Legal Social Control

ECED7002

Session 3d

Associate Professor Caroline Lohmann-Hancock

Three Forms of Social Control

- Informal Control
- Medical Control
- Legal Control

Legal Control

- Criminal Justice System
  - Police
    - Detain suspects and make arrests
  - Law and courts
    - Pass judgements and whether individuals have committed a crime(s)
  - Correction (Prison/Probation)
    - Punishes those convicted of crimes in the criminal courts

Legal Control
Historical Overview

- 900 AD in UK
  - Social order was responsibility of persons in local communities
  - 1066 – Norman Conquest
    - Frankpledge system
      - Citizens formed volunteer teams to watch over each other to ensure everyone stayed out of trouble
      - Early form of surveillance based discipline
      - Solidarity in village or community
      - Due to likeness and familiarity between members
    - Hue and cry
      - Individuals yelling out to other members of community that a violation has occurred.
        - (Peters, 2006)

Legal Control
Historical Overview

- 1300s Leet courts
  - Presentment juries comprised of 12 or more men (notice men)
  - Scolding (often against women: malicious gossiping, backbiting, spreading rumours, eaves dropping, night-walking, sexual misconduct, disorderly alehouses, evil reputation, poverty and illegal gaming)
  - (Peter, 2006)

Legal Control
Historical Overview

- 1620s
  - Law reforms
    - England/New England in USA
    - Tudor ideology of divine right of kings!
    - Execution of King Charles I 1649
      - Illustrates the way persons routinely tolerated what would today be considered gross violations and incivilities in the areas of aesthetics, human relations and the value place on human life
      - (Peters, 2006)

Legal Control
Historical Overview

- Late 1700s
  - How a person died mattered – public outcry
    - Siebert (1990: 8) suggested that 'it was expected that good people would die well, and that the good and great would die greatly'
    - On the day of King Charles I execution he was 'dressed warmly' so he did not shake and appear afraid!
    - His head was put with his body as a form of respect for his 'kingliness'
    - (Peters, 2006)

Legal Control
Historical Overview

- In USA Colony
  - Law was designed to ensure public and private morality (Walker, 1980 11- 34)
  - Linked to Durkheim's concept of mechanical solidarity
    - Offences against God such as blasphemy = death penalty
    - Puritans/Quakers of Pennsylvania
      - Punishment was punitive and repressive
      - Deviance an crime were seen as evil and abnormal
      - Brandings, mutilations, public whippings were common
      - The notion of 'public humiliation' was important
      - Executions were a 'performance'
      - Offenders were identified to the community
  - The offender got their 'just deserts'
  - (Peters, 2006)

Legal Control
Historical Overview

- 1776-1781 USA Colonies
  - Gained independence
    - The King was no longer the 'fountain of justice'
    - Common law ruled
      - No one was above the law - not even the king
      - Law is based on precedent – past court decisions
        - Stare decisis – stand by the decided matter
    - Decided by a Jury
    - Emphasis on the spoken word
  - The notion of 'beyond reasonable doubt'
  - The state has to 'prove' the crime
  - (Peters, 2006)

Legal Control
The Enlightenment

- 18th century philosophical movement
  - Reason, experience and scientific method over dogma (religious or otherwise)
  - Rationalism
  - Universality of law
    - Treatment of persons under the criminal justice system should be equal, fair, transparent
    - Although in reality this was not always the case
    - (Frazer, 2010)

Legal Control
The Enlightenment

- Cesare Beccaria
  - On Crimes and Punishment 1764
    - Appalled at the harsh and brutal punishments in European and USA Penal system
    - Capital punishment
    - Torture
    - Banishment
    - Transportation
- Proportionality
  - Exorbitant fines out of proportion to the offence
- He considered that punishment was 'irrational' and 'arbitrary'
  - He suggested that capital punishment should be abolished
  - And incarceration or imprisonment should replace irrational punishments
  - (Frazer, 2010)

Legal Control
The Enlightenment

- Jeremy Bentham
  - Hedonic calculus
    - He suggested that persons act to maximise pleasure and minimize pain – behaviourist approach
    - Scientific approach to law – utility
      - Insight into human behaviour
      - Greatest good for the greatest number of people
    - Utility versus Justice lead to the medicalisation of the law
      - Public health and safety
  - He began the discourse of rehabilitation
    - Panopticon
      - Constant surveillance
      - Resonates in hospitals and schools
      - (Ryan, 1987)

Legal Control
The Enlightenment

- John Howard
  - Howard League for Penal Reform
    - Scientific, humanitarian and religious methods
    - Reduction of human misery
      - (Beccaria, Bentham, Elizabeth Fry, William Blackstone and others)
        - Appoint chaplains in jails
        - Abolition of solitary confinement
        - Education of prisoners
        - General improvements in incarceration conditions of inmates
    - Visiting Gaols (Jails) prison and correctional institutions
    - 1777 state prisons in England a report
    - Jails and Prisons were in an awful state, corruption, filth, squalor, unhealthness – change followed
  - Classification and segregation of prisoners by sex, age, types and severity of crimes
  - Suggested idleness made criminals
    - Prisoners to be taught industriousness
    - Religious instruction was considered crucial

(Ryan, 1987)

State Power

- John Peel
  - New Police 1812
  - Peace Preservation Force
    - Cost local communities – state coercive powers
  - 1829 Metropolitan Police Act
    - 3000 officers – paid police
    - Walk a beat to ensure close familiarity between officers and members of the community
      - Broad powers of investigation and arrest
      - High levels of discretion

(House of Commons, 1831)

Legal Control

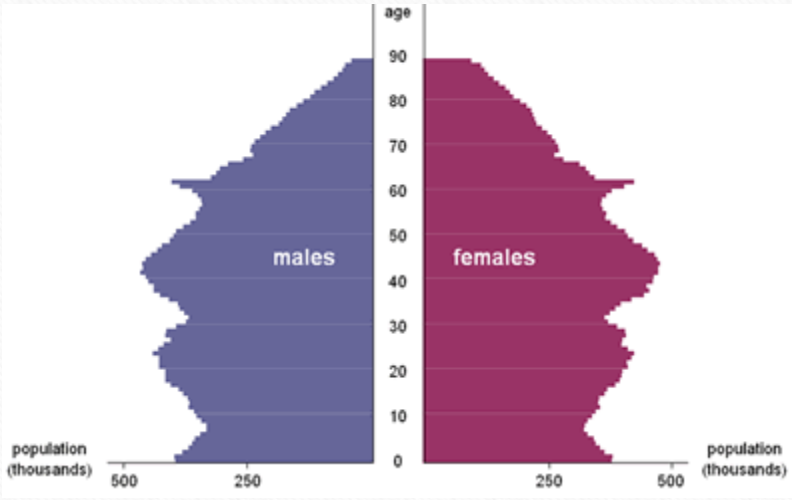
- Community-oriented policing and fear of crime
  - Growth in statistics available on crimes may 'fuel' the fear of crimes
  - In some ways the criminalisation of groups and individuals feeds this fear of crime in society

(Boran, 2002)

Legal Control

- Net-widening
  - Professionalisation and upgrading of policing and police services
    - Suggest that informal control is reducing and that we need ‘state’ control to ‘sort out’ society
    - The UK has one of the largest prison populations

UK Population
Mid-2009



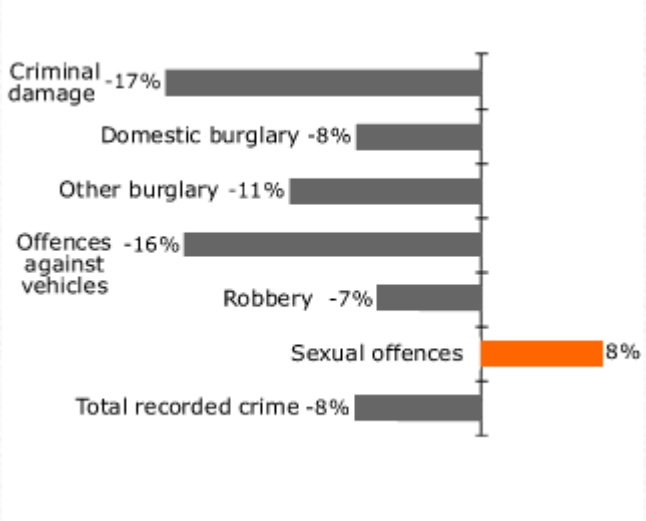
- UK Population Estimates
  UK population grows to 61.8 million

UK Population
Prison Population

- 2014: 64.1 million UK Population
- 2014: 85,634 Prison Population
  - Approx. 1 prisoner per 749 of population
- Intermediate sanction
  - Home confinement, residential treatment, boot camps, halfway houses, shock or intensive supervision probation and community service – to attend to the overcrowding in prisons

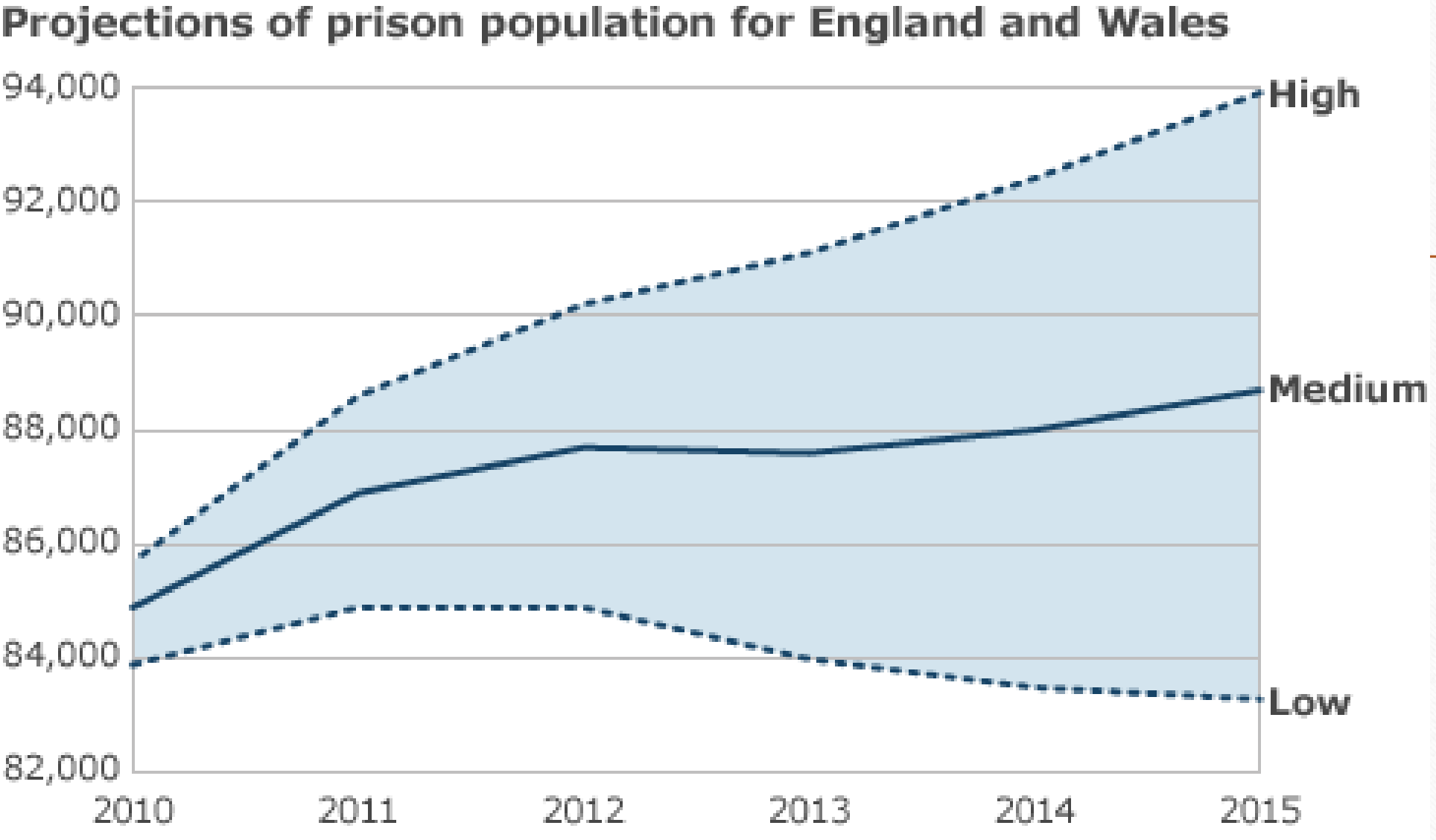
Crime Rates

- Recent prison population trend
  - year, prison population total, prison population rate
  - 1992 44,719
  - 1995 50,962
  - 1998 65,298
  - 2001 66,301
  - 2004 74,657
  - 2007 80,216



Prison Population 2013

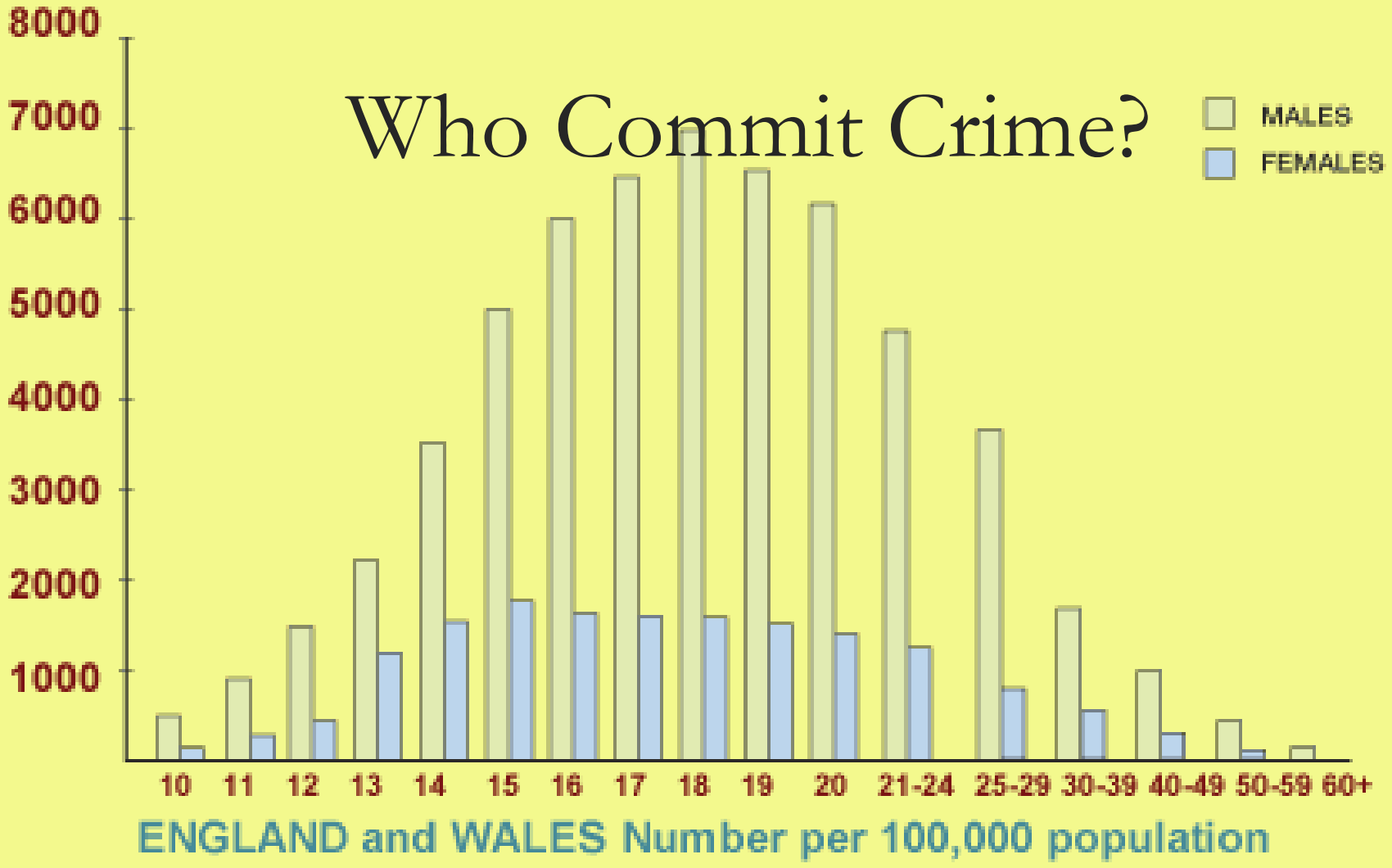
- http://www.prisonreformtrust.org.uk/Portals/0/Documents/Prisonthefacts.pdf


Projections of prison population for England and Wales
94,000
92,000
90,000
88,000
86,000
84,000
82,000
2010
2011
2012
2013
2014
2015
High
Medium
Low
Medium projection assumes no change in custody rates or sentence lengths
Source: Ministry of Justice, August 2009

The Poor Get Prison

- Net-widening
  - Racial minorities and poor over represented in the criminal justice system
  - Poor defendants have public defenders
    - More likely to be told to plead guilty
    - More likely to be convicted
    - Less resources to fight chares
    - More likely to be stopped and arrested
  - When compared to wealthy
- In essence, being poor you are more likely to arrested for the same crime and same set of circumstances at the scene by police than if you were wealthy

Who Commit Crime?



Death Penalty in USA

- African-Americans comprise 12% of US Population
  - They commit – or at least they are convicted of more that 50% of countries murders
  - Death penalty is THREE TIMES more likely to be imposed on a defendants accused of murdering a white person than those accused of murdering a black person
    - White murder is considered worse than black murder!

Death Penalty in USA

Murderer	**Murdered**	**Total % of murders**
Black	White	35%
White	Black	14%
Whites	Whites	22%
Black	Black	6%

Remember African-Americans only comprise 12% of the population!

Status and Framing of Offences

- Paternalism and Status offences
  - Sex bias also apparent
    - A patriarchal society
      - Women considered pure, virtuous
    - Women engaging in serious crime are likely to get a longer sentence than their male counterparts for the same offence
    - This also applies to young offenders
      - Girls tend to be punished more harshly than boys for status offences
      - Sexual promiscuity in girls is assume more threatening
      - In boys this is at least tolerated 'he's just sowing his wild oats'

Legal Control
Foucault

- Panopticon
  - He considered that punishment was 'cruel and in humane'
  - Interestingly the panopticon – surveillance is now around us all the time CCTV, internet – it is possible to get an image/information on most people fairly quickly
    - Whether this is NI numbers, Bank details, Tesco cards and so on.
    - Thus the power of the custodians of such technology has increased
  - Foucault suggested the notion of govern mentality
    - The increased number of people taking on 'government functions' police, auditors, accountants, lawyers, doctors, therapists, managers, teachers, scientists and professors

Panopticon

- Social Control is generated
  - Rather than the ‘few watch the many’
- Now
  - The many watch the many
  - All citizens are now acting like the policy
  - Surveillance has become wide speared, general, constant
    - More people caught in deviance
  - How do you feel?
    - I’m not opposed to surveillance because I’ve got nothing to hide!

Sadly

- Such legal control goes beyond the notion of 'safety' but links with norms and values and ideas of what constitutes deviance.
  - Is punishment the way forward?
  - Or could society do as David Garland suggests
    - Only the mainstream processes of socialisation that are able to promote proper conduct on a consistent and regular basis reduce crime?
- The government suggests that rather than reducing crime
  - Society has more issues with 'families in crisis' children at risk – this creates a market for experts
  - We lose more and more control over our lives and our decision making

Food for Thought

- Since 1997
  - More than
    - 3,000 Criminal Offences have been created
  - In 2008 alone, for example, the Department for the Environment, Food and Rural Affairs created more than
    - 100 criminal offences in a single parliamentary act aimed at reducing the spread of BSE, the commission said.
  - The commission said nearly three times as many pages were written in Halsbury's Statutes of England and Wales between 1989 and 2008 than in the 637 years from 1351

- http://www.bbc.co.uk/news/uk-11065204

References

- Armstrong T (2003) 'Attention Deficit Hyperactivity Disorder in Children: One Consequence of the Rise of Technologies and Demise of Play in Olfman S, All Work and No Play: How Education Reforms are Harming our Preschoolers, Wesport, CT: Praeger.
- Beniger JR (1984) The Control Revolution: Technological and Economic Origins of the Information Society, Cambridge, MA: Harvard University Press.
- Black D (1983) 'Crime as Social Control', American Sociological Review, Vol 48, No. 1, 34-45.
- Boran, A (2002) Crime: Fear or Fascination. Papers from a conference held at Chester College of Higher Education, November 2000.
- Frazer, ML (2010) The Enlightenment of Sympathy: Justice and the Moral Sentiments in the Eighteenth Centry and Today, Oxford: OUP.
- Gibbs JP (1989a) Control: Sociology's Central Notion, Urbana: University of Illinois Press.
- Gibbs JP (1989b) 'Conceptualisation of Terrorism', American Sociological Review, Vol 54, No. 3: 329-340.
- Gibbs JP (1994) A Theory about Control, Boulder, CO: Westview Press.
- Harris J (1998) The Nurture Assumption, New York: Free Press.

References

- Hervieu-Leger D (1998) 'The Transmission and Formation of Socio-Religious Identities in Modernity: An Analytical Essay on the Trajectories of Identification' International Sociology, Vol 13, No. 2: 213-228.
- Hillery G (1968) Communal Organisations: A study of local societies, Chicago: University of Chicago Press.
- Hirschi t (1969) Causes of Delinquency, Berkeley: University of California Press.
- Hirschi T & Gottredson MR (2005) 'Punishment of Children from the Perspective of Control Theory' in Donnelly M & Straus MA, Corporal Punishment of Children in Theoretical Perspectives, New Haven, CT: Yale University Press.

References Continue

- House of Commons (1831) Exaiminer, Oct 2, 1831, Issue 1235, pp. 630-631.
- Katovich MA (1988) 'Cooperative Bases of Control: Toward an
- Milgram S (1963) 'Behavioural Study of Obedience' Journal of Abnormal and Social Psychology, Vol 67, 371-378.
- Milgram S (1965) 'Some Conditions of Obedience and Disobedience to Authority', Human Relations, Vol, 18, 56-78.
- Nye EI (1958) Family Relationships and Deviant Behaviour, Westport, CT: Greenwood Press.
- Peters, J (2006) Criminal Justice : An Introduction to Crime and the Criminal Justice System, London: Willan Publishing.
    - Ryan, A (1987) Utilitarianism and Other Essays, Harmondsworth: Penguin
- Siebert (1990)
- Simmel G (1950) The Sociology of Georg Simmel, New York: Free Press.
- Sumner WG (1906) Folkways, Boston: Ginn.