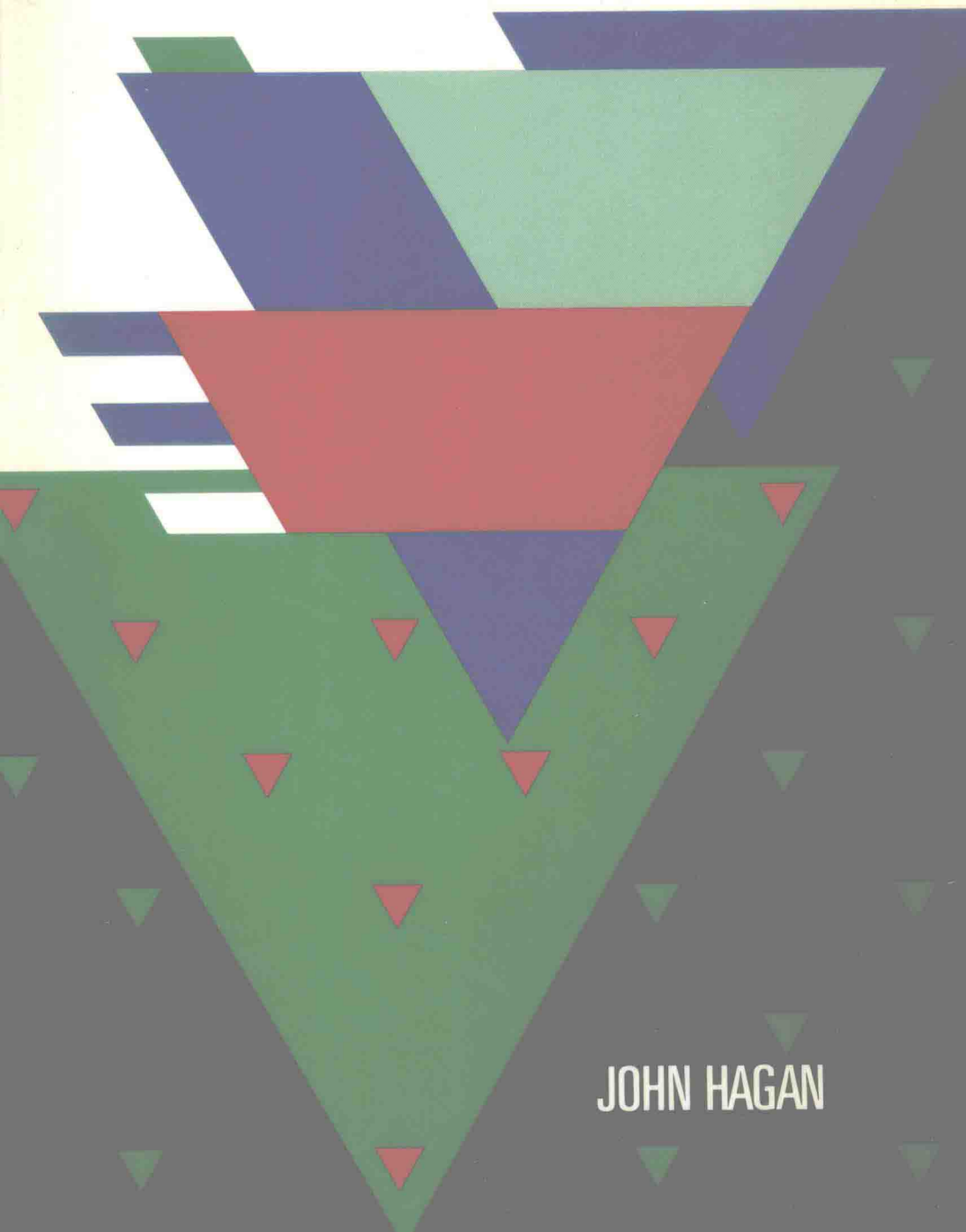


# THE DISREPUTABLE PLEASURES

CRIME AND DEVIANCE IN CANADA

THIRD EDITION



JOHN HAGAN

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# CONTENTS

<b>Prologue:</b>	Studying the Disreputable Pleasures in Canada	1
<b>Chapter 1</b>	DEFINING DEVIANCE: The Thin Line	2
<b>Chapter 2</b>	COUNTING DEVIANCE: The Measures of Disrepute	32
<b>Chapter 3</b>	EXPLAINING DEVIANCE: The Consensus Theories	80
<b>Chapter 4</b>	EXPLAINING DISREPUTE: The Conflict Theories	119
<b>Chapter 5</b>	RESPONDING TO DEVIANCE: The Reaction to Disrepute	147
<b>Chapter 6</b>	LIVING WITH DEVIANCE: The Lessons of Treatment and Prevention	187
<b>Epilogue:</b>	Putting the Pieces Together	221
	Bibliography	230
	Index	271

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# PROLOGUE:

## Studying the Disreputable Pleasures in Canada

The title and subtitle of this book require an introduction. The title announces two assumptions we will make in exploring the world of deviance. The first assumption is that in any given society most behaviours are accorded a socially significant status as either acceptable or unacceptable, reputable or disreputable. A large part of this book is devoted to the causes and consequences of disrepute.

Our second assumption is that most disreputable behaviours involve an element of pleasure, sometimes real and sometimes imagined. Social psychologists remind us that pleasure is experienced in negative as well as in positive forms. The positively reinforcing pleasures require no introduction. The negatively reinforcing pleasures range from the “fix” that relieves withdrawal effects, through the defence mechanism that makes “reality” bearable, to the violent act that rejects the unwanted. In other words the latter pleasures derive primarily from the avoidance of pain.

Some pleasures are experienced by their authors, while others are imagined and attributed by others. In either case these pleasures interest us when they become the subjects of disrepute: we are interested in those behaviours that achieve the status of “crime and deviance.”

The subtitle of this volume reflects the fact that this is one of the few textbooks to focus on crime and deviance in *Canada*. A basic proposition of modern sociology is that deviance varies by social location. Yet textbook discussions deal predominantly with American materials. Little attention is given to whether American research findings can be applied outside of their national context. We will argue that there are both similarities and differences between the Canadian and American situations. These patterns are explored with the hope of developing a sociology of deviance that is more consistently sensitive to the influence of socially significant — in this case, national — boundaries. In this pursuit it is assumed that a valuable resource of sociology in North America is the possibility of Canadian and American comparisons. To focus on North America is, of course, only a selective first step toward a more fully comparative sociology. Nevertheless, we assume that it is a fundamental first step.

It is important, then, that research continues in Canada, and that the findings of this research are, in turn, used to expand our understanding of the influence of the social context in which deviance occurs. Our argument is that this undertaking is important not just for Canadians but for North American sociology more generally. In sum: this book is not intended for Canadian eyes only. It is intended for all who will help to make sense of its subject.



# 1 DEFINING DEVIANCE: The Thin Line

Name-calling is a practice of adults as well as children. Characteristically, the most interesting of these forms of address are also the least desirable. Our cultural checklist is imaginative: we speak of crooks, shysters, gangsters, and hoods; nerds, nuts, sluts, and perverts; geeks, fiends, fools, and degenerates. All such titles serve a similar purpose: they designate persons and their pleasures as deviant, and therefore as subjects of disrepute.

- But why are some pleasures acceptable, and others disreputable?
- By whom, and how often, are the disreputable pleasures experienced?
- How do we explain deviance and disrepute sociologically?
- What are the pains and pleasures of a disreputable lifestyle?
- How do we, and how should we, respond to deviance and disrepute in Canada?

Answers to these questions help to organize the content of this book. Thus, in succeeding chapters we will discuss the definition, measurement, explanation, and response to the disreputable pleasures in Canada. In this chapter we are concerned with the definitions of deviance. Our immediate interest is in determining how individuals and groups draw the line between behaviours considered acceptable and those considered disreputable. In short, how do we define what is deviant?

## CULTURAL CONCEPTIONS OF DEVIANCE

Analysts of deviance frequently disagree on the definition of their subject matter. A central factor underlying this disagreement is the variation, by culture, in what is considered deviant. In this chapter we will argue that the central themes of a culture are an important influence in determining a society's conceptualization of deviance. Note that contrasting cultural themes are an important part of the Canadian experience, beginning with the fateful meeting of aboriginal Native Peoples and Euro-Canadian groups, and continuing in a formal national commitment to the goal of multi-culturalism that includes a special legal status for aboriginal peoples as set out in the *Canadian Charter of Rights and Freedoms*. The traditions and experiences of the Inuit and Native Indian communities in Canada provide useful examples of the importance of the cultural context in which deviance is defined.

Accounts of aboriginal cultures in Canada characteristically cite the problem of physical survival in an intemperate environment as a dominant theme (Valle, 1962; Clairmont, 1963; Cavan, 1968; Shkilnyk, 1985). Traditionally, Cavan notes, there were two types of deviance in Inuit

communities: "private wrongs" and "public crimes." Private wrongs became public crimes in Inuit culture when the behaviours involved were perceived by the community as constituting a threat to the welfare or survival of the group at large. For example, a person considered guilty of generating conditions of starvation was regarded as a murderer. Pursuing this theme, Cavan (1968) suggests several differences between Inuit and Anglo-Canadian conceptions of criminality.

*Killing another person was not necessarily a crime. The destruction of an old parent or a newborn baby . . . was not a crime. Nor was it a crime to kill the seducer of . . . (one's) wife. But unprovoked killing or a chain of murders that threatened to deplete the supply of men in a community and therefore endanger the food supply was a serious crime and called for community action (25).\**

Thus, many acts held criminal in Euro-Canadian society were not so regarded by the Inuit. Most interesting, however, is a partial reversal in the conceptualization of theft. Hoarding food and possessions beyond one's needs was considered a form of stealing by the Inuit, during periods of scarcity. However, Valle (1962) suggests that traditional theft rarely occurred in Inuit communities, and that as a result there were no formal sanctions available when it did occur. Instead, "If someone took something which did not belong to him, it was assumed that he must be in dire need and that he would replace it quietly whenever he could do so." (190). Similarly, Shkilnyk (1985:173) suggests that Native Indians had no concept of private property, but rather "a sense of place" in which the tribe (past, present, and future) held the land in conjunction with all living creatures in it.

Some final observations should be made about responses to deviance in aboriginal groups in Canada. In these groups life was organized in relation to the environment, and work was arranged collectively within clans that formed the basis for tribes and larger communities. One implication of this was that sanctions were collectively derived, predominantly informal, and usually mild in severity. For example, in Inuit communities typical measures included gossip, ridicule, and ostracism (Birket-Smith, 1959). Schwartz (1986:64) indicates that in such folk communities the reproach of fellow clan members usually was enough to bring home the wrongfulness of conduct. Black (1983) introduces a variation on this theme when he notes that the Netsilik Eskimos sometimes subtly encouraged their children to destroy an offender's cache of food, so that what appeared to be mischief or vandalism may actually have been a carefully orchestrated act that went beyond reproach to revenge. In extreme cases threatening the survival of a group, exile or execution was invoked, although still through a collective process. Such measures followed from a process in which heads of families in the community reached consensus on the threat posed to the group by the offending member. A courtroom description of this process, abstracted from an actual case transcript, is reproduced below.

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## FIGURE 1-1

### CASE TRANSCRIPT

The following is abstracted from the court testimony of a prosecution witness in the trial of Shooyook and Aiyaooot, who were tried at Spence Bay in April, 1966 for the "capital murder" of Soosee, the mother of the accused Aiyaooot. Soosee had threatened to kill her husband and everyone else in the band, and had almost killed her child.

*July 6th . . . she started this way. She said there was a hole in her heart. She is the same today on the 7th. . . . Today is the 9th; she's throwing things out of the tent and she hasn't been sleeping for awhile. She's keeping wandering around and not doing any sleeping. . . . She's throwing rocks, and pulling her hair out. It looks as if she's going to kill her husband, and she's throwing rocks at us all, and blowing her breath. We love her, but we have to tie her up. . . . She gets out of the ropes that she's tied up with. The ropes she was tied up with are all laying outside and we tied her up again. She said she is going to kill us, and we love our children. We are afraid she is going to kill all. We are running away, and have only taken two tents. We are getting ready in a hurry to go to the island. We are sleeping on the island today, today is the 13th. In the morning we saw her outside. We are scared to go to her. She is knocking down the tents, and knocking down the aerial*

*masts. . . . We are going hungry, as we are unable to go hunt meat. Sometimes we manage to get one seal to eat during the day. All this time she is pulling her hair. . . . She also walks in the creek without any boots on. She slaps the ground all around her. . . . She wants to kill us, but we don't want to die now. . . . Why she is doing this we don't know, but she is made to do these things by the devil. . . . God in heaven is the only one that we can ask to help us. . . . The only thing to do now is for someone to go after her. If she runs away she will not be hurt, and they will not do anything to her. If she comes after them she will be shot, because we are really afraid of her, because she has been saying that she is going to kill everyone, everybody. . . . When she saw them she came towards them. We wanted to look after our children, and we do not want them to get killed. She came after them so she's being shot. She did not die for a long while. She only died after she was shot three times. We knew the police would not like this, but she would have killed a lot of people. That's the reason why we killed her. We all get together and pray. . . .*

The jury found Aiyaooot not guilty, and Shooyook, who fired the gun, guilty of manslaughter "with a strong plea for leniency in sentence." (cited in Schmeiser, 1972:8-9).\*

\*Reprinted with permission of Douglas A. Schmeiser.

Of course, cultural traditions are subject to change. This is one reason the previous paragraphs are written in the past tense. Our attention shifts next,

then, to some of the conditions productive of changes in Inuit culture and consequent changes in definitions of deviance.

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## WHEN CULTURES COLLIDE

Cultural differences in conceptions of deviance become dramatically apparent when the cultures themselves come into contact. This process again is seen most clearly in northern Canada. As the Native Peoples of the north followed economic and welfare incentives to settle in the emerging communities of the Northwest Territories (Davis, 1965), they found their cultural traditions weakening under the pressure of an alien lifestyle. For example, with the absence of even a term for illegitimacy, Inuit sexual customs facilitated the abuse of Native women by migrant workers. Under the pressure of consequences new sexual mores emerged (Cavan, 1968:37). Similarly, the Inuit were exposed and engulfed in the problems of alcoholism and drugs without a cultural background that either condoned or condemned their use. New norms emerged here as well (Honingmann, 1965), but data collected as recently as 1985 (see Lamarche and Rootman, 1987) indicate levels of drug use in the Northwest Territories and the Yukon higher than in any other province or region in Canada. Finally, previously functional customs involving infanticide, abandonment of the elderly, and the solicitation of community approval for the execution or exile of threatening individuals are largely artifacts of a cultural past.

In all of this the Canadian courts have played a confusing and sometimes coercive role in imposing Anglo-Canadian conceptions of deviance on Inuit communities. One misguided example of this process, involving game and wildlife laws, is cited by Schmeiser (1972):

*... Matthew Koonungnak . . . of Baker Lake, Northwest Territories, was charged with hunting musk-ox contrary to the Game Ordinance. Koonungnak had never before seen a musk-ox, and the animal was approaching his camp. In order to protect the camp, and on the advice of another Eskimo, Koonungnak shot it. He subsequently came to the police department . . . to advise the police what had happened, took the police to his camp, and was then charged with the offence. When he appeared before the Justice of the Peace, he readily admitted shooting the animal, and further stated that if he ever saw another musk-ox and it came towards him he would shoot it. The Justice of the Peace interpreted these statements as a plea of guilty, and imposed a fine of \$200.00 or four months in jail in default of the payment.\**

On appeal, the decision was reversed. One reason given for the reversal involved the acceptance of an invalid guilty plea. The Inuit people apparently have no corresponding word in their language for the term "guilty." (The dimensions of this kind of problem can be recognized when it is noted that there are 53 distinct aboriginal tongues in Canada, 16 of which are in wide

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use.) The appellate judge in the above case further found that the defendant acted in self-defence, noting that "It is notorious in the north . . . that an outcast bull musk-ox driven from the herd and wandering in the barrens alone and homeless is a dangerous animal." (Schmeizer, 1972:4)

The lesson of this episode is that conceptions of deviance are relative to culture and circumstance. Divergent conceptions become particularly problematic when cultures come into close and continued contact. It is extremely doubtful that any enduring solution can be found for such problems. More likely is a continuing pattern of compromise, conflict, and coercion. It is this underlying tension that makes conceptualization of deviance for purposes of study, as well as day-to-day living, so difficult.

---

## SEVEN SOCIOLOGICAL APPROACHES TO THE DEFINITION OF DEVIANCE

Responses of sociologists to the problems of cultural variation are seen in seven approaches to the definition of deviance. The seven approaches include: (1) a legal-consensus definition, (2) a sociolegal definition, (3) a cross-cultural definition, (4) a statistical definition, (5) a labelling definition, (6) a human rights definition, and (7) a utopian-conflict definition. A critical review of these viewpoints follows. Then, elements of the viewpoints are combined in a new definition. We will argue that this last approach is best suited to the task of explaining deviance and its control.

### THE LEGAL-CONSENSUS APPROACH

The most articulate advocate of a legalistic definition of deviance was the lawyer-sociologist Paul Tappan (1947). Tappan insisted that we limit our study to criminality as it is legally constructed: "Crime is an intentional act in violation of the criminal law . . . committed without defence or excuse, and penalized by the state. . . ." (100.) He insisted further that persons studied as criminals must be adjudicated (that is, convicted) as such. Acknowledging that cultures vary in what they call criminal, Tappan argued that governing statutes provide the only clear and definitive indication of what any specific cultural group holds deviant: "Here we find *norms* of conduct, comparable to mores, but considerably more distinct, precise, and detailed. . . ." (100.) In short, Tappan is suggesting that the criminal law provides a reliable guide to what is consensually defined as deviant in any given society.

The salient difficulty with Tappan's approach is that it systematically ignores much of what many analysts of deviance wish to study: the non-criminal but nonetheless disreputable pleasures of various deviant lifestyles. At the same time the legal-consensus approach neglects the basic issue of why some acts are legislated as criminal while others remain only informally the subject of disrepute. Further, this approach misleads us in

suggesting that legal definitions clearly reflect societal consensus about what is deviant. This is conspicuously the case in Canada where the Criminal Code has gone largely unrevised for more than 80 years. Finally, being legally called a criminal depends on getting caught and convicted. This sampling process results in not only a narrowly defined but also a non-representative collection of subjects (more correctly called "captives") for study.

## THE SOCIOLEGAL APPROACH

Edwin Sutherland (1945) suggested a relaxation of legal criteria that allowed an expansion of attention to various "anti-social behaviours." Retained, however, was an emphasis on criminality as designated by two explicit criteria: "legal description of acts as socially injurious and legal provision of a penalty for the act." (132.) Sutherland demonstrated with the use of these criteria that it is possible to consider "criminal" many unethical business practices handled in the civil courts. The demonstration consisted of a comparative analysis of the procedures and punishments used in the prosecution of corporate interests in the civil and criminal courts. The conclusion is that "... the criteria which have been used in defining white-collar crimes are not categorically different from the criteria used in defining other crimes. . . ." (135.)

Sutherland's redefinition of the field of study facilitated a new and important emphasis in criminological research on the economic crimes of "upperworld" offenders. For example, in Canada securities violations (including stock frauds and swindles) are prosecuted under provincial securities acts as well as under the federal criminal code, and recent research indicates that as few as a third of these acts result in criminal convictions (Hagan and Parker, 1985). However, Sutherland's reluctance to widen the scope of attention beyond statutory matters leaves his definition open to two earlier criticisms of the legalistic approach: first, non-criminal forms of deviance continue unnoticed; second, like the criminal courts, the civil court dockets probably represent a biased sample of illegal enterprises. Finally, it should be noted that Sutherland's emphasis on white-collar crime neglects undetected occupational indiscretions among workers of lesser social status (Horning, 1970).

## A CROSS-CULTURAL APPROACH

Thorsten Sellin (1938) proposed a definition of deviance that goes beyond the realm of law. His argument is that every group has its own standards of behaviour called "conduct norms," and that these standards are not necessarily embodied in law. "For every person, then, there is from the point of view of a given group of which he is a member a normal (right) and an abnormal (wrong) way of reacting, the norm depending upon the social values of the group which formulated it." (30). Beyond this, however, Sellin argued

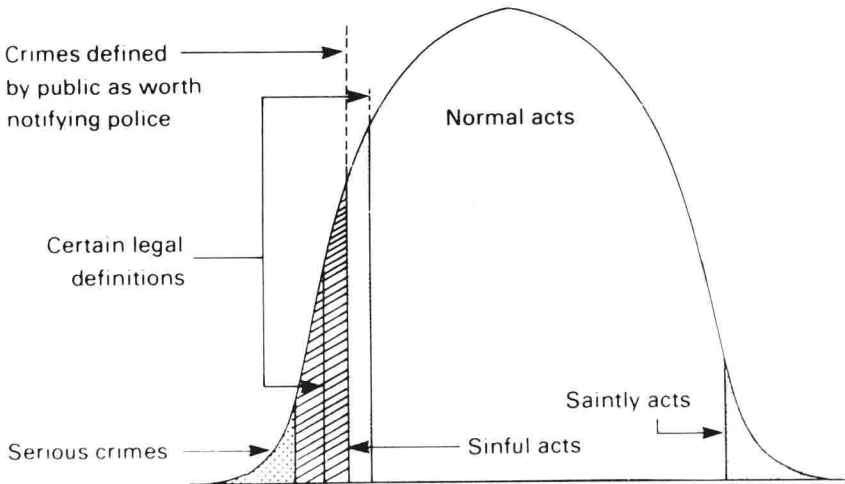
that there are some conduct norms that are *invariant* across *all* cultural groups. Further, he insisted that these norms were the appropriate focus for research: "Such study would involve the isolation and classification of norms into *universal categories* transcending political and other boundaries, a necessity imposed by the logic of science." (3.)

Unfortunately, Sellin did not specify what the universal conduct norms might be. The weakness of his strategy is the dubious proposition that such norms can be found either inside or outside the law. The lesson of a large body of anthropological research is that norms of conduct are remarkably varied, with the universals of human behaviour, if any, limited primarily to the trivial necessities of everyday life. Universal *and* non-trivial conduct norms probably cannot be found.

### A STATISTICAL APPROACH

Wilkins (1964) suggests a more plausible approach to our subject matter, while remaining attentive to the problem of cultural variation. He begins with the assumption that "At some time or another some form of society . . . has defined almost all forms of behaviour that we now call 'criminal' as desirable for the functioning of that form of society." (46.) Wilkins then takes as his criterion of deviance the frequency with which various forms of behaviour occur in any particular society. Said simply, high-frequency behaviours are

**FIGURE 1-2**  
**CONTINUUM OF GOOD AND BAD ACTS**



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considered normal and low-frequency behaviours deviant. The resulting definition of deviance is thus pictured in the form of a normal bell-shaped curve, presented in Figure 1-2: "It may be supposed that the model given by the normal frequency distribution shown in this chart represents the distribution of ethical content of human action." (47.) Serious crimes and saintly acts form the two extremes in this definition. The range of additional acts to be considered deviant remains at the discretion of the researchers.

One weakness of this approach lies in its simplicity. While infrequency of behaviour is one measure of deviance, the statistical approach neglects the role of societal groups in selecting from infrequent acts those considered undesirable. Obviously, all infrequent occurrences are not designated as deviant or criminal. Beyond this, "saintly acts" are seldom of interest to analysts of deviance unless the acts become problematic for those who observe them. What is required, then, is an addition of analytical content to the quantitative framework provided.

## THE LABELLING APPROACH

If the statistical approach minimizes the importance of the societal response, the labelling approach clearly does not. Howard Becker (1963) provides a concise statement of this viewpoint: "The deviant is one to whom that label has successfully been applied; deviant behaviour is behaviour that people so label." (9.) Becker's point is that behaviours are not recognized as deviant unless others, as members of cultural groups, react to them as such. This approach is important in making us aware of the significance of the ways in which we respond to deviance (Hagan and Palloni, 1990). However, as a definition of deviance, the labelling approach also creates problems.

Bordua (1969) observes that the labelling definition tends to make deviance "all societal response, and no deviant stimulus." His point is that the labelling approach characteristically assumes a passive subject who plays little or no part in eliciting a response (Hagan, 1973b). In some cases this will be true, but often it will not. Thus, a more useful definition of deviance will incorporate both possibilities.

## THE HUMAN RIGHTS APPROACH

The next approach we consider proposes a dramatic re-conception in what we define as *criminal deviance*. This re-conception is urged by Herman and Julia Schweindinger (1970).<sup>\*</sup> They begin with the assumption that "All persons must be guaranteed the fundamental prerequisites for well-being, including food, shelter, clothing, medical services, challenging work, and recreational experiences, as well as security from predatory individuals or repressive and imperialistic social elites." (145.) The Schwendingers regard these as rights

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<sup>\*</sup>Used by permission of the *Journal of Crime and Social Justice*.



(rather than rewards or privileges) that the criminal law should guarantee and protect.

The Schwendingers argue that it is the *conditions* that result in the denial of these rights that should be called criminal: “. . . the *social conditions* themselves must become the *object of social policy* . . . it is not an individual or a loose collection of atomistic individuals which is to be controlled, but rather the social relationships between individuals which give rise to criminal behaviour.” (147, emphasis in original) The importance of this shift in focus is that it allows the Schwendingers to recommend a radical change in what should be called criminally deviant, for “If the terms imperialism, racism, sexism, and poverty are abbreviated signs for theories of social relationships or social systems which cause the systematic abrogation of basic rights, then imperialism, racism, sexism, and poverty can be called crimes according to the logic of our argument.” (148.) The final piece of this argument is essentially a plea that the resulting definition would be more just than existing definitions, in the sense that it would address some obvious inequities in the way our society works. The Schwendingers ultimately put their case in the form of a question:

*Isn't it time to raise serious questions about the assumptions underlying the definition of the field of criminology while agents of the state can, with impunity, legally reward men who destroy food so that price levels can be maintained while a sizable portion of the population suffers from malnutrition?*

While many, if not most, analysts of deviance might agree with the moral position taken in asking this question, it may nonetheless be the case that this approach to the definition of crime confuses more than it clarifies. A basic problem is that in its concern to condemn imperialism, racism, sexism, and poverty, this approach confuses presumed *causes* of criminal behaviour with the behaviour we wish to study. It is not that we wish to ignore or neglect these conditions, but rather that we wish to study their presumed role in the causation of behaviours that the state calls criminal, explicitly or implicitly, in practice and in theory. This does not require that we morally endorse what the state defines as criminal (Turk, 1975). Indeed, one of the things our definition must make problematic is decisions about what the state does and does not consider criminal.

## A UTOPIAN-CONFLICT APPROACH

Another provocative approach to the definition of deviance is presented by the “new criminologists,” Ian Taylor, Paul Walton, and Jock Young (1973). They suggest that we re-define deviance as “human diversity,” and argue that deviance represents a normal and purposeful attempt to correct or protest social injustice. In response society seeks to repress this challenge by criminalizing (i.e., arresting, prosecuting, and incarcerating) the actors involved. In short, deviance is born of the conflict between the oppressed and the oppressors. The solution proposed demands a reversal of this situation: