

JOHN F. [REDACTED]

# DEVIANANT BEHAVIOR AND HUMAN RIGHTS



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**DEVIANT BEHAVIOR  
AND  
HUMAN RIGHTS**

to  
**Rea Bates Galliher**

# PREFACE

Some argue that social scientists, unlike politicians and religious leaders, should merely attempt to describe and explain the events of the world but should never make value judgments based on those observations. Yet a value-free and nonjudgmental social science has no place in a world that has experienced the Holocaust, in a world having had slavery, in a world with the ever-present threat of rape and other sexual assault, in a world with frequent, unpunished crimes in high places, including the production of products known by their manufacturers to cause death and injury as has been true of asbestos products and continues to be true of the cigarette industry, and in a world dying from environmental pollution by these same large multinational corporations. This book will demonstrate that such corporations feel they owe no loyalty to the citizens of any culture or nation and thus in turn deserve no respect from social scientists and other citizens.

In the first section sociology's early efforts to arrive at some conclusions about the relationship between deviant behavior, human liberty, and social justice is explored. Section 2 describes powerful social institutions and customs that support oppression, including rape, racism, capital punishment, and genocide. Large-scale corporate crime is discussed in Section 3, as is the considerable legal freedom such organizations enjoy. Section 4 shows how legal institutions established to control abuses actually end up perpetuating such behavior. Section 5 analyzes the appropriate moral stance of the social scientist who is concerned with human liberty and survival.

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# INTRODUCTION

Concerns with human rights only make sense if we depart from the common stance of contemporary sociology that adheres to a *value neutrality* (Sjoberg et al., 1984). The idea of value neutrality assumes that it is improper, and in fact impossible, for social scientists, as social scientists, to make moral or ethical judgments or take positions on political issues. According to this reasoning, social scientists who take these positions do so only as private citizens, not as social scientists. Whether they are registered Democrats, Republicans, or disenchanted radicals, they must not allow biases to influence their professional work in any fashion. In the real world it seems highly dubious that this is ever possible, as everything human beings do is influenced by their values, their work, their play, and their politics.

Sociologist Alvin Gouldner agrees. Value-free “arguments appeal to reason but ignore experience” (1962:199). He explains (1962:212):

*I believe that, in the end, this segregation [of values and science] warps reason by tinging it with sadism and leaves feeling smugly sure only of itself and bereft of a sense of common humanity [emphasis in original].*

If we would teach students how science is made, really made rather than as publicly reported, we cannot fail to expose them to the whole scientist by whom it is made, with all his gifts and blindness, with all his methods and his *values* as well. To do otherwise is to usher in an era of spiritless technicians who will be no less lacking in understanding than they are in passion, and who will be useful only because they can be used.

Gouldner then concludes (1962:212):

If sociologists ought not express their personal values in the academic setting, how then are students to be safeguarded against the unwitting influence of these values which shape the sociologist's selection of problems, his preferences for certain hypotheses or conceptual schemes, and his neglect of others. For these are unavoidable and, in this sense, there is and can be no value-free sociology.

These problems aside, nicely suited to this value neutrality is *cultural relativism*, which contends that various cultures' practices can only be described as different from one another, not judged as better or worse. Thus the beliefs and practices of the Swedes are merely different from those of the Russians, not better or worse. The Holocaust during World War II made such concerns of value neutrality and cultural relativism absurd. The Nazis really were worse than the Swedes, for example. More recently, apartheid in South Africa is recognized worldwide as not merely a *different* cultural practice than found in other nations, but as morally repugnant. Indeed, to avoid making such judgments about Nazism or apartheid is in itself widely recognized as a moral outrage.

The demand for elementary human rights, some feel, runs the risk of ethnocentrism whereby observers judge any cultural practice on the basis of how closely it matches their own. Given this risk, the skeptic may ask, Nazi illustrations aside, how can we arrive at these human rights that are presumably universal and thus be used to judge any given cultural practice? An answer to this question has been attempted by Rawls (1971). He has discussed the notion of the *original position* where people do not yet have information on the society into which they will be born, nor do they know what specific position they will occupy in any society. In this original position people are behind what Rawls has referred to as the *veil of ignorance*. If people are in the original position, Rawls argues, on the basis of self-interest alone, they will always choose a society where equality is at a maximum. To minimize their risk of future misery they will pick socialist Sweden, for example, over South Africa.

While both freedom and equality are important, Dworkin (1977) argues that equality is the more important of the two. If people have an equal input into their governance, they have the means to guarantee their own freedom. Additionally, Hart (1961) found that people everywhere require protection from personal physical attacks, since, unlike tigers in the jungle or the sharks of the ocean, the human is inherently a very vulnerable creature. Thus, the requirements for equality and personal protection are the two universal qualities of human beings that can be used to determine whether their essential human rights are being protected.

The particular bases we will use for making moral judgments are found in such places as the United Nations Charter, which begins with its statement of purpose as follows (United Nations Conference, 1945:1):

WE THE PEOPLE OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women.

Moreover, the U.S. Declaration of Independence reads: "We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their creator with certain unalienable Rights." This demand for social equality and dignity is precisely what the late Reverend Martin Luther King, Jr., emphasized during his lifetime. He

argued that any laws that singled out blacks for inferior treatment to whites were morally repugnant (1963).

The United Nations Universal Declaration of Human Rights (1948/49:535-536) includes the following articles:

All human beings are born free and equal in dignity and rights.

Everyone has the right to life, liberty and the security of person.

No one shall be held in slavery or servitude.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

All are equal before the law and are entitled without any discrimination to equal protection of the law.

No one shall be subjected to arbitrary interference with his privacy.

Everyone has the right to freedom of movement.

Everyone has the right to own property.

Everyone has the right to work, to free choice of employment.

Amnesty International has long made judgments about nations with great violations of human rights (Amnesty International Report, 1983). Amnesty International is particularly concerned when societies kill and torture their own citizens or imprison them because of their political beliefs. And the International Olympic Committee, on the basis of similar demands, has refused since 1968 to allow South Africans to participate in the Olympic Games (Epsy, 1980). Nazi genocide was condemned by four major world powers: France, England, the Soviet Union, and the United States. Although Nazi atrocities violated no German laws of the time, Nazi officials were still held accountable at the Nuremberg trials and they were punished for their acts of violence.

Clearly, cultural relativism will not suffice. According to cultural relativists all deviant behavior is the same if contrary to societal rules. For example, shoplifting and murder are thus lumped together in the United States; both are deviant behavior. And if not contrary to a given culture's rules, nothing is deviant. For example, genocide in Nazi Germany was not deviant. The problem of distinguishing offenses on the basis of seriousness has been a goal of students of deviant behavior for some time. Unfortunately, the distinction between victim and victimless crimes is not satisfactory (Schur, 1965). Victimless crimes include such offenses as prostitution, drug use, and illegal gambling. The problem with this distinction is that a relatively petty offense such as shoplifting is a crime with victims just as is genocide. Personal versus property crime is not satisfactory either, because the boundary is permeable. The massive theft of land from Native American tribes made their survival nearly impossible. The Federal Bureau of Investigation (FBI) distinction between serious Part I and less serious Part II crimes fares no better. Auto theft, and in fact, any theft, is classified as a Part I crime, whereas child abuse is a Part II offense. In the bizarre world of the FBI, stealing a Ford or a bicycle is more serious than beating a child.

## HUMAN RIGHTS AND THEORETICAL FOCUS

Perhaps a better method of distinguishing offenses is between those that do and those that do not have institutional support. The Schwendingers have concluded that the ultimate crimes include imperialistic war, racism, sexism, and poverty (1970). As implied, these are listed because the power of the actors involved is such that they can

create great harm and massive human suffering. Whether or not they are technically criminal violations is immaterial, since even Nazi genocide was legal under the German law of the period. The human rights orientation has the advantage of considering the human rights of both the victim and the aggressor, including prison inmates such as serial killers, as well as others who have been brutally executed and those on death row. What makes the crimes of serial killers so spectacular is that even without great political power they can cause many deaths, something usually reserved for behavior with institutional support such as water and air pollution, lynching, slavery, and genocide. As discussed in Section 3, the Johns-Manville Corporation was responsible for killing many thousands of people through asbestos poisoning.

The question is, When does deviant behavior encroach on these alleged human rights? The first cluster of essays analyzes the theoretical efforts to understand deviant behavior and together ultimately lead us toward an answer to the question of the relationship between deviant behavior and human rights. The earliest perspectives emphasized that deviance was considered to be anything that upset the established order, as the Mills (1943) paper demonstrates. These value judgments were sometimes cloaked in scientific language where communities were said to be disorganized to the extent they failed to uphold rural, Protestant values. Such guises were required, for social scientists soon began to claim to be objective and value-free. No consideration was given to whether this established order was just or fair. Mills implies the very modest right to deviate from middle-class rural norms. There is thus a right to refuse to assimilate and, for example, the right to hold to European values and practices. This includes the right to freedom of religion and lifestyle.

A later generation of social scientists stressed that deviance was merely what a given society determined to call it—nothing more nor nothing less. Labeling theory (which this perspective was called) was seen as a means of avoiding puritanical moral judgments, such as mentioned by Mills. Labeling theory has led to cultural relativism and the avoidance of imposing ethical judgments on those called deviant. Several authors whose essays are included here (see Liazos, Thio, Gouldner, and Schervish in Section 1) note that labeling theory studies only the poor and powerless. According to Schervish (1973), labeling theory assumes actors who are labeled are *passive* and also assumes an individualistic line of analysis, which implies that individuals face labelers totally *alone*, thus ignoring opposing interest groups. This bias leads to a fatalism and pessimism about the possibility of collective action from below. Yet, in fact, radicals have challenged the legitimacy of existing norms and have made demands for human rights.

If such a description of isolated powerlessness applies to anyone, it is to the poor and not to the wealthy. Thus it follows, according to Thio (1973), that the powerless alone are studied by social scientists because *the powerful can hide*. Thio implies the right of others to have the abuses of the powerful disclosed and even perhaps ultimately controlled. Hughes (1984) in Section 1 notes that in any research there is an underlying reason for conducting the research, a driving force that he calls the *major premise*. Typically, the major premise is not made explicit and not recognized. For example, investigations of the pathologies of the poor usually imply that there is something inherently inferior about these people that justifies their subordinate position.

According to Gouldner (1968), labeling theory and its ethos would have us concentrate on problems of the down-and-out, or underdog deviance such as prostitution and drug addiction. This perspective emphasizes their quaintness but involves no real commitment to them. It claims to be on the side of the underdog, but really is only *against* lower-level functionaries. It is, however, according to Gouldner, *necessary to under-*

*stand the underdog to truly understand human suffering that is avoidable as a means of avoiding complacency.* In this context we can learn something from the victims of slavery, rape, and lynching. Unlike radicals, Gouldner claims that labeling theorists have no interest in the power elite, for they argue that all superordinates in turn have superordinates over them. Thus the view of society they provide is where no one is really in charge and thus no one can be held responsible for institutionalized atrocities. This is precisely what the Nazi officials argued at the end of World War II, as reflected in the article by Hughes (1962) in Section 2. As in this case when the government is directly responsible, it often happens that no individuals are held accountable for savagery. This is true of American slavery, as well as American lynchings and its modern-day replacement, the death penalty.

Gouldner's implication is that sociologists should study the underdog with an intellectual passion, and that if and when they do, they will learn not only about the avoidable suffering of the poor but will also at the same time learn about the oppressive practices of the rich and powerful. The fact that only the powerless are labeled and thus only the powerless are studied, leaves *those at the top untouched*, according to Liazos (1972). Massive thefts of corporations, creation of slums, and waging of wars for profit are left unstudied in favor of "marihuana smokers" and "motorcycle gangs" (Liazos, 1972:107). The human right clearly implied here is the right not to die from poverty in a world of plenty. The organized crimes of the modern state are often neglected because social scientists and others confuse large-scale organized crime with the Mafia, as Chambliss (1971) and Smith and Alba (1979) demonstrate (see their articles in Section 3).

Contrary to the value-neutral claims of labeling theorists, their emphasis on the poor often makes the poor seem to be the most immoral. In avoiding ethical judgments of those called deviants, this perspective also avoids ethical judgments of the societies of which these deviants are a part (Gouldner, 1968). Neither the labeling theorists nor the earlier social scientists emphasizing a rural, Protestant order can address these issues of deviant behavior and human rights. The studies included in this book are intended to demonstrate the manner in which deviant behavior is a product of specific social and economic institutions, as are attempts to control deviance. These studies show massive violations of human rights for fair and equal treatment. Chambliss (1964) in Section 2 demonstrates that even the simple right of freedom of movement has been abridged by elites for purposes of economic gain. Indeed, some of these studies show how human life itself is held hostage by giant corporations and modern governments. If social science is to play a major role in disclosing the abuses of the rich and powerful, new professional ethics may be required, as the final two essays of this book conclude.

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## SECTION

# 1

## INSTITUTIONS AND DEVIANCE

### Theoretical Prospects

In the first selection, Mills observes that those who study deviance have a rural, middle-class bias with an emphasis on stability and order by focusing on deviation from social norms as a problem. Remember that, according to the argument developed by Gouldner, deviance theorists who rely on labeling theory condemn lower-level functionaries, not the institutions that really create the most misery. In the selection by Liazos, we see how students of deviance usually study the powerless and poor. Only the powerless are focused on by labeling theory, which is discussed by Thio. Schervish demonstrates that labeling theory emphasizes controlled and passive actors and has as well an individualistic bias. According to Hughes, there is an important hidden agenda in any research that researchers will nonetheless usually deny. The Schwendingers argue that one needs explicit moral criteria to develop a clear picture of a human rights-based definition of crime and deviant behavior, rather than leaving such judgments to the state.