

Tough on...what? New Labour's war on crime statistics

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New Labour's term in office has been remarkable for the emphasis the government has placed on 'law and order' issues - traditionally associated with Conservative rather than Labour governments. A more significant innovation, representing a break with the law-and-order Right as well as the Left, has been the adoption of a broad and coherent preventive agenda, aimed at the active management of both crime and non-criminal disorder. An unintended consequence of New Labour's 'disorder prevention' programme has been to make it significantly more difficult to define, record or count criminal offences in coherent ways. Ironically, a government which prides itself on its achievements in the fight against crime has made it harder than ever before to measure the actual rate at which criminal offences are committed.

On the face of it, measuring the 'crime rate' is a straightforward bureaucratic procedure: simply total up the number of acts identifiable as criminal offences which were committed in a given area over a given period. However, this common-sense approach raises difficulties in three distinct areas: definition, recording and counting. Firstly, criminal offences are **defined** by the criminal law, in ways which may vary not only over time but between one offender and another. Secondly, official crime figures are **recorded** by the police, an agency which may have organisational interests in recording either a lower or a higher figure. Lastly, crimes can only be **counted** meaningfully if counting rules and definitions are consistent.

All of these problems will complicate the analysis of crime figures at any time; however, New Labour's distinctive approach to crime and disorder has exacerbated all three. Definitional problems are aggravated by hastily-worded legislation, and made still more intractable by the deliberate framing of legislation in open-ended 'catch-all' terms. Variations in police recording practices are amplified by external pressures on police forces, either to record a higher proportion of unrecorded crimes or to clear up a higher proportion of those which are recorded. Inconsistencies in counting rules, finally, are made more glaring by a legislative focus on extended and diffuse patterns of behaviour, and by the blurring of the distinction between criminal and non-criminal activity.

Defining crime

New Labour's law and order legislation has been marked both by a proliferation of new forms of criminal offence and by the creation of opportunities to define and sanction non-criminal behaviour. The 1998 Crime and Disorder Act, one of New Labour's first legislative interventions, explicitly instructed local authorities to work with the police to reduce the levels of disorder as well as crime, through Crime and Disorder Reduction Partnerships (CDRPs). Local authorities thus have a statutory duty to fight potential as well as actual crime, and to do so in collaboration with the police.

This extension of policing activities into areas where no offence has been or is likely to be committed is underpinned by a wide range of new police powers and practices. Table 1 records some of the significant changes in police practice since New Labour came to power.

Table 1: Types of intervention by police forces (England and Wales)

<i>Description</i>	<i>Introduced</i>
Reprimand (youth)	1998
Warning (youth)	1998
Anti-social behaviour order	1998
Acceptable behaviour contract	1999
Penalty Notice for Disorder (adults)	2001
Fixed penalty notice (minor offence)	2002
Conditional caution	2003
Penalty Notice for Disorder (children aged 16-17)	2004
Penalty Notice for Disorder (children aged 10-15)	2005
Arrest (any offence)	2005

Prior to the 1998 Crime and Disorder Act, police intervention could take four basic forms. Firstly, a member of the public could be stopped and, potentially, searched, with or without consent. Secondly, a member of the public who was charged with and admitted an offence could be asked to accept a caution in lieu of prosecution. Thirdly, a suspected offender could be charged, with a view to subsequently issuing a court summons; this was the standard procedure for crimes attracting a penalty of less than five years' imprisonment at the first offence. Fourthly, a suspected offender could be arrested: this option was available for more serious crimes and for the prevention of a breach of the peace, as well as for the purpose of enabling a summons to be served. The 1984 Police and Criminal Evidence Act (PACE) included a list of 'arrestable offences'; this was extended on several occasions between 1984 and 1997, by provisions in the 1986 Public Order Act, the 1991 Football (Offences) Act, the 1994 Criminal Justice and Public Order Act and the 1997 Protection from Harassment Act (among others).

Since 1997, as table 1 indicates, the range of interventions available to police forces has grown considerably broader. Three modifications to police powers of caution and arrest can be noted. Firstly, young offenders are no longer cautioned, but given a 'reprimand' at a first offence and a 'final warning' at a subsequent offence. A warning will generally be coupled with a referral to the local Youth Offending Team (YOT), who will be charged with developing a programme of activities to address the offender's behaviour; in some cases a reprimand will also include a YOT referral. While a YOT programme is not a criminal penalty and is not compulsory, non-compliance is likely to incur a warning or a criminal charge; the effect is thus to couple a police caution with an official sanction. Secondly, the introduction of 'conditional cautions' for adult offenders follows the same logic, enabling a police officer to make a caution conditional on a programme of restitutive or rehabilitative activity; 'punitive' conditional cautions, requiring the payment of a fine, are currently under consideration. In all such cases, a prosecution for the original offence may follow if the offender does not comply with the set conditions. Lastly, the 2005 Serious Organised Crime and Police Act clarifies the increasingly arbitrary boundary between arrestable and non-arrestable offences by the simple expedient of making all offences arrestable.

Additional types of sanction have also been introduced. Penalty notices for disorder (PNDs), introduced by the 2001 Criminal Justice and Police Act, are a type of fixed penalty notice (FPN). An FPN - previously used primarily for traffic offences - is not a penalty for an offence. Rather, the FPN gives notice to the offender that he or she may be prosecuted for the offence, but that the liability can be discharged by paying a set fine. Unlike a caution, receipt of a PND is not conditional on an admission of guilt; those issued with PNDs remain innocent of any offence unless and until they are proved guilty in a court of law. Indeed, in theory every recipient of a PND could opt to contest the charge in court. However, in practice this is a remote possibility; in the course of a twelve-month pilot, during which over 5,000 PNDs were issued, fewer than 2% resulted in a court case (Halligan-Davis and Spicer 2004: 3). Payment of the fine averts the possibility of prosecution and does not produce a criminal record; accordingly, Home Office guidance stresses that it does not amount to a formal admission of guilt. However, given that payment of a fine waives the defendant's right to contest the charge in court, the opposite inference could easily be drawn. Indeed, for some classes of offence the police are empowered to record details of those issued with PNDs; this is justified on the grounds of identifying repeat 'offenders'. PNDs can also be referred to in a subsequent court case as evidence of bad character (Roberts and Garside 2005: 6).

Initially, juveniles were excluded from the scope of PNDs and other FPNs. However, the 2003 Anti-Social Behaviour Act included provisions for PNDs to be made applicable to young people aged 16 and 17, with a further extension to children of 10 and over available if the government should require it. These two extensions were both enacted in 2004, without new legislation. Provision for FPNs to be issued by locally-accredited Community Support Officers as well as by police officers was introduced in the 2002 Police Reform Act. The range of offences involved has subsequently expanded - under the 2002 Act and by provisions in the 2003 Anti-Social Behaviour Act - from three to 20.

An anti-social behaviour order (ASBO), secondly, is a court order, which must be obtained from a magistrate (and may be requested by a range of agencies other than police forces). An ASBO is an order to refrain from specified activities, which can be obtained on the grounds that the offender has engaged in 'anti-social behaviour' and that the order is necessary to protect members of the public from further such behaviour. ASBOs and FPNs both offer the prospect of police intervention against a wider range of behaviours and larger absolute numbers of offenders; they also have in common a tendency to dissociate the sanction from the offence. However, FPNs simply enable offenders to buy their way out of a possible court sanction for past offending behaviour; the structure of an ASBO is considerably more complex.

The first and most obvious difference between the two is that anti-social behaviour is not necessarily criminal in itself. Secondly, an ASBO is a 'two-step prohibition', akin to a court injunction or abatement order. A two-step prohibition is preventive rather than retributive: it "makes it a crime to do Y in the future not a crime to have done X in the past" (Simester and von Hirsch 2006: 178). Although ASBOs are imposed in response to past behaviour - because, to the satisfaction of a civil court, the subject of the order has "done X in the past" - they are not imposed as a punishment for that behaviour; indeed, given that ASBOs can be triggered by legal activities, it would be problematic if this were the case. Rather, an ASBO lays down conditions that the individual subject of the order may not breach for a period of time in future. Thirdly, these conditions are - by design - not identical with the behaviour for which the order was obtained: a young person seen throwing stones at passing cars may receive an ASBO, but it is highly unlikely that the only activity prohibited will be throwing stones at passing cars.

In the specific context of identifying, recording and counting criminal offences, the nature of the actions prohibited by a specific ASBO is secondary; the sanctions associated with ASBOs relate to the offence of breaching a court order. An ASBO breach, like any breach of an imposed licence or proscription, is thus inherently an 'iatrogenic' offence - one "caused in part by processes of law enforcement" (Gowri 2003: 601). This makes identifying and recording the relevant criminal offence doubly problematic. On one hand, the level of breaches of licenses or proscriptions is clearly meaningless unless the levels of licenses and proscriptions are also taken into account: a doubling in the absolute number of breaches of Sex Offender Orders, year on year, might indicate a dramatic rise in attempted sex offences or an equally abrupt rise in the number of orders served. On the other hand, the offence represented by the breach has no necessary relationship to the actions involved - which in themselves may not constitute anti-social behaviour, but may simply be seen as actions associated with or preparatory to anti-social behaviour. This is a particularly common pattern in cases where an ASBO is used as an informal curfew or exclusion order, excluding an individual from particular areas or from being out after a certain time. An individual may thus be found guilty of a criminal offence after carrying out actions which are not only legal in themselves, but entirely blameless if carried out in another place or by another person.

These problems have beset anti-social behaviour legislation since it was first discussed. Anti-social behaviour was defined in the 1998 Crime and Disorder Act as acting 'in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household [as the offender]'. Questioned in Parliament, Alun Michael MP explained:

guidance, which will be offered, will make it clear that the target is not just odd behaviour or loud music. We are talking about continuous behaviour, over time, which causes harassment, alarm and the ruination of lives (Michael 1998)

However, the CDA 1998 does not specify that the behaviour in question must be *continuous ... over time* or that it must be serious in its impact. Nor, perhaps surprisingly, does it specify that anti-social behaviour must be engaged in intentionally or recklessly; anti-social behaviour has a victim or victims, but there is no requirement for the offender to be acting aggressively towards them, or even actively disregarding their interests. Strictly speaking, anti-social behaviour can be identified and sanctioned even if no victim has been affected by it ('was likely to cause').

The inbuilt breadth of the definition of anti-social behaviour is matched by its vagueness. The promoters of the legislation clearly see this as a strength rather than a weakness: for Beverley Hughes MP, speaking in 2003, the fact that "anti-social behaviour is not easy to pin down, or to define" was "part of the challenge", which could best be met with equally fluid legislation. However, there are serious problems with the approach of extending the criminal law to cover a set of behaviours which remains undefined - or, at best, is defined only by its reported effects. A key term in this move is 'sub-criminal', as in the phrase 'criminal and sub-criminal behaviour'; phrases along these lines were used heavily by Michael in the debate cited above and have subsequently figured strongly in Home Office guidance. Dismissed by Macdonald (2006:186) as meaningless - "either behaviour violates the criminal law or it does not" - the term 'sub-criminal' nevertheless validates the regulation of non-criminal behaviour by the police: if the police are involved, in other words, what appears to be non-criminal behaviour must be sub-criminal. It could even be argued that the ASBO defines the very behaviour it sanctions.

Lastly, an acceptable behaviour contract or agreement (ABC/ABA) is a formal agreement with no legal standing; it may be offered to individuals whose behaviour is at issue by any one of a number of agencies, including local authorities and housing associations as well as the police. An ABC provides a semi-official means of communicating to potential offenders that their behaviour is under review by the police, and that a measure such as an ASBO may be taken if unacceptable behaviour continues. ABCs are not the subject of legislation; they were first introduced by a local police force in 1999 (Bullock and Jones 2004). Unsurprisingly, given their borderline status, there is at present no formal system for recording ABCs. Current Home Office proposals (Home Office 2006) would couple the ABC with a 'deferred PND' - in effect a 'suspended sentence' PND which would take effect if and when the provisions of an ABC was breached. Concern has been expressed that this would erode the voluntary status of the ABC.

What all these measures have in common is that they erode the distinction between police intervention and penal sanction, and do so with a view to modifying criminal and potentially criminal behaviour before it reaches the level of a prosecutable offence. Some of these allow for heightened sanctions to be applied to criminal offences; others allow for the sanctioning of behaviour which is not in itself criminal; others again broaden the range of criminal offences which are in practice sanctioned. One effect of these changes is to make comparability over time problematic. In the words of a 2004 study of a pilot PND scheme:

The larger number of PNDs indicates a net widening to recipients who would not otherwise have been dealt with by caution or prosecution. The figures for the two areas suggest that between a half and three-quarters of PNDs issued for disorderly behaviour while drunk and causing harassment, alarm or distress were 'new business'.
(Halligan-Davis and Spicer 2004: 3)

At the opposite end of the scale of criminal offences, some categories of offence are seen to be, in effect, too serious to be trusted to the normal court system, so that 'exceptional' or anomalous measures must be taken to deal with them. Available information in these cases is generally limited, and can be gained primarily from parliamentary reporting. Examples include the provisions of the 2000 Terrorism Act, the reports of the Intelligence Services Commissioner and the workings of the Special Immigration Advisory Committee (SIAC), which reviewed detentions under the 2001 Anti-Terrorism, Crime and Security Act and now reviews control orders under the 2005 Prevention of Terrorism Act. While the effects of 'exceptional' legislation are often marginal - SIAC has only dealt with a handful of cases under anti-terrorist legislation - the possibility always exists that the 'exceptional' will become normal:

Section 44 of the Terrorism Act 2000 ("TA") allows for the exercise of stop, search and other powers without the need for suspicion. The entirety of the greater metropolitan area of London has been subject to the use of these extended powers on a rolling basis for over two years. The Home Secretary may authorise a designated zone for the purpose of s.44 TA if he is satisfied that it faces a particular risk of terrorist attack, but such an authorisation may last for a maximum of 28 days; since February 2001 the Home Secretary has constantly renewed his designation for the greater London metropolitan area every 28 days.
(Gallagher 2004: 5)

At the time of writing this authorisation - covering the whole of the Metropolitan and City of London police areas - is believed to remain in force.

The now-notorious invocation of s.44 TA powers at the 2005 Labour Party conference - reports suggest that over 600 people were searched under the Act in and around the Conference, although no arrests were made (Hainey 2005) - vividly illustrates the possibility of a slippage from exceptional to normal policing practice, and the implicit invocation of exceptional criminal offences in a normal social setting.

Recording crime

Recording crime is a surprisingly problematic operation. Police data needs to be set in the context of external information about police operations. A policy of zealous, 'zero tolerance' law enforcement will drive up a police force's recorded crime rate, all else being equal. On the other hand, if a force's overriding concern is an increase in detection rates - represented by the identification of an offender in a higher proportion of cases - this is liable to produce pressure to understate the number of crimes recorded. Home Office researcher Jon Simmons comments:

a force that is known to have a high-recording culture, and thereby treats incidents as crimes which in another force might be 'no crimed', may end up with a particularly high crime rate but low clear-up rate - as a result of it drawing into the system many low level crimes which it will be more difficult to resolve. Another force, may set out to capture a large number of offences of Saturday night disorder around licensed premises by placing a large number of officers on the street with orders to arrest any trouble-makers ... and thereby achieve a high crime rate and yet also a high level of clear-ups - because the crimes it records of this type are invariably those where an officer is present and the offender apprehended. Another force may choose to exercise its operational discretion not to direct resources towards such incidents, perhaps reflecting alternative priorities in its local crime reduction action plan, and may then appear - perhaps artificially - to have a lower crime rate.

(Home Office 2000a: 17)

Pressures like these may cause variation over time as well as between different forces. Victimless offences such as those relating to consensual sexual behaviour are particularly vulnerable to this kind of variation. An extreme example is the offence of "Sexual activity in a public lavatory", added to the 2003 Sexual Offences Act by peers who were concerned that the abolition of the offence of "gross indecency" would encourage this type of activity. This offence can, at least in theory, be prosecuted even if nobody is offended: "the act in itself is sufficient for the offence to apply, there is no need for the act to have shocked, disgusted or revolted a member of the public." (Home Office 2004). Variations in recorded levels of this particular offence are likely to follow almost entirely from variations in enforcement activity.

The categories of crime which are officially recorded are also subject to change. Simmons comments:

The current list of crimes recorded by the police is to some extent arbitrary, in that although the notifiable list of offences is based on a notion of seriousness derived from the legal framework it also includes a small number of minor offences that have been added to prevent a drift from notifiable to non-notifiable offence types [for which less information is captured].

(Home Office 2000a: 13)

Again, New Labour's zeal for preventive law enforcement has amplified and exacerbated these pressures. Prior to 1998, the police in England and Wales took an 'evidential' approach, recording a crime as having occurred if a victim's statement was borne out by other evidence; otherwise a non-criminal 'incident' would be recorded. Changes to the police counting rules, introduced in 1998, led to the broad adoption of a 'prima facie' approach, endorsing the victim's perception of crime in all cases where there was no evidence to the contrary. The inevitable result was a sharp rise in recorded crime figures. These changes were extended and cemented by the introduction in 2002 of the National Crime Reporting Standard (NCRS), which was further modified in 2003 and 2004. It should be noted that further changes were made to the NCRS in 2006. The standard now specifies that, in the case of victimless crimes, evidence should be gathered before a crime is recorded. However, this does not represent a return to the 'evidential' approach: the 'prima facie' approach is retained for crimes with an identifiable victim, while the range of evidence admissible in public order cases includes credible (but otherwise unsupported) witness statements. Perhaps the only situation in which crimes would definitely be recorded more sparingly under the 2006 rules is the denunciation of a third party for a victimless crime without supporting evidence - presumably not a process which currently produces a large proportion of police recorded crimes.

In the light of other sources, it is probably reasonable to see the higher figures being recorded since 1998 as a corrective to earlier under-reporting rather than as over-reporting. However, the disjuncture between the periods before and after the adjustment makes long-term comparisons highly problematic. In Annex A to the 2001 Home Office report "Criminal Justice: The Way Ahead", we read:

It is clear that the ability of the CJS to detect and sanction offenders has not kept pace with the marked increase in recorded crime. The number of offenders convicted as a proportion of the number of recorded crimes has halved between 1980 (when it was 18%) and 1999-00 (9%).
(Home Office 2001: 114)

According to an accompanying figure, the number of offenders convicted in 1999-00 shows little change from 1980, while the number of crimes recorded has almost exactly doubled. The implicit message of the report is that the criminal justice system is failing to 'keep pace' with growing levels of criminality: "the system is simply not as good at convicting criminals as it used to be" (Garside 2004: 19). This is clearly not the only possible reading of these figures. As Garside notes, comparing data on convictions with crime levels recorded by the British Crime Survey (BCS) in 1981 and 1999 yields a conviction rate which is considerably lower than police figures would suggest, but which has remained essentially unchanged at around 3% (ibid.).

In 1999, recommendation 15 of the Stephen Lawrence Inquiry focused attention on racist incidents, arguing that in this category "crimes and non-crimes ... must be reported, recorded and investigated with equal commitment"; subsequent Home Office guidelines mandated that all racist incidents should be recorded as such (Home Office 2000b). Simmons' 2000 discussion paper goes further, recommending that this approach should be extended to all potentially criminal 'incidents or 'calls for service', but that this change should be coupled with the readoption of an evidential approach to crime recording. Simmons' recommendations 3 and 4 read:

The police should apply the recommendation contained in the report from the Stephen Lawrence Inquiry for a prima facie approach to recording racist incidents *to all incidents* or "calls for service" and should adopt the evidential approach for the recording of crimes, on a basis on which such crimes might be expected to be prosecuted in a court.

Incidents or "calls for service" should be understood to include both crimes and non-crimes, and in particular should consider the capture of non-crime events brought to the attention of the police.
(Home Office 2000a: 18; emphasis in original)

This approach would have the immediate advantage of allowing a degree of comparability with BCS figures without the appearance of a huge rise in police crime figures. However, subsequent comments suggest that this proposal would not resolve the 'threshold' problem so much as displace it:

Clear guidance will be required as to when particular events fall into criminal and non-crime calls for service from the police. The inclusion of crime allegations (4.4 million calls for service in 1998-9) and disorder (3.6m) allegations in this count must be complete, in order to assist both operational analysis and also the assessment of crime data quality. However, minor calls for police assistance relating to traffic policing (2.7m) or the provision of information and other non-crime matters (5.5m) are not necessary from this perspective. The category of alarms (1.7m) would however be of use in providing additional information on incident hot-spots, but incidents relating to alarms should differentiate between the total count of alarm calls and the number investigated where there was found to be no evidence of any criminal activity.
(Home Office 2000a: 19)

Wherever the evidential boundary is drawn - between 'notifiable' and 'non-notifiable' offences, between offences and 'incidents' or between 'criminal and non-crime calls for service' - a certain element of arbitrariness seems to remain. The evolution of police recording processes, and its impact on recorded crime figures, is a graphic illustration of Maguire's argument that the 'social meaning' of crime "derives from the application in the real world of the label 'crime' or 'criminal' to specific incidents and people, *out of a much wider set of possible candidates for such a label*" (Maguire 1997: 141; emphasis in original).

Counting crime

Crime rate calculations using multiple sources - either successive releases of a single body of data or data from different sources - are made problematic by differences in counting rules: the rules which determine whether a burglary with two victims should be counted as two crimes or one, a series of assaults by one assailant should be counted as one crime or several, and so on. The BCS has its own counting rules, including the stipulation that no more than six incidents are recorded in detail for any respondent. With regard to types of crime which tend to be under-recorded, it is likely that those offences which are recorded will also be under-counted: victims who do approach the police are likely to do so after a series of incidents, not all of which will be counted separately.

As noted above, Simmons proposes addressing the problem of variability of incident recording by imposing a distinction between 'prima facie' incident recording and 'evidential' offence records. In the longer term, this would allow for incident-based reporting and analysis in the broad sense, allowing for a coherent view across a range of criminal and non-criminal 'incidents'. One initiative which shows how this might work was the 2003 "Anti-Social Behaviour Day Count". On 10 September 2003 agencies of 17 different types, covering every CDRP in England and Wales, reported a total of 66,107 incidents of anti-social behaviour. Each type of incident was assigned an estimated cost; the conclusion was that "[a]nti-social behaviour recorded on the day of the count cost agencies in England and Wales at least £13.5m; this equates to around £3.4bn a year." (Home Office 2003a).

However, the apparent precision of the “Day Count” dissolves on inspection, casting doubt on whether a valid and reliable count of ‘incidents’ could ever be achieved - let alone any reliable estimate of associated costs. With a disparate set of agencies submitting counts for classes of incident as imprecise as ‘noise’ (5,339 reports) or ‘litter’ (10,686 reports), there is no reason to assume that the incidents reported will include all the relevant incidents occurring on that day. On the other hand, it cannot be guaranteed that those incidents which were reported were genuinely of the same type; that they met a uniform threshold of significance; or that incidents were not reported more than once, by the same agency or multiple agencies. Extrapolating from the Day Count to a full-year estimate is also problematic, raising the distinct possibility of multiple reporting over time. In the case of ‘vandalism’ - the category with the highest estimated cost - the grounds for extrapolating from an estimated cost of £2,667,000 for a single day’s incidents to £667,000,000 for a full year seem particularly debatable.

Costing is a problematic operation in its own right. To arrive at cost figures, incidents are grouped into two main categories and a mean unit cost estimated for each category; costs of £400 and £204 are proposed for individual incidents in each category (Home Office 2003b). The estimated cost for each category of incident reflects a calculation of the costs of different levels of agency intervention, qualified by the estimated probability of intervention at each level (Home Office 2003b; see also Whitehead, Stockdale and Razzu 2003). ‘Hoax calls’ and ‘abandoned vehicles’ are each classified separately, since more detailed information regarding the costs of responding to incidents of these types was available.

The great majority of incidents recorded fall into either the ‘Type 1’ or the ‘Type 2’ category - 13,000 and 46,000 respectively. The calculations underlying the costing for these types of incident are inevitably skewed by the use of an upper value (‘Report and high-level response’: £5,025) which is nearly ten times the value assigned to the next category (‘Report and mid-level response’: £525) and 250 times the value assigned to the lowest (‘Report only’, £25). In all likelihood, these estimates give a valid indication of the costs of different types of intervention in this area, which will range from the sanction of an ASBO (total processing costs estimated at £5,000) down to incident reports which require very limited action or no action at all. However, the breadth of the range produces calculated mean values which are highly sensitive to small changes in the distribution of incidents between categories. In the case of vandalism, the estimated £400 unit cost derives largely from the calculation that 20% of incidents will receive a ‘mid-level response’ and 5% a ‘high-level response’. Relatively minor changes to these two estimates, holding other estimates constant, would change the calculated unit cost significantly: assuming that 6% of incidents received a ‘high-level’ and 19% a ‘mid-level’ response, for example, would give a unit cost of £445 - an increase of over 10% on the original estimate of £400. Given that the total cost figure was arrived at by multiplying the calculated unit cost by the count of 7,855 reports, while the full-year figure was calculated by multiplying this figure by 250, this small adjustment would produce a change of around £90,000,000 in the estimated yearly cost - 2.5% of the total estimated cost for anti-social behaviour.

The methodological critique of these calculations is potentially even more serious. These figures are based on costs of law enforcement responses; as such, they are vulnerable - like police recorded crime figures - to external pressures for a more or less hard-line response. In the specific case of anti-social behaviour, the calculations are strikingly circular: the perceived scale of the problem of anti-social behaviour, and hence the need for enforcement measures such as ASBOs, is determined in large part by the processing costs of ASBOs and the frequency with which they are already imposed. Perceived on this basis, the problem threatens to feed on itself: a higher rate of enforcement would automatically lead to a higher overall cost and hence to the perceived need for still more enforcement. A more defensible approach would be to remove the cost of a ‘high-level response’ from calculations; this would remove the difference between ‘Type 1’ and ‘Type 2’ incidents, cutting the cost of both to £150. The published ‘Day Count’ uses figures ranging from £156 to £194 for Type 2 incidents and £340 to £366 for Type 1, making it difficult to estimate the exact impact which this change would have; a conservative estimate is that it would take £1 billion off the headline annual cost of £3.375 billion.

Beyond the crime rate? Alternative measurements of crime

As we can see, the incident-based enumeration and costing of incidents of anti-social behaviour poses methodological difficulties far beyond even those already noted with reference to crime. This suggests that, rather than extending the event-based framework to encompass non-criminal incidents, it might be more appropriate to abandon incident-based enumeration altogether. As Genn suggests, in some areas the reality of crime is not of an incident or series of incidents, but of a continuous process:

Although isolated incidents of burglary, car theft or stranger attacks may present few measurement problems, for certain categories of violent crime and for certain types of crime victim, the 'counting' procedure leads to difficulties. It is clear that violent victimization may often be better conceptualized as a process rather than as a series of discrete events. This is most evident in cases of prolonged and habitual domestic violence, but there are also other situations in which violence, abuse and petty theft are an integral part of victims' day-to-day existence.
(Genn 1988: 91; quoted in Maguire 2002: 358)

Even some types of crime are not amenable to incident-based counting. The 1997 Protection from Harassment Act - a significant late Tory precursor to New Labour's public order legislation - creates an offence of "pursu[ing] a course of conduct which amounts to harassment of another". "Course of conduct" denotes "conduct on at least two occasions": under the 1997 legislation there is, by definition, no such thing as a single incident of harassment. (However, the 2005 Serious Organised Crime and Police Act Act modifies this definition, such that two single incidents of harassment directed at different individuals can be deemed to constitute a "course of conduct".) As problematic as this might be in counting terms, Genn's argument suggests that it may reflect the experience of harassment. One localised 1986 survey found that two-thirds of women under 24 reported being 'upset by harassment' in the previous twelve months (Maguire 2002: 357). This can perhaps best be understood as revealing a continuing process or climate of harassment, rather than a large number of individually memorable incidents.

Home Office statements on anti-social behaviour also suggest a possible move away from the 'incident-based' approach, focusing attention on the perceptions of those affected by anti-social behaviour. In a 2003 speech, the then Home Office minister Beverley Hughes commented:

One in three people in the British Crime Survey say that it's a problem in their area. Its impact is significant - on the individual and on the community. Anti-social behaviour can make people feel afraid and unsafe. ... It can mean very different things from one place to the next. In one area it's young people causing problems on the street, in another it's noisy neighbours or abandoned cars. In one town centre it's street drinking and begging, in another it's prostitution. In practice anti-social behaviour ranges from the litter on our streets, to dealing with the problems caused by the behaviour of some of our most complex and challenging families.
(Hughes 2003)

The implication of Hughes' remarks is not that begging, prostitution, residential noise or groups of young people only occur in certain areas, but that there are only certain areas in which these phenomena "make people feel afraid and unsafe", and hence amount to anti-social behaviour. The underlying activities themselves are thus less significant than the continuously unsafe environment or climate which they are perceived to create. This argument echoes the 'signal crimes perspective' advanced by Innes (2004), according to which certain crimes - and non-criminal incidents - have a 'signal' effect of undermining a public sense of safety and security. As Innes writes, this perspective

recognizes that crime and disorder incidents directly harm victims, and they can also harm a wider sense of collective security. As such, the signal crimes perspective can be seen to focus upon processes of social reaction, being concerned with how criminal and disorderly acts are used by

people to construct judgements about the levels of individual and collective risk across different social situations. ... The premise being that people construct their perceptions of risk around certain visible incidents. Thus, even in relation to ostensibly similar offences, public reaction may differ according to the situational context. Early empirical studies suggest that people often tend to construct their insecurity around the kinds of comparatively trivial crime problems that they experience directly and regularly, as well as the very rare serious types of offences ... if it is possible to identify these signal offences then acting against these problems might be predicted to have a disproportionate impact in tackling the causes of crime inspired insecurity. As such, the NRPP [National Reassurance Policing Programme] formulation of reassurance policing strategy aims to make neighbourhoods more secure by targeting signal crimes and signal disorders (Innes 2004: 163)

For Innes (and Hughes) the only consistent index of anti-social behaviour, consequently, is perception - the degree to which members of the public report feeling 'afraid and unsafe' as a result of anti-social behaviour. A continuing stress on anti-social behaviour (or on 'signal disorders') is thus likely to lead to a focus on measuring the perceived effects of this behaviour, rather than a - necessarily imprecise - enumeration of individual incidents. Fear of crime thus becomes an indicator in its own right, rather than being contrasted with data on 'real' levels of crime.

This, however, immediately prompts the question of whether law enforcement measures are an appropriate and effective way to address the social problem of fear of crime. As Loader argues, demands for greater security against crime and disorder are inherently political and require democratic mediation:

When ... people speak of crime and disorder, and make claims for this or that level of security provision, they are always also giving voice to a series of fears about, and hopes for, the political community in which they live ... They may do so, moreover, in ways that are by no means ... consistent with the idea that security is a right available, by reason of their membership alone, to all members of that community. (Loader 2006:207)

In other words, while measurements of the fear of crime may sometimes track the level of criminal offences within a community, they will much more predictably articulate a complex of social strains and conflicts, giving voice to and empowering some parts of the community rather than others.

Another alternative to incident-based counting is the 'zemiological' approach, which offers to measure the harm done by crime rather than enumerating criminal actions. Hillyard and Tombs argue that the zemiological perspective gives significant advantages over the incident-based approach:

it provides a more accurate picture of the vicissitudes of life; it makes the allocation of responsibility easier at the collective level; it captures more objectively the scale of harmful events; it encourages public and social responses to all harmful events; it raises issues about the distribution of resources to prevent harm and poses a challenge to the existing exercises and structures of power (Hillyard and Tombs 2001)

A similar change of emphasis is suggested by Garside:

Getting a better sense of the total amount of crime of itself tells us little about the variable impact of different types of crime. A prolific car thief might blight the lives of tens or hundreds of people. The misselling of endowment policies has blighted the lives of many thousands. A child's graffiti might cause an unsightly mess. A factory knowingly polluting the environment might damage the health of tens of thousands of people. Is it time to develop ways to quantify the variable harm caused by various forms of criminality, rather than content ourselves with simply knowing the raw numbers?

(Garside 2004: 23)

While Garside's suggestion that we begin "to develop ways to quantify" harms associated with crime is modest in its claims for the zemiological state of the art, his reference to "the raw numbers" concedes too much to mainstream criminal statistics; as we have seen, the numbers are anything but. Clearly, there are real social phenomena which can reasonably be classified as criminal; equally clearly, records of crime exist. But there are many differences between one and the other - and the meaning of each of the two has evolved, continues to evolve and can never finally be fixed.

Moreover, while a level of epistemological fluidity is ultimately unavoidable, the situation has been made much more fluid and less predictable by New Labour's enthusiasm for preventive policing of non-criminal disorder. The last ten years have been characterised by a stream of legal and policing innovations in the area of public order. The impact on levels of crime and disorder is hard to judge - not least because the reforms themselves make crime levels harder to measure. This government's legislation may have been driven by a desire to be 'tough on crime', but its overall effect has been - paradoxically - to make it hard to assess whether it has been tough on crime or not.

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