians will at least have to consider a CTO if leave is to be granted for longer than seven days or indefinitely. In such circumstances, it is important, not only that they do so, but also that they can show that they did so. Under transitional provisions, patients under supervised discharge when the new provisions come into force could be placed on a CTO or discharged, detained or placed under guardianship. A patient's Responsible Clinician (RC) (who need not be a doctor) will be able to make a CTO in respect of a patient detained under s.3, but only if he or she does so in writing and has the support of an Approved Mental Health Practitioner (AMHP). The patient will have to comply with a treatment regime and certain conditions whilst living in the community. The criteria for a CTO are that the patient is detained under s.3; that it is necessary for his or her health or safety, or for the protection of other persons, that he or she receives treatment; that treatment can be provided outside of hospital, subject to the power of recall; and that it is necessary that the Responsible Clinician should have the power of recall. In determining whether the power of recall is "necessary", the RC must consider the risk of deterioration if the patient were not detained in hospital and refused or neglected to receive the medical treatment required for his/her mental disorder. This specifically involves considering the history of the mental disorder and any other relevant factors, which presumably includes any previous history of compliance with medication and medical advice, and the likely consequences of not receiving treatment. There is no threshold for the CTO, and one may be imposed upon a patient's discharge from his or her first admission under s.3 of the 1983 Act. The patient may, however, challenge the use of a CTO in the absence of a relevant history. The conditions applied to a CTO must be "*necessary or appropriate*" to ensure that the patient receives medical treatment; prevent risk of harm to his or her health or safety; or protect other persons.

All patients subject to a CTO will have to make themselves available for medical examination, including by a Second Opinion Appointed Doctor (SOAD). Recall is by notice in writing and takes immediate effect. A CTO can only be revoked with the agreement of an AMHP; otherwise it is as if the patient had remained in hospital throughout the period of the CTO. A CTO may be renewed after six months for an additional six-month period, and thereafter, for a year at a time. Although a CTO may specify that a patient receive certain treatment in the community that treatment cannot be given against the patient's wishes. A patient will be able to apply to a MHRT when a CTO is imposed upon him or her, and subsequently, when it is renewed or revoked. Upon revocation, the managers of a hospital will themselves have an obligation to refer the patient's case to the MHRT.

The changes in the definition of *mental disorder* mean that the conditions about which a Court has to be satisfied before making a Mental Health Act disposal are as a consequence also amended. The 2007 Act removes the right of the Courts to impose time limited Restriction Orders. In addition the power of the Crown Courts to impose a hospital and limitation direction (1983 Act, s.45A) is no longer restricted to those who fall within the legal category of psychopathic disorder. This is a direct result of the change in the definition of mental disorder referred to above. The 2007 Act includes a definition of "*medical treatment*" and states that any reference to medical treatment "*shall be*

construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations". It is to be noted however, that Practitioners are being asked to delay sectioning patients with serious mental health problems until the primary care trusts can establish who is responsible for paying for their treatment, the Mental Health Act Commission has discovered. The *Health Service Journal* reported that high bed-occupancy levels were to blame alongside the need to balance budgets. While patients await beds, they may be kept in custody by an approved social worker, put in a police cell, or they could just be in the community, according to an official. This latest practice has been criticised as being improper according to the Mental Health Commission's biennial report *Risks, Rights, Recovery*.

Vehicle Clamping Order under Vehicle Excise & Registration Act 1994

By Sally Ramage

A clamping order must not be made except in relation to a vehicle which is registered under the Vehicle Excise and Registration Act 1994 in P's name. The Court Act 2003 applies if a motor vehicle has been clamped under a clamping order, and at the end of the period specified in fines collection regulations; any part of the sum due is unpaid. The magistrates' court may order that the vehicle is to be sold or otherwise disposed of in accordance with those regulations, and any proceeds are to be applied in accordance with those regulations in discharging P's liability in respect of the sum due. applies if a motor vehicle has been clamped under a clamping order, and at the end of the period specified in fines collection regulations, any part of the sum due is unpaid. Clamping Order issued under the Courts Act 2003.

If a bailiff has visited you to enforce a warrant for an unpaid Magistrates Court Fine there are legal provisions concerning the bailiff showing you the actual Warrant. A bailiff must first check that the vehicle that he is intending to clamp, is the one identified in the Clamping Order. He cannot clamp a vehicle that is not in the name of the defaulter He must then clamp the vehicle identified before knocking at the door to inform the defaulter of the action carried out and to try to obtain payment of the outstanding amount. The Bailiff cannot clamp or immobilise a vehicle either displaying a valid Disabled Badge or, where there are "reasonable grounds to believe that the vehicle is used for the carriage of a disabled person". The owner of a car won £6,000 of damages against Drakes Group Ltd after they seized, and sold at public auction, his motor vehicle because of parking penalties incurred by the previous owner.

ROAD TRAFFIC LAW

Simon Cooper and Michael Ore

Second Edition

Blackstone's Practical Policing Series, Oxford University Press

ISBN 978-0-19-955975-6

Book Review by Sally Ramage

As the preface states, this book is a practical guide for those police officers in their daily business of enforcing traffic laws, addressing mainly the common problems and regularly encountered situations. It is not an encyclopaedia of road traffic law. The book is divided into twelve chapters and also contains five appendices. Section 170 of the Road Traffic Act defines what a 'reportable' accident is and chapter 2 deals excellently with this subject. Chapter 2 tells us that section 2 of the Road Traffic Act 1988 gives five parts to the offence of 'dangerous driving' namely: (1) A person who drives (2) a mechanically propelled vehicle (3) dangerously (4) on a road or other public place (5) is guilty of an offence. The very serious matters of causing death by inconsiderate driving, careless driving (Road Safety Act 2006, section 20) automatism, causing death while disqualified, unlicensed or uninsured (Road Safety Act 2006, section 21) are included in chapter 2. Causing death by careless driving can carry a five year prison sentence on indictment. The above offences are sometimes called 'vehicular homicide' and the matter has been much discussed, debated and consulted over. The very useful appendices in this book include a table of road traffic offences as per appendix 1, consisting of the law creating the offence, the general nature of the offence, the mode of prosecution, punishment, disqualification, endorsement on one's driving license and penalty points suffered.

Speeding

Speeding is a very common offence and this is covered in chapter 12. Today most speeding offences are caught on camera and they carry a fixed penalty. '*Both roads and individual vehicle types may be subject to speed restrictions*' the authors state. If a road has a system of street lighting with lamps not more than 200 yards apart, then, unless there are any contrary signs, it is a restricted road and it is subject to a 30 mile-per-hour speed limit. In some parts of the country, the police, for example in Staffordshire, offer an alternative to the fixed penalty procedure called a 'speed awareness scheme' where, rather than a fine, the offender is offered speed management skills, which, if accepted, means that the offender will not be fined nor will his driving licence show any penalty points. The course is not free however but costs £60 (the same amount as the fixed penalty fine) and costs 4 hours in time, but hopefully is more worthwhile than a fine. There are exceptions to a speed limit for vehicles used by the fire brigade, ambulance or for police purposes, if the observance of that provision will hinder the use of the vehicle for the purpose for which it is being used on that occasion (Road Safety Act 2006). Such exceptions do have limitations, however. The case of *Alan Armsden (executor of the estate of Rachael Cheesewright, deceased) v Kent Police* [2009] was one in which the police were found partly negligent in not using sirens when speeding. An accident with another car caused a death and the failure to use sirens had exacerbated the danger that there might be another car about to enter a road junction at the same time as the police car.

Stop and search' powers of the police

Of course police have 'stop and search' powers. The primary purpose of 'stop and search' powers is to enable officers to allay or confirm suspicions about individuals without exercising their power of

arrest. Before the search takes place the officer must inform the person (or the owner or person in charge of the vehicle that is to be searched) of his or her entitlement to a copy of the record of the search, including his entitlement to a record of the search if an application is made within 12 months, if it is wholly impracticable to make a record at the time. Reasonable suspicion can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person. Of course when stopped, inspection of documents as dealt with in Chapter 6, is essential for possible offences under section 165 of the Road Traffic Act 1988 and the driver may be asked to produce his certificate of the vehicle's insurance; and driving licence, and if not on their person, these documents must be produced within seven days at a police station, although the driver must give oral explanations. Today all traffic officers have access to the police national computer and can therefore check out oral explanations.

Conclusion

This book introduces the reader to the extent of the importance of road traffic law, a very complex subject. What is important to traffic police officers is the fact that many serious crimes have been solved as a result of a traffic stop or chance encounter with a police officer. For example, when a vehicle is stopped for ignoring a red light and it is discovered that the occupants have just completed a burglary or when a driver is pulled over because of an equipment violation and, through questioning, the police officer learns that the other occupant in the vehicle is a 'wanted person'. *Road Traffic Law* is essential reading for traffic users and the police. Getting it right is essential, not only because of the human implications but also the monetary implications. Road traffic law is a very lucrative topic of law for lawyers in respect of insurance claims. Finally, on a lighter note, the following tale may make one smile: On a lighter note, and as detailed in a motor insurance claim form: *"I was driving along on Christmas Eve, on the Cannock Chase Road, near Shrugborough Hall, the National Trust property, when two reindeers stepped onto the road right in front of my vehicle, thereby causing the dents at the front of my car..."*

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