Contents

List of Boxes xi
List of Acronyms and Abbreviations xiii
Acknowledgements xvi

About this Book 1

SECTION 1 Understanding Human Rights

1 The Origins and Idea of Human Rights 5
  1.1 Introduction 5
  1.2 What are human rights? 5
  1.3 The philosophical foundations of human rights 7
  1.4 Some criticisms of human rights 10
  1.5 Core human rights concepts 15
  1.6 Conclusion 17

2 International Human Rights Law 21
  2.1 Introduction 21
  2.2 The UN and international human rights treaties 21
  2.3 Monitoring and enforcing human rights 26
  2.4 Human rights law beyond the UN 30
  2.5 Conclusion 36

3 Human Rights and Civil Society 39
  3.1 Introduction 39
  3.2 Human rights in a social context 39
  3.3 Building human rights cultures? 40
  3.4 The role of NGOs 44
  3.5 Indifference and denial 47
  3.6 Conclusion 48
## 4 Collective Rights and Discrimination  52

- **4.1** Introduction  52
- **4.2** From individual to group rights  52
- **4.3** Applying collective rights in criminology and criminal justice  56
- **4.4** The many faces of discrimination  61
- **4.5** Discrimination in crime prevention and criminal justice  64
- **4.6** Conclusion  67

## 5 Integrating Criminology and Human Rights  72

- **5.1** Introduction  72
- **5.2** Reviewing the criminological record  72
- **5.3** Human rights, globalization and human suffering  82
- **5.4** Conclusion  83

### Section 2 Applying Human Rights in Criminology

## 6 Criminal Law  91

- **6.1** Introduction  91
- **6.2** Human rights in domestic criminal law  93
- **6.3** Shield/sword binary function of human rights  95
- **6.4** Counter-terrorism and supreme emergency exception  98
- **6.5** State crime, criminal law and human rights  101
- **6.6** Conclusion  103

## 7 Crime Prevention  108

- **7.1** Introduction  108
- **7.2** Understanding crime prevention  109
- **7.3** Crime prevention by the UN and Europe  111
- **7.4** From prevention to pre-emption: surveillance, security and risk  112
- **7.5** Preventing violence against women  115
- **7.6** Justice reinvestment  118
- **7.7** The failure of the War on Drugs  120
- **7.8** Human rights education and prevention  124
- **7.9** Conclusion  124

## 8 Policing  129

- **8.1** Introduction  129
- **8.2** Police as protectors and abusers of human rights  129
- **8.3** Human rights standards on the use of force by police  131
- **8.4** Human rights implications of particular policing strategies and contexts  134
<table>
<thead>
<tr>
<th>Contents ix</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.5 Promoting human rights in policing</td>
</tr>
<tr>
<td>8.6 Conclusion</td>
</tr>
<tr>
<td>9 Criminal Courts</td>
</tr>
<tr>
<td>9.1 Introduction</td>
</tr>
<tr>
<td>9.2 The court’s role</td>
</tr>
<tr>
<td>9.3 Therapeutic jurisprudence (TJ), restorative justice and ‘problem-solving’ courts</td>
</tr>
<tr>
<td>9.4 Conclusion</td>
</tr>
<tr>
<td>10 Detention</td>
</tr>
<tr>
<td>10.1 Introduction</td>
</tr>
<tr>
<td>10.2 Rights of individuals deprived of their liberty</td>
</tr>
<tr>
<td>10.3 Violations of the human rights of detainees</td>
</tr>
<tr>
<td>10.4 Transnational detention, extraordinary rendition</td>
</tr>
<tr>
<td>10.5 Violence and deaths in custody</td>
</tr>
<tr>
<td>10.6 Deprivation of life, and life without parole</td>
</tr>
<tr>
<td>10.7 ‘Social death’ of the prisoner</td>
</tr>
<tr>
<td>10.8 Privatization</td>
</tr>
<tr>
<td>10.9 Women prisoners</td>
</tr>
<tr>
<td>10.10 Accountability</td>
</tr>
<tr>
<td>10.11 Humane systems in a punitive world</td>
</tr>
<tr>
<td>10.12 Conclusion</td>
</tr>
<tr>
<td>11 Juvenile Justice</td>
</tr>
<tr>
<td>11.1 Introduction</td>
</tr>
<tr>
<td>11.2 The CRC and juvenile justice</td>
</tr>
<tr>
<td>11.3 Implementation and monitoring</td>
</tr>
<tr>
<td>11.4 Regional children’s rights</td>
</tr>
<tr>
<td>11.5 Attitudes to children’s rights</td>
</tr>
<tr>
<td>11.6 From welfare to injustice</td>
</tr>
<tr>
<td>11.7 Children in detention</td>
</tr>
<tr>
<td>11.8 Reintegration and restorative justice</td>
</tr>
<tr>
<td>11.9 Conclusion</td>
</tr>
<tr>
<td>12 Victims</td>
</tr>
<tr>
<td>12.1 Introduction</td>
</tr>
<tr>
<td>12.2 Crime victims, offenders and the role of the state</td>
</tr>
<tr>
<td>12.3 Victimization and restorative justice</td>
</tr>
<tr>
<td>12.4 Victims’ agency in transnational and international crimes</td>
</tr>
<tr>
<td>12.5 Conclusion</td>
</tr>
</tbody>
</table>
**SECTION 3  A Criminology for Human Rights**

<table>
<thead>
<tr>
<th>13</th>
<th>Future Directions</th>
<th>231</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.1</td>
<td>Introduction</td>
<td>231</td>
</tr>
<tr>
<td>13.2</td>
<td>A criminology for human rights: key themes</td>
<td>231</td>
</tr>
<tr>
<td>13.3</td>
<td>Conclusion</td>
<td>235</td>
</tr>
</tbody>
</table>

*Index*  

239
Human rights have been described at various points in history as ‘nonsense’ by their detractors and as ‘secular religion’ by their supporters. They are inescapably controversial, but at this point in time many people believe they are indispensable. Human rights provide a set of normative standards against which the performance of governments can be assessed, and are referred to increasingly in the quest for social, cultural and economic justice as well as for the protection of civil liberties. In this risk-conscious age, where security looms large as a political goal, human rights can provide the language and concepts to ask critical questions about the harms, benefits and limits of state action and inaction. Is the security of some people being pursued at the expense of the rights of others? Or are some fundamental rights and freedoms being sacrificed completely in the name of community safety, in a way that will benefit no one in the longer term? We believe that the positioning of criminology in an arena in which individuals and groups encounter the power and the promise of the state makes the critical study of human rights an essential element of contemporary criminological inquiry.

The purpose of this text is to build bridges between the knowledge domains of criminology and human rights. It is aimed at established criminologists and advanced students of criminology with little or no prior knowledge of human rights. While the book is suitable as a text for specialized undergraduate or postgraduate courses in human rights, crime and criminal justice, it has also been drafted with the independent reader in mind. In the first section, we provide a broad, multidisciplinary introduction to human rights concepts, and the law and practice of human rights. In the second section, human rights thinking is applied systematically to a range of well-established topics within criminology and criminal justice. In the final section, we identify some broad research themes within criminology that we believe illustrate the growing relevance of human rights in a globalizing world.

The book does not include important developments relating to the creation of the International Criminal Court and its dealings with large-scale international crimes such as genocide, war crimes and crimes against humanity. Nor does it review the ground-breaking work that is being done
by criminologists on transitional justice and peacemaking in international arenas. This is not because we consider these topics to be irrelevant to criminology or insignificant in the wider scheme of things. Rather, it is because important and highly specialized books are already being written on these subjects (see Parmentier and Weitekamp 2007; Stanley 2009; Braithwaite et al. 2010; Savelsberg 2010).

Moreover, these emerging areas of study extend the scope of criminology beyond the usual concern with the maintenance of social order within generally peaceful and stable societies, towards an engagement with fundamental questions of war and peace. While we wish to endorse these developments towards a more globally aware discipline, our focus is deliberately on the more familiar concerns of what we call ‘everyday criminology’, as it is usually practised within advanced democracies. Instead of seeking to extend the boundaries of criminology to become more globally focused, we are attempting to locate human rights within more well-trodden criminological territory. Rather than seeing human rights as applicable only to distant places with unstable and undemocratic governments, we hope to illuminate some of the connections between domestic criminology and the international human rights arena. This leads us to consider how human rights can be relevant to the operation of criminal law (Chapter 6), crime prevention at the local and national levels (Chapter 7), accountable policing (Chapter 8), and the pursuit of criminal justice (Chapters 9 to 12).

Our approach to the promise and pitfalls of human rights is both circumspect and hopeful. We are mindful of the arrogance of simply assuming the universal acceptance of human rights, the naivety of the unreflective conflation of human rights with the content of human rights law, the danger and hypocrisy of using human rights as a shield while pursuing individual or elite interests, and the limitations of law of any kind in the face of entrenched injustice. Still, we see in human rights an important framing that is becoming essential for criminologists to understand, if not embrace, under conditions of globalization that are transforming both the world and the discipline.

References
The term ‘human rights’ can be used in a superficial way that amounts to little more than sloganeering. But if human rights are to count for more than empty rhetoric, it is important to have a sound understanding of the origins and meaning of the term.

In this section we explain the multifaceted nature of human rights — as political philosophy, international law and socio-political practice. We concentrate on the concept and meaning of human rights, initially with minimal reference to criminology, and assume little or no prior knowledge of either human rights law or theory on the part of the reader.

In Chapters 1 to 3 we discuss the nature of human rights as moral standards, as legal constructs and as a basis for political claims, and outline some of the major objections to applying human rights in these contexts.

In Chapter 4 we introduce the idea of collective rights and explain the tensions between individual and group rights. We then relate this discussion to one of the most fundamental principles of human rights — non-discrimination, which is also a core concern within criminology.

Finally, in preparation for Section 2, where we apply human rights thinking systematically to specific areas of criminology, we summarize in Chapter 5 some of the ways in which human rights perspectives are already being applied within criminology.
CHAPTER 1

The Origins and Idea of Human Rights

Key concepts
Natural rights — Social contract — Universality — Inalienability — Indivisibility

1.1 Introduction

Reference to human rights is commonplace in contemporary societies. But what does the term actually mean, and where does it come from? In this chapter we consider human rights as normative or moral claims that operate primarily in the space between individuals and the state. Human rights set out rules and standards about how governments and populations should behave. It is their prescriptive character, stating what should be, rather than what is, that identifies human rights as a system of normative claims.

1.2 What are human rights?

Whatever we think about what human rights are, where they came from and what are their limits, it can be said that ‘commitment to human rights is a commitment to a moral vision of how the world should be regulated’ (Fagan 2012: 19).

The concept of rights has existed in various forms since ancient times (see, for example, Haas 2008). In modern times, rights came to be associated with individuals rather than collectives, and conceptualized as human rights. This way of articulating the relationship between individuals and the state is often traced to social contract theory, as developed by liberal Enlightenment philosophers, most notably British philosopher John Locke. According to Lockean social contract theory, citizens make a notional pact with their rulers to give up some of their individual autonomy (or sovereignty) in return for
the provision of collective security. This is a rather risky venture, since governments can misuse the power that has been vested in them by the people. Human rights are intended to be a tool for mitigating this risk of misuse. They express the parameters of that political bargain, and propose limits on the ways that governments can exert their power over citizens. The language of rights is therefore tightly interwoven with the philosophical underpinnings of the liberal democratic state, and can be seen as a kind of citizen’s insurance against tyrannical government.

This way of understanding human rights, as a ‘bulwark against the state’, is quite a negative conception, aimed at ensuring freedom from unwarranted interference by the state with an individual’s property, privacy, conscience or liberty. However, in more recent times, particularly since the emergence of the welfare state, residents of liberal democracies have come to expect that governments will intervene more actively on their behalf to promote their security and wellbeing. This has led to a more positive conception of human rights as an agenda of individual entitlements to receive support from the state in relation to health, education and employment, as well as the protection of the classic civil liberties mentioned above. However, since considerable state intervention is needed, including the establishment of a criminal justice system, to ensure that individuals are protected from breaches of their civil liberties, the distinction between positive and negative rights may not be particularly meaningful.

Adherence to particular political ideologies may influence which of these aspects of human rights is emphasized or supported in practice. Forms of liberalism that advocate minimal intervention by government in social and/or economic affairs tend to favour (negative) civil liberties over (positive) welfare rights. The right to work, for example, has little meaning within capitalist systems, where full employment is not considered an objective of government. Welfare liberalism or socialist philosophies advocate state responsibility for meeting human needs, and therefore focus on positive rights such as the provision of housing, jobs and education. In practice, this has sometimes occurred at the expense of civil liberties. It is possible to steer a middle course through these positive and negative conceptions of the role of government with respect to human rights. Former US president, Franklin D. Roosevelt, who was – unusually within the American political context – a strong supporter of social and economic rights, expressed this position as follows: ‘The only sure bulwark of continuing liberty is a government strong enough to protect the interests of the people, and a people strong enough and well enough informed to maintain its sovereign control over its government.’
1.3 The philosophical foundations of human rights

Despite the endurance and widespread acceptance of the idea of human rights, it is not an easy matter to establish beyond doubt that we have them. Locke relied on the idea of *natural rights* given to individuals by God, to support his assertion that all human beings possess human rights. This was part of a radical agenda aimed at refuting the doctrine of the Divine Right of Kings in favour of a more democratic form of government that recognized the sovereignty of individuals. The utilitarian philosopher, Jeremy Bentham, famously referred to the idea of human rights as ‘rhetorical nonsense – nonsense upon stilts’. Bentham argued instead that laws should be devised by governments to maximize *utility*, an elusive concept that roughly equates to the common good. Critics of Bentham’s utilitarianism argue that governance directed single-mindedly at achieving the common good may sacrifice the wellbeing of some individuals for the benefit of others. For example, governments might subject individuals to harsh punishment in order to deter others from committing crimes, regardless of the guilt or innocence of those punished.

German philosopher, Immanuel Kant, argued that individuals must be treated as autonomous moral agents, and therefore as ends in themselves, not as a means to achieve utilitarian objectives. He also claimed that identifying universal moral rules (which he called ‘categorical imperatives’) that can be derived from pure reason is the best way to provide this protection. This style of moral reasoning is described as *deontological*, meaning that it is based on moral obligations and duties, rather than on a consideration of consequences. While he did not refer to human rights explicitly, our understanding of contemporary human rights owes a large debt to the philosophy of Kant (see Caranti 2012). Liberal theorist, Ronald Dworkin, famously described rights as moral duties that normally ‘trump’ other considerations, unless a very strong argument can be made that breaching an individual right is necessary to achieve some greater social good (Dworkin 1984). As we shall see in Chapter 2, the drafting of international human rights law often leaves a generous space for consideration of the common good, in recognition of the continued relevance of consequentialist forms of moral reasoning in contemporary governance.

Even after making a convincing case in favour of human rights, it is not a straightforward matter to find a philosophical foundation for them. There is ongoing debate over how the idea of universal human rights might be derived through philosophical reasoning from other concepts such as ‘duties’, ‘needs’, ‘human nature’, ‘essential interests’, ‘shared capacity for suffering’, ‘human agency’ or the goal of securing ‘equal individual liberty’ (see Fagan 2012). In the face of these conceptual difficulties, postmodern philosophers such as
Richard Rorty have concluded that human rights need not be rationally ‘grounded’ at all, but can instead be embraced in the spirit of human solidarity (Rorty 1993). Other political philosophers have objected to this ‘anti-foundationalism’, arguing that a ‘quasi-foundational’ justification for rights can be established by adopting a ‘pragmatic’ perspective, accepting that human rights are social constructions, but are none the less real rather than imaginary (Bufacchi 2008). The array of philosophical justifications for the existence and content of human rights is somewhat bewildering to the non-philosopher. Some of these positions delve deeply into what it means to be human, while others reject these considerations as essentialist. Some explanations attempt to sidestep these issues by defining human rights in terms of the functions they perform. Despite the inconclusive nature of these debates, human rights continue to have widespread appeal as practical vehicles for making moral claims. As Conor Gearty notes, ‘we have a paradox: the idea of human rights has been reaching dizzying heights in the world of politics and law whilst its philosophical base has been increasingly called into question’ (Gearty 2006: 11).

While we do not attempt to get to the bottom of these complex arguments in this book, the way we think about and justify human rights does matter in everyday life. For example, the idea of God-given natural rights sometimes makes an appearance in political debate. In the USA, the Bill of Rights enacted in 1789 after the violent overthrow of British rule is seen by many US citizens as the ultimate or only source of their individual rights. While there is no explicit reference to God in the US Constitution or Bill of Rights, some conservative groups still insist that these documents represent the will of God and therefore cannot be changed. In the political debate about arms control that followed the 2012 Newtown school massacre in the USA, the National Rifle Association has lobbied fervently against restrictions on gun ownership, largely on the basis of Americans’ ‘God-given rights’ under the Second Amendment (see Box 1.1). This example alone illustrates that what we believe our rights to be, and how we justify them, has serious implications for governance and the types of societies we create.

Despite increasing scepticism about the idea of natural rights (but see Feser 2012), Locke’s starting point – that universal human rights arise from recognition of the equal dignity and moral worth of all human beings – continues to underpin contemporary understanding of human rights. In practice, while it might fall short of providing a philosophical ‘proof’, for many human rights supporters it is sufficient to assert that human rights are the rights we have simply by virtue of being human. Whether founded on a belief in God or derived from reason, intuition or solidarity, it is the shared vulnerability to suffering and insecurity that marks the human condition, and renders human
Box 1.1 A God-given right to bear arms?

The Second Amendment of the US Constitution reads:

‘A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.’


Disparate interpretations from voices in the US gun control debate:

‘No government gave [these rights] to us and no government can take them away.’
(Wayne La Pierre, President of the National Rifle Association)

‘There are absolutes in our Bill of Rights. And they were put there on purpose by men who knew what words meant and meant their prohibitions to be absolute.’
(Supreme Court Justice Hugo Black, as cited by Wayne La Pierre)

‘Progress does not compel us to settle centuries-long debates about the role of government for all time — but it does require us to act in our time.’
(President Barak Obama in his inaugural swearing-in address)


rights an important tool for addressing human need. On the other hand, human rights have come increasingly to be understood as being socially and legally constructed, with their particular content open to political debate and amendment as circumstances change.

Dembour (2012) has suggested that contemporary views on the nature of human rights can be divided into four ideal types: the natural school, which considers human rights to be ‘given’, derivable metaphysically either from God or reason; the deliberative school, which conceives of human rights as ‘agreed’ and as an important vehicle for expressing fundamental entitlements; the protest school, which sees human rights as ‘fought for’, stresses practical action to redress injustice, and is less concerned with their philosophical
underpinnings; and the discourse school, which views human rights as merely ‘talked about’, accepting that they represent a powerful language to express political claims, while lacking a deep belief in their authenticity. While many human rights thinkers will align themselves with several of these camps, Dembour identifies representative scholars from each school, including Jack Donnelly (natural), Jürgen Habermas (deliberative), Costas Douzinas (protest) and James Nickel (discourse). Key readings from each of these significant thinkers are listed at the end of this chapter.

1.4 Some criticisms of human rights

Several decades ago, feminist legal theorist Carol Smart (1989) observed that ‘[i]t’s almost as hard to be against rights as it is to be against virtue’. While ‘rights talk’ has become pervasive in many contemporary societies, this statement may not be as applicable now as it was at that time. Serious reactions against human rights approaches are now emerging in liberal democracies that once supported the idea of human rights, and many recent books on the subject conclude with speculations about whether human rights will, or should, survive (for example, Gearty 2006). In addition to these broad political and legal debates, there has always been a range of philosophical objections to the idea of human rights as a way of regulating the relationship between individuals, the state and other collectivities.

For communitarians, the relationship between individuals and communities is the essential building block of moral and political thought. Communitarians from a variety of political traditions, from conservative to Marxist, argue that human rights thinking encourages selfish egoism, by placing the concerns of isolated individuals above the collective good. Alasdair MacIntyre rejects the idea of human rights completely and, in a famous phrase that rivals Bentham’s reference to rights as ‘nonsense upon stilts’, has argued that human rights are ‘as real as unicorns’ (cited in Etzioni 2012). Other communitarians reject liberal individualism while retaining some commitment to the idea of human rights, advocating moral dialogue to resolve conflicts between individual rights and collective goods, which will lead to different emphases and outcomes in different socio-political contexts (Etzioni 2012).

It is true that individuals may sometimes use human rights instruments for reasons that others consider to be trivial or motivated by narrow self-interest. Rights talk is also frequently used in a disingenuous fashion by governments and other powerful groups to justify agendas that are exploitative or harmful. However, human rights advocates assert that most of the time human rights principles are used to defend members of vulnerable groups – such as refugees,
accountability  see prisons, police
‘adultification’  189, 197
African-Americans: discrimination against  178; in prison  178;
over-policing of  130; see also King, Rodney, death of
African Charter of Human and People’s Rights  192
African Charter on the Rights and Welfare of the Child  192
African Union  31
age of criminal responsibility  197–8
Alien Tort Statute (ATS) US  34
American Convention on Human Rights  193
Amnesty International  45, 103
anti-homosexuality legislation  57
Anti-Social Behaviour Act 2003, UK  195
anti-social behaviour orders (ASBOs), UK  156–7, 157 Box 9.2
Apartheid, South Africa  93–4, 135, 155
apology to Stolen Generations, by former Australian Prime Minister Kevin Rudd  215, 217 Box 12.2
Arendt, Hannah  16–17
Asia Pacific Forum  31
Association of Southeast Asian Nations (ASEAN)  31
asylum seekers  48, 232–3; see also border crossing; border control
Australian Human Rights Commission  35, 61
Barak, Aharon, former Chief Justice of Israel  155
Beijing Rules  198, 200
Bentham, Jeremy  7
Bin Laden, Osama  160
border control  82–3, 97, 232–3; see also border crossing, asylum seekers
border crossing  58, 97, 233; see also border control, asylum seekers
Boston Marathon, 2013 bombing  147
Braithwaite, John  76–7
Bulger, James, murder of  152
Bush, George W., former US President  154
Canadian Aboriginals in prison  59 Box 4.1
capabilities approach  12, 40; see also Sen, Amartya; Nussbaum, Martha
capacity building  40–6, 110–11; see also Sen, Amartya; Nussbaum, Martha
capital punishment  see death penalty ‘categorical imperative’  7
children: ‘best interests’ of  191, 204; as victims of abuse  194, 201;
citizenship rights of  55; curfews imposed on  195; in detention 195 Box 11.2, 199–203; in detention see age of criminal responsibility;
children (cont.)
in immigration detention 201, 202
Box 11.4; of women prisoners 182;
rights of 55, 189–90, 194–7, 200,
204; rights of, opposition to
194–6; suspects, rights of 56;
vigilance against 196, 201; see also
juvenile justice
Circle Sentencing 59–60
civil liberties (negative rights) 6, 23,
140, 141 Box 8.3
closed-circuit television (CCTV) 109,
133; see also surveillance
Cohen, Stanley 47–8, 58, 78
collective rights: and discrimination
61–4; conceptualizations of 52–6;
impact on individual rights 53–4;
instrumentalist 53; see also
individual groups
colonization 43, 54, 58
Commission on the Status of Women
(CSW) 26, 45 Box 3.1, 57, 115
communitarianism 10, 11
compensation and reparation, principle
of 219
Constitution of Australia 1901 94
Constitution of the Republic of South
Africa 1996 93
Constitution of the US 8, 93; Second
Amendment of 8, 9 Box 1.1, 93
Convention Against Illicit Traffic in
Narcotic Drugs and Psychotropic
Substances 120
Convention Against Torture and Other
Cruel, Inhuman or Degrading
Treatment or Punishment (CAT)
133, 169, 171, 211
Convention against Transnational
Organized Crime (UNTOC) 58
Convention on the Elimination of All
Forms of Racial Discrimination
211
Convention on the Eradication of Racial
Discrimination (CERD) 61, 62
Convention on the Rights of Persons
with Disabilities 55, 160, 212
Convention on the Rights of the Child
(CROC) 24, 45, 55, 156, 189,
190–1, 211; four key principles of
191; implementation and
monitoring of 192
Convention on Transnational Organized
Crime (UNTOC) 97
Convention Relating to the Status of
Refugees 211
corporal punishment 196, 197 Box
11.3
Council of Europe 31
Council of the League of Arab States 31
counter-terrorism 98–100, 172–3; see
also policing, security, securitization,
terrorism
Court of Justice of the European Union
(CJEU) 193
courts: constraints on 149–60;
problem-solving 161–2; role of
149; see also juvenile justice,
restorative justice, therapeutic
jurisprudence (TJ)
crime: committed by transnational
corporations 57, 78, 235; state
see state crime; transnational and
international 220–3, 233;
transnational organized 78–9; see
also crime prevention, drug
trafficking, human trafficking,
terrorism
Crime and Disorder Act 1998, UK
156–7
crime prevention 58, 108–24; primary
109; secondary 109; situational
109; social 109–10; tertiary 109;
see also justice reinvestment
Criminal Justice and Public Order Act 1994, UK 65
criminal law: domestic 91–5; international 25–6
critical criminology 77–80
cultural criminology 77
cultural relativism 14, 58
Curti, Roberto Laudisio, death of 133, 133 Box 8.1, 140; see also electro-convulsive weapons
Daphne programme 112
death penalty 174–5; for young people 203
death row 171–2, 175
deaths in custody 134, 174
Declaration on the Elimination of All Forms of Violence against Women 67, 115
Declaration on the Rights of Indigenous People 22
defendants, rights of 151–2, 162; see also offenders
Dembour, Marie-Bénédicte 9–10, 42, 73, 74 Box 5.1
Democratic Republic of Congo, conflict in 103; see also Dyilo, Thomas Lubanga, Congolese warlord
denial, states of, Stanley Cohen’s 47–8 Box 3.2
derogation 15, 23, 35
detainees: human rights abuses of 167; violence against 174; see also prisoners
detention: administrative 42, 172, 179; as a last resort 162, 184, 199; privatization of 178–82; see also
prisoners, Guantanamo Bay, prisoners, prisons
discrimination: against women 152–3; direct 63; in policing 65; in the criminal justice system 64; indirect
63; positive 62, 63; racial 195–6; racial, within policing 63–4, 131; systemic 63, 64–7, 134–5, 195–6
(see also women, violence against)
diversion from criminal justice system, of children 191, 199
diversion from custody 118, 119
doli incapax, principle of 198
domestic violence 95–6, 152; see also women, violence against
Doorson v Netherlands, case of 214
drug trafficking 120–3
due process 42, 75, 131, 154, 162
Dworkin, Ronald 7
Dyilo, Thomas Lubanga, Congolese warlord 222
electro-convulsive weapons 132–3, 140;
see also Curti, Roberto Laudisio, death of
el Masri, Khaled, detention and torture of 173 Box 10.1
environmental harm 111; produced by drugs trade 122
equality: formal, concept of 62; substantive, concept of 62
EU Charter of Fundamental Rights and Justice 112
European Convention on Human Rights 31–3, 61, 170, 212
European Court of Human Rights (ECtHR) 32–3, 46, 193
European Crime Prevention Network 112
European Union 32
extraordinary rendition 172–3
feminism 12–13, 80–1
First Nation people in US prisons 59 Box 4.1
Foucault, Michel 81
G4S 181 Box 10.4
gender-responsive policies and programmes 182, 183
Geneva Conventions 25, 155
Global Commission on Drugs Policy 121

globalization 82–3, 232
governance: neo-liberal 16;
technologies of 112–14, 234 (see also policing, security, surveillance)
group rights see collective rights
Guantanamo Bay 34, 154

Habermas, Jürgen 15
Hale, Lady 91
Hamdan, Salim Ahmed 154
*Hamdan v Rumsfeld*, case of 154–5
Hicks, David, detention of 158, 159 Box 9.3
Hirst, John 177

Holocaust, the 17, 101, 211, 222; see also Nuremberg trials
homosexuality, decriminalization of 95
human rights: as social constructs 7;
conceptualizations of 5–10; culture 41–4, 45; deliberative school of,
Dembour's concept of 9, 14, 15, 74 Box 5.1, 76–7; developmental
110; discourse school of, Dembour's concept of 10, 15, 74 Box 5.1,
80–2; education 41, 43, 124; first generation 24; fourth generation
24; God-given, natural 7, 8, 24; individual see individual rights;
influence on domestic criminal law 91–5, 96; influence on state power
92–3, 96–7, 101–3, 148; minority 11; natural school of, Dembour's concept of
9, 14–15, 73–5, 74 Box 5.1; negative see civil liberties; of prisoners and detainees 169,
171–2; of victims 131; of victims of crime see victims of crime,
human rights of; protest school of,
Dembour's concept of 9, 12, 15,
74 Box 5.1, 77–80; second generation 24; thinking within

[Add more entries as needed]
International Covenant on Economic, Social and Cultural Rights (ICESCR) 12, 23, 61
International Criminal Court (ICC) 25, 27, 103, 116
International Criminal Tribunal for the former Yugoslavia (ICTY) 102
judicial discretionary powers 155–60
judiciary, role of 153–60
justice by geography 154
justice reinvestment 118–20, 233–4
juvenile justice
CROC Articles in relation to 190–1
separate systems of 198
specific instruments 192–4; see also
age of criminal responsibility;
Bulger, Jamie, murder of;
children; Convention on the
Rights of the Child; UN
Committee on the Rights of the
Child; corporal punishment
Kant, Immanuel 7
King, Rodney, death of 132
Kirby, Justice Michael 16
Kyi, Aung San Suu, Burmese opposition politician 222
Lawrence, Stephen, murder of 63
legal certainty, principle of 91–2
‘less eligibility,’ principle of 176
Lex Patrick Wotton v The State of Queensland & Anor 183–4
life without parole (LWP) 174–6, 175
Box 10.2, 203
Little Children Are Sacred report 162–3
Locke, John 5–6, 7
mandatory minimum sentencing see
sentencing, mandatory minimum
Mandela, Nelson, former South African President 93–4
Maori people in prison 59 Box 4.1
Marikana mines, South Africa, police shootings 135, 136 Box 8.2
Marx, Karl 12, 81
minority group rights 52–4
Miranda rights 147–8
miscarriage of justice 150; see also
victims of crime
Mohamed, Binyam, detention of 158
Mubenga, Jimmy, death of 181 Box 10.4
Nixon, Richard, former US President 120, 121
non-discrimination, principle of 52, 61
non-governmental organizations (NGOs), role of in promoting human rights 44–6, 103
Northern Territory Emergency Response (NTER) 29, 60–1, 162–3
Nuremberg trials 223
Nussbaum, Martha 110
offenders, rights of 211, 212, 213, 219; see also defendants
Office of the High Commissioner for Human Rights (OHCHR) 26, 41
Organization of American States 31
parole 168; see also life without parole
peacemaking criminology 76
Pelican Bay Supermax Prison 171
persons with a disability: children 196;
in institutions 169; in prison 171;
prisoners 56; rights of 55–6, 160
physical restraints, use of 181 Box 10.4, 196–7; see also Mubenga, Jimmy
police: accountability 140; community relations 138; human rights training for 138–9; occupational culture 64, 130, 131, 139;
shootings 134, 135 (see also
Marikana mines, South Africa, police shootings); use of force 131–4; see also policing
policing: civil model 130; counter-terrorist 130, 135; global 82–3; impact on human rights 129–31; intelligence-led 134; military 130; networked 137; of public spaces 135, 195, 234 (see also surveillance); over-65; privatized 137; problem-oriented 137–8; procedural justice 138; public order 135; quality of life 137–8; security 135–7; state model 130; transnational 123; under-67; zero tolerance 134, 140, 141 Box 8.3

pre-crime 99, 113; see also crime prevention
pre-emption 112–14, 158; see also crime prevention
presumption of innocence until proven otherwise, principle of 92
Prevention of Terrorism Act 2005, UK 99
prisoners: African-American see African-Americans, in prison; as risk categories 171, 182; Indigenous Australian see Indigenous Australians; numbers of 167–8, 179 Box 10.3; right to vote 176–8; rights of 56, 176–8, 183–4, 185; women see women, prisoners
prisons: accountability of management 183–4; costs of 119, 119 Box 7.2; mass incarceration 122, 167, 168, 180; maximum security 171; open 184; privatization of 178–82; violence in 202; see also justice reinvestment; life without parole; Scandinavian exceptionalism
probation 168
proportionality, principle of 91, 132, 155, 219, 220
prosecutorial discretionary powers 150–1
Qatada, Abu, detention, deportation and torture of 34–5, 99–100 Box 6.2
’reresponsibilization’ 189–90, 197, 204
retroactivity, principle of 91
rights see human rights, individual rights
right to a fair trial 16, 99–100 Box 6.2, 148, 151, 152–3, 156, 213, 214, 220
right to be free from arbitrary arrest and detention 148
right to be free from torture 16, 148, 213
right to be presumed innocent 148, 151
right to life 149
right to life, liberty and security 148
right to remain silent and have a lawyer present see Miranda rights
risk: assessment and management 113, 134–5; categorization of individuals according to 109, 134–5, 200, 232; concerns of the state 231: influence on criminal justice 108; see also security, securitization
Rome Statute 212, 214
Roosevelt, Franklin D., former US President 6
Royal Commission into Aboriginal Deaths in Custody 174
Rudd, Kevin, former Australian Prime Minister 215, 217 Box 12.2
R v Middendorp, case of 152–3
Scandinavian exceptionalism 184
Schwendinger, Hermann 77
Schwendinger, Julia 77
securitization 99, 153, 158
security: assessment and management 113; concerns of the state 147, 171: influence on criminal justice
108; measures 195; practices: impact on human rights 75, information gathering 114 (see also surveillance); privatization of 113; see also securitization; surveillance self-determination 54, 58 self-harm among children in detention 201 Selmouni, Ahmed 213 Selmouni v France, case of 213 Sen, Amartya 110 sentencing 174–6: criminal 155; life 175 Box 10.2; mandatory minimum 155–6, 156 Box 9.1; see also death penalty, life without parole September 11, 2001, terrorist attack on US 98, 134, 172–3 Serco 180 sexism see discrimination, against women sexual assault 56, 152, 174, 221 sexual minorities, rights of 55, 57; see also anti-homosexuality legislation shield/sword binary function of human rights 95–8 Snowden, Edward 114 social contract theory, of John Locke 5–6 social harm 48: produced by criminal justice system 96, 122–3, 134, 160; produced by drugs trade 122 solitary confinement 202 state–corporate crime see state crime state crime 78, 101–3, 235 state power 92–3, 96; abuse of 77–8; see also state sovereignty state sovereignty 17, 22, 23, 26, 36, 92–3, 97, 98; see also state power stop-and-search powers 65, 66 Box 4.3, 135 suicide among children in detention 201 surveillance 109, 112–14, 135–7, 234; see also security; Snowden, Edward targeted killing 158–9; see also Bin Laden, Osama target hardening 113 tasers see electro-convulsive weapons terrorism 154, 172–3; see also counter-terrorism Terrorism Act 2000, UK 65 therapeutic jurisprudence (TJ) 160–3, 234; in juvenile justice 203–4 torture 34–5, 41, 42, 99–100 Box 6.2, 116 Box 7.1, 133, 172, 173; see also el Masri, Khaled; Qatada, Abu; Selmouni, Ahmed; Selmouni v France, case of trans-boundary responsibility, principle of 103 transitional justice 76 Tsarnaev, Dzhokhar, terrorist suspect 147 UK Equality and Human Rights Commission 66–7 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 215, 219 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 131–2 UN Code of Conduct for Law Enforcement Officers 131, 138 UN Commission on the Status of Women 26 UN Committee against Torture 29 UN Committee on the Rights of the Child (CRC) 198 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 214 UN Development Programmes 111–12
UN Draft Declaration on the Rights of Indigenous Peoples 54
UN Economic and Social Council (ECOSOC) 26, 161
UN-Habitat Programme 112
UN Human Rights Commission 26–7
UN Human Rights Committee 29–30
UN Human Rights Council 27
United Kingdom Border Agency (UKBA) 180
United Nations (UN): role of 21–2; Security Council 22
Universal Declaration of Human Rights (UDHR) 11, 13, 14, 23, 25, 52, 211
universality of human rights 13–14, 15
UN monitoring bodies 27–30
UN Office of the High Commissioner for Human Rights (OHCHR) 26
UN Office on Drugs and Crime (UNODC) 111
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 97
US Bill of Rights 8, 33
US military campaigns in South America 122
US Trafficking in Persons Reports (TIP Reports) 97
US Trafficking Victims Protection Act 2000 (TVPA), US 97
utilitarianism 7

victimization: primary 212; secondary 212
victimology 210
victims of crime: agency of 220–3; characteristics of 219; compensation for 209; culpability of 221; human rights of 210–18; mass atrocities 214; representations of 222–3; rights of 219; seen as ‘innocent’ 209–11, 221; sexual assault 56; transnational and international 58, 220–3; treatment and role of, in criminal justice system 213–18, 215 Box 12.1; women 58, 221; see also miscarriage of justice

Vienna Conference on Human Rights 115
Vienna Declaration and Programme of Action 24, 44, 53, 161
violence: racial 63–4 (see also discrimination, racial); violence against women see women, violence against; in prisons see prisoners, violence in

war in former Yugoslavia 102

War on Drugs 120–3

women: prisoners 123, 174, 182; rights of 54–5, 83, 115–18; victims, discrimination against 221; violence against 56–7, 67, 115–18, 122, 124, 174; see also discrimination, against women; domestic violence; sexual assault

workers, rights of 57
Wotton, Lex, case of 183–4
Yarl’s Wood Immigration Removal Centre 180
Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity 55

Zedner, Lucia 75