

Two Faces of Deviance

**Crimes of the
Powerless and
the Powerful**

**edited by
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and
John Braithwaite**



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Introduction

John Braithwaite
and
Paul R. Wilson

Pervs, Pimps and Powerbrokers

Most books on deviance consist of collections of articles on pervers and pimps, nuts and sluts. Such books sell well because as Lenin first pointed out "the middle classes love to be shocked". This book also seeks to shock by showing how the degradation of pimps and pervs is in part a process of systematic oppression which attracts public attention away from the extraordinary deviance of the most powerful groups in Australian society. But before we begin that task we must ask what does the term *deviance* mean.

Most people have a commonsense understanding of *deviance* as meaning *not normal*. Yet an olympic gold medallist, who is certainly not a normal human being, would never be called a deviant, because he is abnormal in a "right" rather than a "wrong" kind of way. So whilst harlots will often be called deviants, virgins rarely attract that label, and while mental defectives might be labelled deviant, geniuses will almost never be.

Sociologists define deviance in most explicit terms: deviants are people who violate societal rules. Homosexuals and marijuana users break rules, so one often hears sociologists refer to them as deviant. At the other end of the power continuum, Richard Nixon broke rules and for that he was castigated by many epithets, but not once did a sociologist refer to Richard Nixon as a deviant. One of the key arguments of this book is that, in both everyday discourse and in sociological discourse, deviance is used in a two-faced way that is implicitly subservient to the powerful and explicitly oppressive of the powerless.

This argument does not imply that we should be referring to Richard Nixon as a deviant. What Richard Nixon has in

common with homosexuals and marijuana users is that in most situations at most times in his life he has followed the rules. When the sociologist studies the deviant as if his whole life is organized around his rule breaking, the sociologist is on a voyeuristic trip which throws into relief only that which is deviant.

The real sin of the sociologist is that his voyeurism is selective in a way that is class biased. When he studies a group of kids who hang around on street corners in a working class suburb, he studies them as a "delinquent gang". The reality is rarely that the lives of such kids are organized around rule breaking; rather, that part of their lives occupied with hanging on street corners is organized about the principle of having a good time on a Saturday night, and occasionally, only occasionally, such activity spills over into rule breaking. In stark contrast, when the sociologist studies the way the medical profession behaves in a large hospital, he pays no attention to the rule breaking engaged in by the doctors: hospital regulations are flaunted, private consultants make fraudulent claims as to the number of hours they have worked, life-saving drugs are discontinued so that patients might die more quickly. Rules are broken all the time, but the attention of the sociologist focuses instead upon organizational structures, doctor-patient interaction, and the like. There is nothing wrong with this. It is just that when sociologists study powerful people, it is the paradigms of organization theory or the sociology of the professions which are always used, and the deviance paradigm which is almost never used. With powerless people the reverse is true.

The fundamental question we must ask is whether it is in fact desirable to have a sociology of deviance at all—for either delinquents or doctors. What is it that makes deviance a coherent construct? Deviance does not hang together as a unidimensional entity, with one type of deviance correlating with all other types. Drug users are neither more likely nor less likely to be homosexuals or murderers. Some ethnomethodologists might claim that the construct gains its coherence from its grounding in commonsense typifications from everyday life. We have already implied that this is nonsense by asserting that for most laymen deviance means malevolent abnormality, while for most sociologists it means rule breaking—two quite different things.

Deviance is, in fact, a word rarely used in everyday discourse. If there are any ethnomethodologists who are serious about the coherence of the deviance construct, they must clarify the interpretive rules according to which ordinary people and sociologists designate an act or person as deviant. Ethnomethodologists who talk about deviance fall into a trap of their own construction because they fail to specify how their sociological conception of deviance relates to laymen's typifications of the events studied. As Phillipson and Roche have explained, "Until we can describe how members typify some acts as deviant and how sociologists jump from members' typifications to their own constructions, then we have no means of choosing between alternative descriptions of the same phenomenon."¹

In reviewing the literature of the sociology of deviance we find that there are no clarifications of consensual observers' or subjects' rules for determining when an act is deviant; observers' constructions are based on meanings which are presumed to be commonsense and traditionally understood by sociologists. The coherence of the deviance construct is therefore a taken-for-granted presupposition. After all, everyone knows what deviance is, don't they?

When we have an incoherent construct like deviance, which is ambiguous in meaning, then we come up against the fact that powerful groups have more success in stamping their interpretations upon that ambiguity than do powerless groups. As Marx said, "The ideas of the ruling class are in every epoch the ruling ideas."²

It can be seen clearly how power over the interpretation of deviance can be a useful tool in ensuring the domination of the ruling class when one considers the commitment of Soviet dissidents to mental institutions. But not dissimilar processes are operative in our own society when we label radicals as hippies, weirdos, unwashed, or nuts. The deviance construct is used as a vehicle for reinforcing ruling ideas and for suppressing diversity. Part 1 of this book is devoted to a number of detailed case studies to show how the attribution of deviance serves to bolster the ruling hegemony. In chapter 2, for example, Braithwaite and Barker show how during the 1950s the labelling of "unfeminine" girls as *widgies* provided occasions for celebrating the hegemony of conventional sexist ideology.

This book therefore suggests that, because of its lack of coherence as a construct, deviance becomes both a methodologically unsound category of analysis, and one that is ideologically dangerous for anyone but the arch-conservative. To many readers who are imbued with Western categories of thought, it might seem nonsensical to suggest that deviance not be a critical construct in the analysis of society and the guiding of human action: surely in any society there must be rules, and there must be people who break them? Certainly this is true. But behaviour which violates a rule can be interpreted in many ways other than that which focuses upon the rule-breaking quality of the behaviour. It might be more analytically fruitful to interpret rape as an act of exploitation, rather than as the violation of a rule. The most significant thing about rape is not that it is behaviour which violates a rule, but that it is behaviour which conforms with the rule that women should be dominated by men and be the sexual property of men. Rape is less significant as an instance of deviance than as an instance of sexist exploitative normalcy.

Many societies put less emphasis than ours does on the rule-breaking quality of acts. Navaho Indian children, for example, are not so much taught rules as they are taught to assess how much harm they are doing to others by their actions.³ It is not so much that there is a rule against murder, but one can see that murder does harm to another person, and one is punished for doing harm to others (not for breaking a rule). To kill an old woman does not attract as much punishment as killing a young man who is supporting a large family. Whereas each is punished equally in our society, because each is equally a violation of the same rule; in Navaho society punishment is a function of harm.

Hopefully some sociologists might read this book and wonder whether a sociology of exploitation might be more useful than a sociology of deviance which continually focuses upon the rule-breaking quality of the act. Rules are the creation of the social order, and the sociologist who takes the rule as the foundation for his analysis is implicitly supporting the social order. To the extent that the sociologist talks about the rule breaker as a rule breaker, he confirms modes of thought which suppress diversity. All of this is not a matter of black and white. We do not wish

to abolish deviance from the language. The sociological literature is replete with instances where deviance has been an analytically useful construct. What we seek is a reorientation of emphasis—less talk about deviance and more about exploitation. There are many half-way points along the road to such a reorientation. For example, sociologists who talk about deviance are being less subservient to the ruling hegemony than sociologists who talk about deviants: better we talk about a person as having committed a sin than speak of him as a sinner.

The most straightforward message of this book is that the rule makers are the most flagrant rule breakers in Australian society. But what we have been at pains to point out in this introductory chapter is that we do not *simply* want to say that the powerful are more deviant than the powerless, rather than vice versa; we want to suggest in the process that exploitation and domination may often be more fruitful categories of analysis than deviance itself for understanding phenomena normally subsumed under the deviance rubric.

This volume is the first collection of Australian evidence on the proposition that the rule makers are the most flagrant rule breakers—a proposition that overseas has long since been demonstrated beyond doubt. Edwin Sutherland in the United States was the first to systematically lift the lid on what he christened white collar crime.⁴ Sutherland defined *crime* as simply behaviour which is punishable by law—a definition which is adhered to in the present book. The startling discovery of Sutherland's seminal work was that the seventy largest corporations in the United States had a total of 980 convictions recorded against them in various civil and criminal courts up to 1949. Sutherland cited a great deal of evidence to illustrate the extent of white collar crime, including the following:

The financial cost of white-collar crime is probably several times as great as the financial cost of all the crimes which are customarily regarded as the "crime problem". An officer of a chain grocery store in one year embezzled \$600,000, which was six times as much as the annual losses from five hundred burglaries and robberies of the stores in that chain. Public enemies numbered one to six secured \$130,000 by burglary and robbery in 1938, while the sum stolen by Krueger is estimated at \$240,000,000, or nearly two thousand times as much. The

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New York Times in 1931 reported four cases of embezzlement in the United States with a loss of more than a million dollars each and a combined loss of nine million dollars. Although a million-dollar burglar or robber is practically unheard of, these million-dollar embezzlers are small-fry among white-collar criminals. The estimated loss to investors in one investment trust from 1929 to 1935 was \$58,000,000.⁵

Sutherland was not the first to demonstrate the extent of white collar crime. As early as 1895 Barrett⁶ showed that banks lost more from fraud and embezzlement than from bank robberies. More recently the President's Commission on Law Enforcement and Administration of Justice concluded on the basis of its investigations of white collar crime that,

There is no knowing how much embezzlement, fraud, loan sharking, and other forms of thievery from individuals or commercial institutions there is, or how much price-rigging, tax evasion, bribery, graft, and other forms of thievery from the public at large there is. The Commission's studies indicate that the economic losses those crimes cause are far greater than those caused by the three index crimes against property.⁷

Frank Pearce⁸ estimates that \$284 million worth of goods burgled in 1965 in the United States represents only three per cent of the estimated annual profits of organized crime, and only three per cent of the money gained by the tax frauds of the wealthiest one per cent of the population in 1957. Pearce claims that officials of the Federal Trade Commission itself have estimated that in 1968, when robbery netted \$55 million, detectable business fraud netted in excess of \$1 billion.⁹ The president of the United States Fidelity and Guaranty Company has written in the F.B.I. Law Enforcement Bulletin that the losses to employers from white collar embezzlement exceed those caused by fire in substantial measure.¹⁰

For many years Australians thought that such examples of rule breaking by rule makers was confined to North Americans. Few sociologists or journalists attempted to assess the amount of exploitation that those in power in this country inflicted upon the powerless. Academic criminologists and social scientists were, and still are, actively discouraged from investigating such abuses. It is, for example, far safer career-wise, for a sociologist or lawyer interested in the penal system to study violence by

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prisoners rather than violence perpetrated by penal administrators.

In criminal justice research it is the decriminalization thesis that is accepted almost without criticism from liberal criminologists. The main exponents of the thesis, Morris and Hawkins, expressed it this way:

The first principle of our cure for crime is this: we must strip off the moralistic excrescences on our criminal justice system so that it may concentrate on the essential. The prime function of the criminal law is to protect our persons and our property; these purposes are now engulfed in a mass of other distracting inefficiently performed legislative duties. When the criminal law invades the spheres of private morality and social welfare it exceeds its proper limits at the cost of neglecting its primary tasks. This unwarranted extension is expensive, ineffective and criminogenic.¹¹

With the exception of David Brown from the University of New South Wales Law School¹² most researchers have not noticed the basic inequity in this proposition. As Brown points out, if the "prime function of the criminal law is to protect our person and our property" its effect is to preserve an inequitable status quo.¹³ To postulate the role of the criminal law as the protection of property ignores the question of how the existing distribution of property came about and whether it is a justifiable distribution. It ignores, to give just one example, the fact that land owned by white Australians in the 1970s was originally taken by force from Aborigines who were frequently killed in the process.¹⁴

Those academics who did study the rape and oppression of Aboriginal people and who submitted their study as an example of deviance were called politically biased, "pop" sociologists. Australian journalists are even more guilty than academics of subservience to powerbrokers, and voyeuristic exploitation of pervs and pimps. They have simply not followed their counterparts in North America and Europe in uncovering the mechanisms of oppression and privilege perpetrated by those in power in this country. It is fashionable to blame this journalistic deficiency on harsh libel laws which make it difficult for reporters to report on anything but the most trivial events surrounding famous or powerful figures. This explanation is too facile and

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ignores structural patterns in media ownership which perpetrate "play-safe" journalism. Three newspaper chains own virtually all of Australia's metropolitan papers and their conservative owners rarely encourage the kind of investigative reporting which challenges the abuses of power and privilege.

Of course like all generalizations there are exceptions to this bleak picture of media complacency. The *Melbourne Age*, the *National Times*, and *Nation Review* have been prepared to report on the often shoddy and illegal activities of powerful individuals and groups. Thus the well-publicized Victorian land scandals, the Bathurst prison bashings, and the Beech report on graft and corruption in the Victorian police force were given much prominence in these papers. Other newspapers, after the ice had been broken, reported all these events even though it is doubtful whether they would have been willing to initiate research into uncovering the activities of politicians who use their position to enrich themselves or prison administrators who perpetrate violence against inmates.

The *Brisbane Courier-Mail*, in one of its rare excursions into police malpractice in 1976, exposed a series of police practices and excesses that finally led the Queensland government to form a committee of inquiry into practices associated with the criminal law in that state. In a very real sense the findings of the committee and the subsequent government action—or more correctly inaction—in regard to the findings illustrate how the Australian ruling class deals with those of its agents who break rules.

A conservative committee comprising a Supreme Court judge, a criminal barrister, and a police inspector found "that verballing, as it has become known is a device that is not uncommonly employed by certain members of the police force."¹⁵ Transcripts of interviews recorded among police officers showed conclusively that the planting of evidence, perjury, and violence were widespread among sections of the force and the practices were "by no means peculiar to Queensland."¹⁶

Despite these documented findings of gross police malpractice the committee refused to acknowledge that there was a need for independent investigation of complaints made by citizens against the police. Instead the committee granted the police increased powers of detention without arrest and the opportunity

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in many cases to search persons and premises without a magistrate's warrant. In an attempt to appease civil libertarians the committee suggested the videotaping of confessional evidence so that independent evidence other than the word of a police officer could stop police verballing.

This rather mild corrective to documented police excesses was bitterly opposed by both the police commissioner and the police union. The Queensland government, partly as a result of police pressure, then formed yet another committee to "overview" the findings of the committee that it had itself established. On the second committee the government appointed its own public service chiefs and the commissioner of police—a man who had spoken forcibly for extending the period when citizens could be held without formally being charged. At the time of writing, this second committee had not yet reported to Cabinet but it is safe to assume that its recommendations will further increase police powers while doing little to contain police excesses when dealing with citizens. As we said earlier in this chapter, rule makers and enforcers who break the rules they themselves make and enforce rarely suffer the same fate that powerless "deviants" incur.

The same analysis of what appears when powerful persons oppress powerless ones could be applied to other well-known examples of rule-breaking behaviour engaged in by privileged people. When Sir John Kerr violated basic tenets of constitutional democracy by sacking an elected government, it became a matter of great equivocation as to whether he really did anything wrong at all; when prison warders bashed and, in some cases, tortured prisoners, nobody in authority was criminally liable; when rich doctors defraud patients and taxpayers alike they are treated like petulant schoolboys rather than the calculating criminals that they are.

It was suggested earlier that we should talk less about deviance and more about harm to others. If we are going to do this, then Part 1 of this book rather than being about the sociology of deviance is about the sociology of domination. It shows how powerless people who are doing little harm to anyone are repressed by being labelled as deviant, and how, in the process, conservative ideas are buttressed. Part 2 is about the sociology of exploitation. The chapters in this section illustrate

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how illegal behaviour of the powerful which does considerable harm to powerless people is covered over. The structure of the book is intended to denounce the fact that the traditional sociology of deviance has served to highlight and manufacture abuses of the powerless, and cover up the extent of the abuses of the powerful. In this denunciation the book is biased and inflammatory. There is no discussion of working class criminals who exploit powerful people. They exist and you can read about them in many other places. This volume does not seek to be fair, it seeks to balance the books.

In a sense, then, this book is structured around the dialectics of oppression, exploitation, and privilege—categories of analysis which we feel could well act as alternatives to deviance. In Part 1 we bring together a number of studies which cogently illustrate how acts defined as illegal (and deviant) are manufactured and exaggerated by what C. Wright Mills has called the power elite. Windschuttle and then Braithwaite and Barker look at how the police and the media create their own peculiar image of deviance and how they are both enormous coercive institutions of social control. In two articles Wilson demonstrates how relatively minor forms of law breaking (obscene words and drug taking) are differentially enforced against powerless people, while Margaret Dee raises the issue of whether “deviant” acts are committed more by women who violate laws relating to prostitution or by those who enforce these laws.

In Part 2 of the book we consider the methods and mechanisms by which the powerful in our society use their positions of privilege to engage in exploitative and often illegal acts. In a provocative article Gorrington compares and contrasts the motivations behind those who “push” illegal drugs with the multinational pharmaceutical companies. Despite media publicity to the contrary there is much evidence to suggest that legal drug pushers kill many more citizens than do illegal ones. Braithwaite demonstrates how used car salesmen consistently defraud consumers with little risk of criminal justice retaliation, a theme illustrated yet again with another privileged group, doctors, in Hodge’s account of Medibank fraud. Hundloe’s discussion of environmental crime shows how the powerful have their way regardless of what the law says, while Bright raises the question as to who really is deviant, tax dodgers or those who are popularly known as dole bludgers.

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Three separate articles on corporate crime all vividly illustrate the class basis of our criminal justice system. Sutton and Wild look at the relationship between social structure and corporate crime, while American sociologist Ed Gross argues that in any complex society organizations are inherently criminogenic. In the final article on corporate crime, criminologist Andrew Hopkins provides, for the first time in the Australian setting, empirical case studies of company rule breaking.

We end this section with a provocative chapter by Braithwaite and Condon. Most of this book has been concerned with crimes against property committed either by the rulers or the ruled. In this article the authors argue that the powerful commit many more crimes of violence, that they kill and maim many more citizens than the rapists, muggers, and murderers who dominate media and public discussion about crime and deviance. The solutions to ruling class institutional violence tentatively suggested by Braithwaite and Condon involve a radical restructuring of the legal order and the economic order. It needs to be pointed out that many of the other contributors to the book would disagree with such a political stance. The book embraces a diversity of political interpretations of crimes of the powerful. Our purpose is not to produce a book of readings which takes a unitary political line, but to set up a series of oppositions to the basis in class power of the traditional sociology of deviance, even though such oppositions are themselves often mutually conflicting.

In the final section of this book we present a lengthy but gripping account of violence in a prison setting to illustrate the inevitable result of our two faces of, and standards towards, crime and deviance. It is quite clear that what is unacceptable behaviour for the victims of the legal system is accepted and often sanctioned behaviour for the custodians of that very same system. The systematic brutality at Bathurst, authorized, condoned, and covered-up at the highest levels pervades not only the New South Wales prison system but also many other Australian prison systems.

As the reader will see, the summary of the Bathurst goal commission is written by former convict Bob Jewson—the only full time unofficial observer of the Royal Commission. The article is deliberately written in an unemotional low-key way.

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Most of the material used is drawn from transcripts of the official proceedings, quoting from the evidence given by politicians and prison administrators. This approach condemns the brutality and intransigence of penal authorities more forcibly than any words spoken by the prisoners themselves. The opposition is less to the truncheons that beat them than to the strings that move the hands. What more fitting way to conclude a book on two faces of deviance than to have a powerless "criminal" using evidence volunteered by highly placed officials to show the irony of their own arrogance towards the "rules".

NOTES

1. M. Phillipson and M. Roche, "Phenomenology, Sociology and the Study of Deviance", in *The Sociology of Crime and Delinquency in Britain, Volume 2: The New Criminologies*, ed. P. Wiles (London: Martin Robertson, 1976), p. 71.
2. K. Marx, *The German Ideology*, edited by R. Pascal (New York, International Publishers, 1947), p. 41.
3. J. Ladd, *The Structure of a Moral Code: A Philosophical Analysis of Ethical Discourse Applied to the Ethics of Navaho Indians* (Cambridge, Mass.: Harvard University Press, 1957).
4. E.H. Sutherland, *White Collar Crime* (New York: Holt, Rinehart, and Winston, 1949).
5. *Ibid.*, pp. 121-22.
6. A.R. Barrett, *The Era of Fraud and Embezzlement* (Boston, 1895).
7. The President's Commission of Law Enforcement and Administration of Justice, "Crime and Victims in a Free Society", in *Crime and Delinquency*, ed. C.A. Bersani (London: Macmillan, 1970), p. 8.
8. F. Pearce, *Crimes of the Powerful: Marxism, Crime and Deviance* (London: Pluto Press, 1976).
9. *Ibid.*, p. 93.
10. W.J. Jeffery, "The Forty Thieves", *F.B.I. Law Enforcement Bulletin* 39 (1970): 17.
11. N. Morris and G. Hawkins, *The Honest Politician's Guide to Crime Control* (Chicago: Chicago University Press, 1970), p. 3.
12. See D. Brown, "Criminal Justice Reform: A Critique", in *The Australian Criminal Justice System* (2nd edition), ed. D. Chappell and P.R. Wilson (Sydney: Butterworths, 1977).
13. *Ibid.*, pp. 471-91.
14. A. Hopkins in his review of Chappell and Wilson, *Australian Criminal Justice System*, *Australian Institute of Criminology Newsletter* 5, no. 1 (September 1977): 18.
15. *Report of the Committee of Inquiry into the Enforcement of Criminal Law in Queensland* (Brisbane: Government Printer, 1977).
16. *Ibid.*, p. 14.

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