



**CAMERA, ACTION:
CRIMINALISATION AND AUTHORITY IN PUBLIC SURVEILLANCE**

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I. Pre-amble

When I first discovered the workshop 'In Search of Authority, Rebellion and Action,' I was immediately drawn to the title. It seemed to sum up my research approach particularly aptly. Indeed, my concern, within the socio-criminological/gender studies project that I conceived, am conceiving, is to critique the (criminal) law on these bases. Exploring and examining the ways in which the law functions is something that I have been fascinated with since I embarked upon my first degree. As you will note from my current work, however, I have not pursued legal research within the strict remit of that discipline. Nevertheless, my focus remains the same: the practice and production of law, and, specifically, legality or illegality.

"Sociologists look at the social conditions of crime, psychiatrists and criminal anthropologists for its physical determinant. There are, however, interstitial areas where social and constitutional forces enter into combination... As a result they are neglected by sociologists and biologists alike, though playing a not inconsiderable part in the natural history of the delinquent," (von Hentig 1967 [1948]: Foreword).

II. Introductory comments and background

In considering methodological approaches to legal scholarship, one can begin to conceive of numerous possibilities. Indeed, identifying the potential for application of practices common within other disciplines and fields can be imagined as both viable and functional for legal research. Once this imagination takes place, although that law as a discrete discipline appears to have been tainted, made less pure, in effect it becomes more accessible. In fact, the law can be read, observed and investigated by researchers with interdisciplinary interests, bringing the law, its authority, regulation, governance itself, and associated human rebellion and action, to the forefront of research activity in many spheres. This is not only interesting, but important for improving and increasing our complementary knowledge and understanding of law and, of course, social life.

In this paper, I explore the use of qualitative social research methods (Bryman 2004, Denzin and Lincoln 1994, Foster 1996, Flick 1998, Emerson, Fretz et al. 2001, Gilbert 2001, Gold 1958, Hammersley, Atkinson 1995, Lofland 2006, Mann 1985, Mason 2002), specifically participant observation (Emerson, Fretz et al. 2001, Gold 1958, Lofland 2006, O'Reilly 2005), as applied to a socio-legal question relating to the criminal law, criminality. In particular, I focus upon the traditional inequality found among numbers of male versus female criminals (Miller 1983),¹ which is found, known and written about in both criminological and gender-oriented works (Kennedy 2005, Klein 2003 [1973], Pollak 1961 [c.1950], Smart 1976, Steffensmeier, Allan 1996, Worrall 1990).² Of course, sex, or gender, distinctions imply a feminist approach. Whilst I draw on gender literature and scholarship (Smart 1976, Simon, Landis 1991, Smith, Visser 1980, Cruikshank 1999, Smart 2003 [1990], Daly 2003 [1997]), and

¹ The author should like to note that whilst there are many sociological categories which affect (perceived) criminality and, indeed, often qualify how gender is relevant in this regard, the focus of the current paper is limited to gender.

² Also see recent statistics for the UK published by the Home Office (<http://www.homeoffice.gov.uk/crime-victims/crime-statistics/>), HM Prison Service (England and Wales) (<http://www.hmprisonservice.gov.uk/resourcecentre/>), Scottish Prison Service (<http://www.sps.gov.uk/default.aspx>), Northern Ireland Prison Service (<http://www.niprisonservice.gov.uk/>). Data can also be accessed from individual police forces (<http://www.police.uk/forces.htm>) and from court services. This is an internationally recognised phenomenon and similar statistics can be found from equivalent authorities' records across the globe.

am indeed influenced by these in some part, I should clarify that in my work I intend no gender bias, nor do I propose any action to repair or rectify disparity. The purpose of my work is, essentially, to prompt a new lens through which we can observe and analyse issues of criminological practices and to comment upon how these may relate to legal issues of criminal law, jurisprudence and, more pragmatically, policy and practice. Specifically, the object of this paper is to engage with subjectivity and authority as the causes of criminalisation, and not the criminal law itself.

As such, and not only metaphorically, the lens through which I present my observations and analysis is public (police) closed circuit television (CCTV) surveillance. I reflect on the use of qualitative methods for research within public (police) CCTV rooms and how these can be exercised in order to access the subjective, perhaps authoritative, nature of CCTV work (Wood 2005, Smith 2004, Smith 2007, Walby 2005). Moreover, I consider the ethnomethodological 'making sense of the world' (Garfinkel 1996, Garfinkel 1967) processes that CCTV operators employ and deploy, specifically their rebellions and (re)actions in working as crime processing agents (Goold 2004, Newburn, Hayman 2002, Norris, Moran et al. 1998, Plews 2002, Short, Ditton 1996). Essentially, I address their opportunities for social control and 'criminal' justice, in terms of what is seen, or selected; before the punishment, before the courtroom, indeed, before the crime (Lyon 2003, Paterson 2007, Shapland 1995, Welsh, Farrington 2003). Therefore, empirical, theoretical and philosophical discussions concentrate on the use of such surveillance in relation to it as facilitating and representing a hybrid view of society. Further considerations centre on CCTV regulation, governance on the parts of the observers, and, of course, on the parts of the observed, and the opportunity for individual and collective rebellion or action.

In essence, the principle underpinning this research is what potential for a paradox of partial productions of truth exists and could reveal about the criminal law (Goold 2004, Welsh, Farrington 2003, Parker 2000, Lyon 2001, Welsh, Farrington 2002, Gill, Turbin 1998). Specifically as applied to the reality of sex difference found between the 'criminal' among us, especially where women are considered 'victim' almost by default (Brown 1998, Jones 2005, Koskela 1999, Wesely, Gaardner 2004). Using sociological methodological - symbolic

interaction and social construction (Bourdieu 1989, Berger, Luckmann 1967, Garfinkel 1964, Goffman 1959, Goffman 1971) (and theoretical – deviance – (Becker 1963 [Ch.10, 1973], Copes, Williams 2007, Bourdieu 1984, Corcuff 2001, Downes, Rock 2003, Goffman 1956, Misztal 2001)) - frameworks, to engage in observations, analyses and critiques of impressions and perceptions of crime and criminals, and of individualised and selective criminal justice, 'ethnomethod', what can indeed be effected is accessed through those involved at this early stage of contact with criminal justice.³ Crucially, the use of alternative research frameworks, instead of content and discourse analyses in respect of policies, legislative proposals, discussions and successes/failures, legal decisions, *obiter dicta*, and so on, to approach legal problems is engaged with (Jupp, Davies et al. 2000). Essentially, the source is not 'the black letter law'.

In this paper, firstly, I explore my research methodology, including consideration of my epistemological background and framework: perspectives. I do so through considering various choices and decisions I have made, and the purposes they serve in realising knowledge about the law, in particular, jurisprudence in relation to the criminal law. This should provide some context for the more substantive and empirical discussions that follow. Indeed, secondly, I develop these ideas and illustrate my findings and discussion as they relate to the fieldwork conducted to date within an empirical setting. Finally, I offer some provisional and tentative conclusions upon the indictment my research has for both legal research and the law itself.

III. Rationale - Methodology

Through this section of the paper, I explore the use of social research methods, with some influence of gender scholarship, in relation to the specific 'problem' of how and why it seems

³ Symbolic interaction considers the self-society relationship and the interactions and communications of social actors (Mead 1934, 1938); social constructionism deals with social as opposed to biological explanations for social behaviour; deviance is used here as including deviation from social norms, particularly in terms of failure to observe the criminal law 'normally'. 'Ethnomethod' is a derivation of 'ethnomethodology', which approaches individual ways and means of representing how individuals and collectives make sense of the social world they are engaged in.

that women commit less crime than men. Essentially, I discuss the background to and methodology of my current (and continuing) research project, which, at least in my mind, provokes questions of how the criminal law, in particular, has been and can be read, interpreted and practised. In doing this, I deliver some concerns relevant to modern jurisprudence, and, also (despite my having implied that I am not seeking reform, rebellion, or action) touch on implications for both policy and practice.

1. Research justification

Historically, and contemporaneously, women have been seen to commit less crime than men (Pollak 1961 [c.1950], Smart 1976, Worrall 1990, Simon, Landis 1991, Boritch 1992, Walklate 2001, Lombroso, Ferrero 1895, Heidensohn 1996). At least, that is the common conception/misconception (Miller 1983, Feeley, Little 1991, Walker 2003, Forsyth, Foster 1993). Empirically, trends reveal that a relatively constant number of men have come into contact with the criminal justice system. Conversely, women, I assume depending upon their status within a given society, their economic, social, political, emotional, physical positions (which, of course, even vary across women) (Carlen 1988, Abelson 1989, James, Thornton 1980, Jordan-Zachery 2003), have sometimes been more or less criminal. That is to say that the ratio between men and women as criminals has fluctuated, but the actual numbers of men remain stable. Thus there is a ratio whereby women have always been less criminal than men. Less than criminal (Anderson 1976, Berrington and Honkatukia 2002, Corston 2007). As a student of gender, this is obviously of interest and concern; definitions of gender and gendering is what I spend the majority of my time (re)conceiving! Here, however, I focus more upon this revelation's indictment on law, its subjectivity and authority in determining how and what and where and why an activity might be deemed, and so treated (or mistreated) as, criminal. In particular, I consider subjectivity and authority as the causes of criminalisation and not, *per se*, the criminal law itself. Specifically that criminal causation rests with the individual who 'presides' over a situation, determining whether something is deemed criminal or not, rather than because it inherently is, or that all crimes, as crimes, are treated consistently.

Considering Packer's statement: "Crime is a socio-political artefact, not a natural phenomenon. We can have as much or as little crime as we please, depending on what we choose to count as criminal." (Packer 1968: 364) I am obliged to ask who 'we' is. Is it the parliament, the legislator? Is it, then, politically (small 'p') motivated? Or, is it the judge? Same question? The jury? And again, political? What about the police? Again, political? But, if we take a step even further back, we can delve a little deeper, broader: what about before all this contact with the 'real' criminal justice system? What happens there, then? Is there not authority and, to some degree, action before the punishment, before the courtroom, even before the crime? Who does this rest with, and are the approaches 'common' (Valverde, 2003)? What does this mean for the nature of crime, criminality and criminal justice? And women? As women and as criminals?

Despite having pursued a general degree in law, I have always felt more inquisitive than knowledgeable: I am a critical thinker. As such, I pose these questions. Although I had gained training in the application and interpretation of the law, its origin, purpose and, as such, philosophy, in discrete areas: tort, property, conveyancing, company, succession, crime, family, revenue; something troubled me about its, the law's, overarching command. Its lack of distinction among human qualities, (in)attention to individuals and (in)consideration of extra-legal notions of personhood, private and public, among society/ies, yet paradoxically the individual and almost arbitrary manner in which the system(s) through which the law(s) applies itself to those societies. This is a real and valid contradiction (Foucault 2003, Foucault 1991 [c.1975], Garland 2003 [1997], Harris 1997). Stop: there: did I say 'applies itself' (Lombroso and Ferrero 1895, Leo 1985, Lange 1931, Lombroso-Ferrero, Von-Borosini 1914, von Hentig 1967 [c.1948], Curtis 2008). What I ought to have said was 'is applied to'. This is truly the jurisprudential conundrum with which I am ultimately concerned. Legal/legislative application – how it is, how it ought to be (Harris 1997). Indeed, and as an aside, my post-structural, post-modernist critical theoretical position (if we are to apply labels to such concepts) implies that this is the stance I would take. Is the law what it ought to be? What ought it to be? How might this be realised? What is the vehicle of the criminal law? More importantly, who is driving?

Of course, I contradict myself somewhat, in suggesting that 'a law/laws' could be 'ideal' and universally applicable – but this is the difficulty that I intimate is inherent in all those areas, rules and practices we call 'law', as is the moral 'inherency' approach to criminality, the criminal law, in particular. Therefore, I neither seek reform, nor rebellion, nor action, *per se*. Hence I concentrate, in the main, on authority. Nevertheless, elements of those former three are relevant. As such, my intention is to consider the authority of the law, and of the application of the law, its accessibility and biases (Foucault 1991 [c.1975], Turkel 1990), through assessing methodological approaches to what I deem 'alternative' legal study, through sociology, legal study in, of and for itself, and our ability to develop knowledge and understanding of the law (and other disciplines) in doing so.

2. Deploying the research - employing methods

My research addresses this 'pre'- part of the process. Indeed, I opted to look at 'street level' and so-called 'criminality'. To observe the identification of criminals, the selection process, as it were. I believe that by accessing a population, a society, at this level, the actual practices of crime prevention, crime and crime detection can be seen at their roots. Not only that, but also that the 'working' definitions of crime, criminality and criminal might be ascertained. That these might be different from those represented within the legislation, unfamiliar to judges, and juries, and not known to, or, more importantly, not wanted by, the police. That, in reality, there are unaccounted for, un-quantified, 'others', who might, or might not include more women, equal numbers of women, even. Nonetheless, if not, these people could tell us something of, educate us in, the law and subjectivity.

In terms of selecting a means of, a field and, then, a site for conducting such research, and in light of the 'topical' nature of CCTV, 'Big Brother' (which I analyse as gender-significant), I considered that CCTV would offer a sort of hybrid view. In betwixt reality and pseudo-fantasy (the creation of scenes with clever camera tricks, characters introduced through inventive narratives (probably false, because the truth is unknown)), and actions depicted and seen by machinated quasi-eyes, at a distance, at a height, with super-human views and viewpoints,

those being devoid of audio, and only perceived through a mediated context: 'the gaze without eyes' (Lyon 1994, Koskela 2000). CCTV use and abuse provides an interesting example of criminal justice management within what tends to be (in the UK at least) non-police staffed, yet police-controlled or dependent (and designed) environments (Goold 2004, Paterson 2007, Neyland 2004, Brown 1995, Claire 2007). To reiterate: criminal justice before the punishment, before the courtroom, maybe before the crime?

Having conducted a pilot study of CCTV use in conjunction with store detectives/security guards at three retail sites (Shapland 1995, Gill, Turbin 1998, Loveday, Gill 2003), which unsurprisingly focused on the crime of (theft by) shoplifting, I had come to find that patterns of watching, looking, searching, strategies for detecting and tactics for preventing were noteworthy. CCTV operators had learned, or trained themselves in, the art of reading people and their actions, remotely (Smith 2007, Corsini 1959, Cash, Pruzinsky 1990, Bull, Green 1980, Broidy, Agnew 1997, Farrington 1986, Mocan, Tekin 2006, Murray 2003 [1990]). Managing crime and criminals. So too had they become cynical of the system proper in relation to the administration of criminal justice. They do the 'groundwork' for the more powerful agencies with precious little real acknowledgement. Of course, their work is only focused upon shoplifting – hardly the crime of the century? Victimless? Common? Unrepresentative of 'crime' itself; petty? Women's work? Maybe. But, their work tells us something of crime and of the law: that there is the potential for the paradox of partial truth, that selective criminal justice occurs frequently and consistently at the earliest stage of contact with the criminal justice system, and that the observation, analysis and challenge of impressions and perceptions of the criminal law, crime and criminals is pertinent.

3. Current project

In accordance with 1. and 2. above, I continued with CCTV-based data collection (that is descriptions of everyday occurrences, people, conversations, actions, reactions, within CCTV control rooms, and beyond, i.e. the places those CCTV cameras see), analysed using 'grounded

theory' (Glaser, 1992, Garfinkel 1967).⁴ I approached a police force in order to enquire as to their CCTV use, as controlled by civilian, non-police operators. Who do they look at, or for? What do they look at, or for? Why do they look there, what for? Who or what do they find? Where? Not restricted to locating and processing shoplifters, their remits and power (in the Foucaultian 'knowledge' sense (Foucault 1982)) are self-defined, created. They choose what they see, see some incidents, miss others altogether. Report some, leave some be. Make a cup of tea. 'Big Brother' – 'you decide': there are rarely such apt words spoken. More importantly, though, from another 'knowledge' perspective; have they, the operators, learned the 'letter of the law'? As citizens, ignorance is no defence to lawbreaking, but isn't that something quite different from knowledge and understanding among the lay population, employed to operate CCTV, but not necessarily educated in law, and, perhaps equally importantly, remunerated at non-professional salary levels. Is there subjectivity? Is there authority? Is there rebellion? And what of action?

Decisions, based upon subjective indicators or evidence, are taken by people unqualified in the rigours and nuances of the criminal law. What are their perceptions of themselves? Like jurors; good men and true? Loaded with a degree of power, these people become the bastions of justice, in some respects. Not to be disparaging; but can I ask the question: where is the law? Does it really rest, sometimes, always at this level (are we all police?) and not in and of the criminal law itself? Is that the point? Non-conversant with the legal education, who are our hunters of 'crime'? How do they make sense of the world? Do they change it? Can they change it? Or the law? Surely these questions could assist me in my enquiry? Particularly given that I am looking at legal research through a social scientist's eyes. But, how to investigate their answers? How to do this sensitively? Without damaging the data, or isolating myself from the staff (Gold 1958, Hammersley, Atkinson 1995, Castellano 2007, Kleinman, Copp 1993, May 2001)?

Negotiating access, with police management and staff, presenting my research comprehensibly, and actually conducting what social scientists term 'fieldwork'(O'Reilly 2005, Kleinman, Copp

⁴ Grounded theory, instead of being, as other theory, abstract, is grounded in data (systematically) extracted through social science research.

1993, Taylor 2002, McCall 1969) had to be in keeping with my research design but also with those whom it would touch in order for me to explore my questions. Of course, this is a consideration for all social scientists and most researchers. However, here, I also had to consider whether I would be specific about what I was looking at. It could be that operators and their managers would be suspicious of my trying to unpick and critique their methods for surveillance, and my asking questions, interviewing, could also prove intrusive, if not destructive in terms of the data I would be able to collect. Therefore, I opted to approach the site concerned with a general frame for my research: operators' perceptions of criminals. I also opted to merely observe. No questioning, no note-taking, no recording. Just participating (Gold 1958). Of course, this does necessitate questions of my influencing the data through participation, however, it seemed that the public pretty much determined the reactions of CCTV operators – I could not control their 'natural' reactions to frames.⁵

As I have stated, I suggested to the police force concerned that I was interested in perceptions of crime and criminals – not, specifically men and women. I was anxious to avoid spoiling or influencing my findings. Not covert, as such, but not exactly explicit, the fieldwork was and is 'advertised' as a project on operators' perceptions of crime and criminals. The police sergeant in charge of the CCTV unit I had approached seemed happy with this, and some form filling, police clearing later, I was admitted to the Unit. Once there, I further suggested, when I met the 'civvy' staff, that I wanted to just be 'one of them', that is to say to conduct 'participant observation', both participating in and observing the everyday practices of (criminal) surveillance. No note-taking, no interviewing, no questioning; merely being there, seeing, engaging with, doing (O'Reilly 2005, Ditton 1977). Indeed, I carried out, over the course of the past year, and continue to carry out, such participant observation with a CCTV unit in a local city. Sitting in on shifts, befriending the staff, bemoaning the long (!) hours, and generally being 'one of the boys' (don't forget that my interest is in gender, and that CCTV staff are statistically more likely to be male – a commentary on subjectivity and the law, and criminalisation, if there was one!). All of this has been my main 'extra-curricular' activity at every opportunity since January 2008, the habitat being a small, darkened and temperature-

⁵ 'Frames' is used in a technical sense, although, as is probably apparent, I like to reflect on the active element of framing: to frame. In this sense, perhaps I could influence how frames are captured, or framed.

controlled room, with a wall accommodating around eighty screens. There are three desks, with individual staff equipment (screens, radios, phones), three chairs, and very little else aside from some tape cabinets and recording equipment. Not particularly comfortable, but equally friendly, this room, these people, CCTV and the recordings made, (police) interventions, 'catches' (successful interceptions/arrests) and the relief or buzz when a catch/intervention emerged, were all my informants.

IV. Findings – Discussion

I have learned that, through their work, crime processing agents (re)produce coherent accounts of crime and criminals, based upon what is deemed to be socially correct and responsible. That is to say that they concentrate upon known offenders, over-policing them even as they go about their daily, if a little 'dodgy' business, when they are not behaving in any way 'criminally', yet they are being pursued and treated as 'criminal', their basic right to freedom compromised. That a crime might never be far from them is etched on any operator's mind – experience – and the developed ability of operators to 'read' situations guides them; the trick of their trade. For example;

"So, Susan and I were talking about the focus of the camera.⁶ You know the ones', the 'knowns' (even I know some!). She explained that you just look for behaviour, running, Big Issue sellers (who tend to deal in drugs too in the operators' experience) and beggars.⁷ Just anything that catches your eye and is illegal/out of the ordinary, etc. We looked at some young lads, very scruffy, on one screen (the location of the corresponding camera was beyond

⁶ Names throughout have been changed to preserve anonymity, though the customary gendering of the given name reflects the sex of the operator.

⁷ The 'Big Issue' is a magazine sold on the streets by street vendors and is available across the UK. According to the Big Issue (<http://www.bigissue.com/>): "The Big Issue exists to offer homeless and vulnerably housed people the opportunity to earn a legitimate income. We produce a weekly entertainment and current affairs magazine which vendors buy from us for 70p and sell to the public for £1.50, keeping 80p for themselves. Vendors must adhere to a code of conduct whilst selling the magazine." The sale of the magazine tends to attract mixed reactions and there is a common (mis)conception that vendors are untrustworthy and possibly deal in illegal substances as well as the magazine. The issue of the Big Issue is controversial and much-debated.

me, although there is a 'drop-in' centre there), there was one lad drinking from a tin. He waved at the camera. He was jittery and moving on and off the pavement and in front of to behind a wall beyond where the camera could not see. He probably knew this: he seemed to. I'm sure that I saw him 'dealing' to a guy that was in and out of the centre. Something changed hands, but Susan (who is also a volunteer Special Constable, as well as a paid CCTV operator) did not flinch. I thought that this was what she was, had been, looking for, even willing. Perhaps I was mistaken. We then saw a group of three men, drunks, stumbling up by Smith's restaurant.⁸ Susan thought that they were headed towards the 'soup kitchen' for their lunch. She mentioned that one of the men (who must have been over fifty years of age) had been missing for a while, or at least they hadn't seen him. She said that that often happened, where the 'knowns' and watched came and went. Her colleague, Nicola, added that CCTV is very useful for searching and often locating known missing people. Many resources have been saved by keeping a watch on the bus station (excellent camera) and train station (not so good as no indoor camera). Indeed, she had once found a man for whom they were on the verge of sending out mountain rescue." (*Fieldnotes, January 2008*)⁹

In doing just this, however, operators are failing to consider the volume of unknown crime, which remains unknown, or unreported and so unknown to the statistics, in spite of the promises predicted for and by CCTV. Their focus errs on traditional depictions of (petty) 'criminals'; the sort of 'junkie' look, the homeless, the wayward ones, which doesn't tend to amount to much in the way of action (save for the odd lucky shoplifting arrest, or maybe even a drugs charge). This can be where men and women are treated equally:

⁸ The name of the restaurant has been changed.

⁹ Excerpts are taken from fieldnotes I typed up, from memory, immediately after finishing shifts (O'Reilly 2005, O'Reilly 2005, O'Reilly 2005, Ditton 1977).

“‘Nasty bitch,’ said Kate about a known prostitute, ‘either she’s pregnant or her jumper is full of nicked stuff.’” (*Fieldnotes, July 2008*)

This implies that operators might miss ‘crime’ or construct it as comprising certain people, certain behaviours. Indeed, apprehensive about ‘rebellion’ that may involve making decisions about reporting recurring, but average, offences, operators tend to allow what might be actual misdeeds to pass in favour of this over-policing of ‘knowns’. For instance, drunk and disorderly conduct among ‘normal’ citizens who are enjoying a Friday night session in the city, except where the ‘offender’ is vulnerable (and therefore usually female):

“Nicola mentioned that there was a young girl out one night, very skimpily dressed, clearly drunk and alone. They sent out a unit and got her parents involved.¹⁰ Nicola said that she had been especially vulnerable and that she wished that her parents could have seen the footage.” (*Fieldnotes, January 2008*)

Or the persistent road traffic offences that slip through the net because the car is sporty and attractive, nice to watch regardless of the driving; the sexual assault that they saw coming, but didn’t prevent – it was like a bad, or good (?) movie; the grievous bodily harm that they missed whilst they were watching a known drug-dependent prostitute walk in the opposite direction on the off-chance that they might catch her selling her wares, or might provide ‘a laugh’:

“A couple more ‘knowns’ were spotted, including a prostitute with one leg. Cathy asked if ‘that’ was real and whether she wore little skirts. Meanwhile, ignoring Cathy but sniggering, Malcolm wrote her (the prostitute’s) details on the daily list of sightings: ‘blue tracksuit bottoms, one white trainer’.” (*Fieldnotes, July 2008*)

¹⁰ A unit consists of two or more police officers, either on foot or in a marked car.

The operators of CCTV, who could, and are well-placed to, pay heed to and summon police attention to actual offences, choose and construct the ways in which crime is represented through their intuitive or 'creative' ethnomethod – that is the way they do and see, interpret and understand. Their opportunities for social control, harrying of particular (stereo)types of individuals, and the laissez-faire attitude towards more culturally-accepted norms in terms of behaviour, despite some of the illicit elements of that behaviour, make the enforcement of the law something quite different to what it ought to be, in terms of the legislation that supposedly governs it. Moreover, male operators, perhaps because of ego, or because they don't see women as criminal, or only as criminal women, which is different from criminal, tend to focus on men as 'deviants'. When they look at women, their consideration of them, even prostitutes, as sexual beings is rife:

"Christopher was looking at one girl's clothes, saying 'it' was tasty, but that he was not sure about it being an outfit to wear during the day. He then turned the camera to look at girls in skirts and spoke about how the singer Duffy was very attractive." (*Fieldnotes, July 2008*)

"I don't think you should really be wearing that, love."

"You've got nice legs without the heels." (*Fieldnotes, May 2008*)

These, I have found and believe to be, the/a main source of gender difference in the application of criminal law. Far from the 'sex-sanctioning issue' where women are treated more harshly when they do commit crime (Kruttschnitt, Green 1984), because they do so infrequently and it is 'man's work', I argue that women are barely able to be seen as deviant in relation to anything except their sex and sexuality (unless they are 'underclass' (Murray 2003 [1990]) and so 'knowns' – usually prostitutes). Therefore, I can assert that these gender, gendering, gendered, examples provide context for and illustration of evidential basis for my claims that subjectivity and authority cause criminalisation, and not the criminal law, as such.

I argue that the difference between legality and illegality is so blurred, subjective, unjust, that that difference renders the criminal law 'predictably unreliable' depending upon which way operators favour you: how you look, your gender, whether you are known. They prioritise crime, but are their priorities right? The nature of CCTV illustrates only too well, even from the few examples I have provided, that layman expectations, interpretations, decisions, motivations, influences, and, probably, resources, in relation to crime management, mean that the picture we have of the law, the criminal law, and its operation and effects, is quite different to 'real', everyday life practices we experience.

Owing to the 'making sense of the world' traditions of CCTV operators, their authority, as in their 'authoring' of criminal events, crimes, and criminals, perceptions and interpretations of crime (and so danger) are warped somewhat. Or maybe ours are too? As citizens. As members of shared societies. But, as people trained in the law, perhaps some of us practising it, and, if not, certainly as researchers who question and examine it, must we ask whether the law itself is really authoritative – does it exert authority? Or do those who apply it, in applying it, change it, its authority, by becoming the author themselves, like the CCTV cameras that become eyes? Would rebellion, in this case and at any rate, manifest itself in the proper application of the law? To every 'crime'? Would action mean policing more comprehensively, making arrests and processing offenders much more thoroughly? Resources? What do these questions, as they have been necessitated by my findings, tell us of human nature, society and both the private and public natures of interaction with the law?

I am not sure of the answers to these questions, but I am certain that in having interrogated them through social research, as opposed to content analysis of legislation, Hansard reports, statistics, police best-practice guidelines (Grampian Police 2005, Brandon 2003), and so on, I have presented a complementary means of understanding the (criminal) law in practice.¹¹ Through conceiving of an alternative approach, and method, in terms of considering how a consistent 'problem' might occur, i.e. the imbalance between male and female crime statistics, I

¹¹ Hansard is the official report of edited verbatim of proceedings in the UK's Houses of Commons and Lords. Contains details of bills for introducing new legislation and legislative reform.

have not 'solved' that problem: I did not intend to. But, I have explored a different way of approaching and exploring this very legal issue.

V. Concluding remarks

Not relying exclusively on theoretical frameworks established by readers in jurisprudence, criminologists, sociologists or indeed gender scholars, to support or justify my work, nor speaking too much to technical elements of research design, I have more freely explored my methodological approach to legal scholarship. Indeed, I have critiqued the means by which criminal law is realised, by specifically questioning degrees of criminalisation and authority as created, constructed, in public CCTV surveillance. In sum, I would offer that the outcomes my, or similar work, alerts us to are twofold. Firstly, that legal research need not be constrained to analyses of certain legislation, case law and precedent. Indeed, I have questioned the causation of criminality, which I consider to result from subjectivity and authority applied by the individual 'in charge' and not the criminal law itself, in an unconventional way. As such, I have suggested and demonstrated that legal research can be done through exploring and applying a sociological imagination, examining the law, in this case the criminal law, at 'micro' and 'macro' levels. I have enquired as to individual behaviour (micro) as it connects and interacts with the (criminal) law (macro), using sociological techniques, in order to allude to how this can work in practice. Secondly, as a result, I have shown that the law itself is so dependent on the societies, and individuals, who uphold and employ it, that we cannot classify it as a definite, crystallised series of regulations. Although we know that the law is a system of rules enforced through institutions, designed by societies, individuals, we underestimate the 'low level' residence of the law. Therefore, we can say that the law is not a thing in itself, rather it is as it is applied, as opposed to as it is supposed.

Indeed, through conducting this paper, I have illustrated how, in particular, my approach to gender difference in criminality shows that criminalisation might occur as a result of 'street level' practices that (en)gender the criminalising gaze and see women, but as something other than criminal. Therefore, whilst the legislation may no longer discriminate according to social

expectations and mores, because there must also exist an opportunity of equality in criminality, women may continue to be less visible as criminal. Despite this age of equivalence, because of law-related, even extra-legal, practices, that do not tend to see women as criminal, then the disparity arises. Not in the criminal law itself. Therefore, the criminal law is only properly observable when legal research is approached in a socio-legal manner. That is to say that the law is a class of abstract and conceptual ideas, rather than reflective of actual conventions. It is only empirical work that can adequately address and explore the 'real' criminal law. To a degree, then, the law is similar to what sociologists call 'grand theory'.

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