

8. SICK, DEVIANT OR JUST LOOKING FOR A BETTER COMMUNITY?

AIM: To look at key differences in some basic sociological approaches to social difference or 'deviance'. To argue that international and national goals regarding health and human rights should guide and assist coordinated community management of health, justice and related environment concerns.

THE SICK, DISABLED, STIGMATISED, CRIMINAL AND OPPRESSED

This lecture looks at some of the key differences in sociological approaches to discussing variations from the social norm - 'deviance', in statistical terms. The sociological literature on 'deviance', (which I put in italics because the term is often used pejoratively), spans academic views about the sick, the disabled, the stigmatised, the criminal or the oppressed. Today the term 'challenging' behaviour is often preferred to the term 'deviant' behaviour. This is because the history of deviance suggests that yesterday's villain may be seen tomorrow as a victim or a hero, and that one man's idol may be another's devil. Another lesson from the literature is that how people see themselves and others may strongly influence how they act. People often learn to see themselves as others see them, or may develop directly opposing views in reaction to those who have labelled them. An honest, open, empathetic and evidence based communication is usually vital for people to be able to understand all others and themselves effectively. People are likely to be prepared to enter into this kind of communication only if they think it is likely to be in their interests and they feel safe. This suggests that health and justice related service provision should be strongly guided by the wishes of the clients and delivered within their chosen community.

This lecture also aims, therefore, to show a range of common assumptions about health and justice in their broader, social context, which includes communication. It is hoped that this assists readers to question others' assumptions and actions and their own continuously, with a view to everyone communicating and hence learning better, to improve their treatment. Trying to understand how people see themselves and others is usually vital to any process of development, which depends as well on continuing communication. International and national goals for health and human rights should be implemented in a suitably coordinated manner to assist local community management of health and justice concerns. Individuals and communities may fruitfully be assisted to achieve self-determination and self-management in this international, community based context, which a growing number of nation states accept, at least on paper. The lectures in the subject Health Policy and Service Delivery provide more discussion about the implementation of health, environment and justice related goals in Australia.

PROFESSIONAL PROVIDERS – LABELLING OR HELPING?

Talcott Parsons' functionalist theory of the 'sick role' conceptualised sickness as the only available alternative to the 'criminal role' as a means of providing people with opportunities to avoid the stresses associated with normally expected social functions. He wrote about the expectations, rights, and obligations placed on people who wish to be relieved of their normal responsibilities on the basis of being sick. They must deny the wish to be sick, do something about it, accept the help of others, and try to get better. In 'Stigma' the social interactionist sociologist, Erving Goffman, wrote about the situation and feelings of people who society has stigmatised because their looks, actions, capacities or perceptions are different from the norm. Status symbols, such as possessions, trappings of high office or good looks are contrasted with stigma symbols, such as disfigurement, physical or mental disability or 'criminal appearance'. A later lecture addresses Goffman's description of the oppressive management functions of the

‘total institution’, such as the typical mental hospital or prison of his era. Such ‘total institutions’ are still around today.

Foucault thought that the confinement of ‘the mad’ in asylums and ‘the bad’ in prisons has historically allowed potentially subversive elements in a population to be controlled, whilst at the same time providing a point of contrast with the so-called triumph of reason and progress, as it supposedly occurs through scientific development. According to Foucault, up until the end of the eighteenth century medical practice was related more to health than normality. It was concerned about the quality of the patient’s lifestyle and general functioning, rather than about comparing the person against a supposed physical or social norm. Increasingly, however, the concept of ‘the standard’ developed, and medicine became interested in the surveillance of populations and the classification of their ills. This was undertaken primarily through the identification of the deviations of individuals from an apparent normality, as defined by the doctor. The broad thesis of Foucault’s work is that modern professional knowledge often constitutes a form of repression, in which people are defined by professionals against false norms and then swept along against their will by dominant and controlling professional discourses or institutions. In such processes and institutions people may be diagnosed and then ignored or monitored, regulated and subjected to invasive treatment, mainly to advance professional careers. Today, this kind of criticism is perhaps most commonly applied to psychiatrists who invariably use the Diagnostic and Statistical Manual of Mental Disorders (DSM 4th edition) to make their diagnoses. The critics argue that behaviours which are primarily responses to environmental pressures are routinely labelled and medicalised by those who use this book to dole out drugs which subdue unwanted behaviour, rather than inquiring into how ‘dis-ease’ may be alleviated through changing the environment.

Australia is a developed, multicultural society in a global economy. Acceptable community behaviour should therefore be seen as having a very broad range. For the goals of community based self-management to be achieved, the individual service provider needs to listen to the client and understand their community. Some people who have been labelled or who see themselves as different from ‘normal’ Australians may feel that they are ill or injured. Others may simply perceive themselves as different. Yet others may think that they have been rejected or oppressed, or may explain their apparent situation in another light. In any case, the service provider should generally adopt and encourage a broad, questioning and self-questioning, evidence based approach with every person, in the context of a broadly coordinated approach to community management guided by global, national and local health, justice and related environment goals.

The Australian homosexual community provides an example of a traditionally stigmatised and silenced group, who have become highly effective community leaders in the national and international struggle against the spread of HIV/AIDS. They commenced their struggle in the 1970s by first standing up against the violence meted out to them, and fighting for their right to be honestly acknowledged and treated equally by the rest of society. (Demonstrations for the right to be on the streets of Sydney without being assaulted turned into the Gay Mardi Gras, which is now a major tourism and commercial success for Sydney and the nation.) Heyman’s global and regional research shows that Australian control of HIV/AIDS, chlamydia, hepatitis B, genital warts, herpes, gonorrhoea and syphilis can be favourably compared with that achieved anywhere in the world. The Australian HIV epidemic has remained largely confined to male-to-male sexual transmission of the virus, rather than heterosexual transmission, which is the dominant mode in many other countries. This is the result of a combination of facilitating public health policy development and sophisticated HIV/AIDS community activism which has led to prevention work among gay communities being undertaken almost exclusively by gay men themselves.

EARLY FUNCTIONALIST PERSPECTIVES ON DEVIANCE

For the functionalist sociologist, shared norms and values are the basis of the social order. In 1938 Emile Durkheim argued that deviance is a necessary part of all societies, and that it performs positive functions for social systems by breaking their social norms and values. According to Durkheim, crime is integral to society and also inevitable, because not every member can be equally committed to the collective sentiments and beliefs. Since individuals are exposed to different influences and circumstances, it is impossible for everybody to be alike. Durkheim believed that crime only becomes harmful to society (dysfunctional) when its rate is unusually high or low. He argued that all social change begins with some form of deviance and that for change to occur, yesterday's deviance must become today's normality.

According to Durkheim, a certain amount of change is healthy for society and so is deviance. He regarded some crime as prefiguring the future moral order of society. As an example of this you may ponder the change which has taken place in societies where homosexuality was once 'the love that dare not speak its name', but where there is now anti-discrimination legislation which seeks, among other things, to protect people's right to take partners of the same sex. Durkheim argued that the function of punishment in a society is not to remove crime, but to maintain the collective sentiments of social commitment and solidarity at their necessary level of strength. Without punishment the collective sentiments would lose their force to control behaviour and the crime rate would reach the point where it became dysfunctional. Thus, in Durkheim's view, a healthy society requires both crime and punishment. Both are inevitable and both are functional.

Cohen asserted two major propositions in relation to deviance. The first was that deviance could be a safety valve, providing for comparatively harmless expressions of discontent. In this way the social order may be protected. Cohen argued that prostitution could provide a safety valve function without threatening the family. Prostitutes can offer a release from the stress, pressure, or boredom of family life without undermining family stability, since relationships between prostitutes and their clients usually avoid strong emotional attachments. You will perhaps have noticed that it generally only works this way if such behaviour is kept secret from those who might complain. If a man's wife knew about his nocturnal visits she would be unlikely to tolerate them easily, at least in the dominant white, Anglo-Saxon, society of Australia. Cohen saw deviant acts as a useful warning device to indicate that an aspect of society is malfunctioning. This usually draws attention to a problem and leads to measures to solve it. However, to the non-functional sociologist or to a black person from Ku Klux Klan territory, the concept of any society acting to 'solve' its problems might not be comforting. From a broader perspective, exactly who is defining what behaviour as a problem might seem issues of major concern. The comparatively powerless and minority groups have excellent reasons to be concerned about this because history often shows them being defined as problems by dominant groups and punished.

THE CONFLICT PERSPECTIVE ON CRIME

From an early conflict or Marxist perspective, society itself is labelled as the crime, in that the social order and its rules are seen as being driven by a powerful few who have the ability to enhance their own interests at the expense of the majority, as well as hated minorities. For Marx, the capitalist state operates primarily in the interests of the capitalist class, and the police and jails are seen as the repressive apparatus of this dominating state. Marx differentiated between a range of agencies working to maintain the power of the ruling class and its state. He contrasted the

repressive or punishing apparatuses of the police and army with the ideological apparatus of schools or newspapers. Schools prepare people for work, and the newspapers are supposedly used for spreading only those ideas which are most acceptable to the owners and advertisers.

Contemporary conflict theorists often provide an updated Marxian perspective. Acts may be considered criminal primarily because it is in the interests of the ruling class to define them so, while other problems may selectively be ignored. For example, the jailing of the petty thief may be contrasted with the legislative requirements which enshrine commercial secrecy and so protect the financial dealings of the wealthy from broader scrutiny by others whose money is being managed on their behalf and supposedly in their interests. Could the 'mum and dad investors' afford the price of the barristers if they could understand and be shocked by what they found out about the management of their money? The conflict perspective suggests that individuals from the lower classes will often be labelled criminal, and usually take their frustrations out on each other, rather than challenging those who seek to ignore or otherwise torment them. The wealthy, however, may use their money not only to control the means of production, but also to influence, strongly and selectively, the institutions of government, media and law enforcement in their favour. If necessary, they may end up building gated communities and employing guards to protect their families against those outside, who envy their exceptionally privileged position.

MERTON AND THE AMERICAN DREAM

Merton brought a strong socio-economic analysis to functionalist discourse on deviance. He argued that the degree of opportunity that an individual has for economic success and personal status in American society relates positively to their family wealth and status opportunities. As a result of this, deviance results not from 'pathological personalities' but from the culture and structure of society itself. Since members of society are placed in different positions in the social structure (in terms of their family wealth, ethnic identity or colour) they do not have the same opportunity for realising the success values of U.S. society. This situation can generate crime (breaking the norms) because of the tension which exists between the shared social goals and access to the means to achieve them, which is distributed unequally across the social structure.

Merton took 'the American Dream' as his cultural study. This is essentially a belief in the goodness of the market economy for the individual and in the related potential of democracy. The assumption is that personal merit and luck can guarantee the journey from rags to riches or from log cabin to President. Thus, the American dream is essentially the belief that all members of U.S. society can achieve their dream of the good life, because anyone can be successful if they work hard and have the necessary talent, ambition and self-belief. It is also recognised, however, that it helps to have luck on one's side – the market and the gambler often go together. Merton claimed that as a result of the strength of the shared cultural perception that anyone can achieve their dream, American society is unstable and unbalanced. There is a tendency for many individuals to reject 'the rules of the game' and to strive to achieve success by any available means. The situation becomes like a game of cards in which winning becomes so important that the rules are abandoned by many of the players. According to Merton, when rules cease to operate, a situation of normlessness or 'anomie' always threatens to result. In a situation of 'anything goes', norms can no longer direct behaviour and further deviance is encouraged.

Those who read biographies of the Kennedy or Hearst families, or who are lovers of 'The Godfather' movies, may perhaps note that the American Dream also appears to work so that the more successful deviants may finally attain the mainstream respect and legitimacy they crave as a result of business or charitable dealings with well chosen individuals in the political and judicial establishments, the church and the business community. For example, many of the mafia were

apparently strong family men and supporters of the church. They understood the protective value of confidential arrangements as well as any other businessman, lawyer or politician. Their dream was also to have their economic contribution to building their chosen society morally cleansed and publicly and positively acknowledged. (I'd like to give you a more authoritative source than Francis Ford Coppola, but the multiple choice questionnaires haven't been sent out yet.)

Merton outlined five possible ways in which members of American society can respond to success goals. The first and most common response is 'conformity'. People conform both to the normal success goals, and strive for success by means of accepted channels. A second response is 'innovation'. This response rejects normative means of achieving success and turns to deviant means, particularly crime. Merton argued that members of the lower social strata are most likely to select this route to success because they are least likely to succeed via conventional channels, and there is greater pressure on them to deviate. Their educational qualifications are usually low, their jobs provide little opportunity for advancement, and they believe that trying hard to achieve success under those circumstances would not be realistic. Merton pointed out that in some European societies those at the bottom of the social structure might be comparatively more likely to accept their position since they have not internalised mainstream success goals. Instead they have developed distinctive subcultures, which define success in terms which differ from those of the dominant sections of society. The pressure to 'innovate' operates forcefully on the lower classes mainly in societies such as the United States, where most members share the same strong, material success goals, but where social inequalities are also very wide. Merton argued that those who innovate have been socialised by advertising, the family and other institutions to strive to attain the broader cultural goals, but reject the expected institutional means of doing so.

Merton used the term 'ritualism' to describe a third possible response. This comes from people who have largely abandoned the commonly held success goals. Their occupations provide less opportunity for success than many of those which they have been taught to look up to. In comparison with many members of the working class, they have been strongly socialised to conform to social norms. This usually prevents them from turning to crime. Unable to innovate and with jobs that offer little opportunity for advancement, their only solution is to scale down or abandon their success goal. Merton described typical ritualists as lower middle class. They are low-grade bureaucrats who are ultra-respectable but stuck in a rut. They are sticklers for the rules, follow the book to the letter, cling to red tape, conform to all the outward standards of middle class respectability, but have given up striving for success. It is this last factor which makes Merton consider that the 'ritualists' are deviant. From a slightly different perspective, they could be seen as desperately clinging to the existing order and their own particular place in it, for fear of being knocked off a ladder or sliding down a greasy pole.

Merton talked about a fourth group of people whose response to the American Dream is 'retreatism'. This applies to a mixed group such as the homeless, drug abusers and other mentally disturbed people. They have strongly internalised both the cultural goals and the institutionalised means of getting to success, but are unable to achieve it. They resolve the conflict of their situation by abandoning both the goals and the means of reaching them. They are unable to cope and 'drop out' of society defeated and resigned to failure. According to Merton, they are deviant because they have rejected both the cultural goals and the institutionalised means. Finally, Merton discussed 'rebellion' as a fifth response to the American Dream. It is a rejection of both the success goals and the institutionalised means, and their replacement by different goals and means. Those who adopt this alternative view wish to create a new society.

Unlike some other functionalist writers on deviance, Merton appears to define those Americans who fail to effectively embrace the 'American Dream' as deviant primarily in a statistical sense,

rather than in a sense which implicitly links statistical and moral meanings of the term. Paradoxically, however, if a society successfully structures its goals primarily in terms of comparative economic success and related social status, a very large proportion of the population presumably end up highly stressed, if not thinking of themselves as failures or deviants or sick. The personal goalposts related to achieving the American Dream are often far away and may be unexpectedly affected by rapid changes in the market or at the hand of God. The competition may be intense and one cannot often let one's family down. Under such circumstances comparatively few people may consider themselves to be good enough for long enough.

Merton's account of deviance is an instructive but limited model for the Australian policy context, because its definitions are developed within the framework of the individual pursuit of the American Dream, rather than from any broader, multicultural perspective on wellbeing. It is difficult to think of his 'ritualists' as deviant, rather than predominantly conformist and frightened of loss. In the wider global context, one does not have to be particularly rebellious to reject the American Dream for the future. Many people in other cultures may take their greatest pleasures in simple routines without ever feeling that they need to excel rather than simply enjoy these endeavours, or that there is anything which is necessarily unusual about what they are doing. A very broad and inclusive social framework is required for developing good international, regional and local community policy and for protecting natural environments. Australian public policy has recently concentrated on making the economy more competitive but also on protecting people from fluctuations in the market and insuring communities against its peaks and troughs through guaranteed health, education and other welfare provision. There is continuing focus on managing service provision effectively for the community, rather than leaving the market to its own devices. (A right wing Australian politician recently joked that in the 1970s the Australian government managed the private sector and nobody managed the public sector.) There may be truth in that.

THE INTERACTIONIST PERSPECTIVE AND LABELLING THEORY

Cohen argued that Merton failed to account for 'non-utilitarian crimes' such as vandalism and joy riding which do not produce monetary reward. He argued that delinquency is a collective rather than an individual response and that individuals may become part of a delinquent subculture whose participants establish and reinforce their own norms. In Cohen's view, a delinquent subculture not only rejects the mainstream culture, but also reverses it. Thus a high value is placed on activities such as stealing, vandalism and truancy which are condemned in the wider society. Those who conform successfully in terms of the values of the subculture, gain recognition and prestige in the eyes of peers. From Cohen's perspective, people involved in interaction primarily negotiate the definition of deviance. It focuses on the relationship between the person who is defined as deviant and the person who does the defining. It also looks at effects on the future actions of the individual who is defined as criminal or delinquent. Miller later argued that there is a distinct lower class culture whose focal concerns are toughness, smartness, and excitement. Pursuing these aims often involves major risk taking. It is primarily men who see themselves as being in control of, or enjoying this, or who just live as best they can.

Becker also argued that through the process of social interaction deviant subcultures develop which rationalise, justify and support deviant identities and activities. He says that once individuals join an organised subculture they are more likely than before to see themselves as deviants and to justify their actions in terms of this self-concept. Becker argued that dominant social groups may create deviance through the process of making the rules then labelling people who break them as deviant. The label is not neutral, but contains an evaluation of the person who is labelled. This label also has a 'master status' in that it colours all the other statuses possessed by an individual. Since a person's self-concept is seen as largely derived from the responses of

others, labelled people often tend to define themselves in terms of their label. This may produce a self-fulfilling prophecy whereby the deviant identification becomes the controlling one.

In Australia, for example, a whistleblower who alleges corruption at their workplace might be simply called difficult or mad by many superiors and peers in the organization. If the whistleblower is not mentally unbalanced when they make their allegation, they almost certainly will be by the time powerful elements in the organization have finished with them. The whistleblower is likely to feel as if they are being bullied and driven mad. In 1994 NSW introduced a Protected Disclosures Act to provide support to public sector whistleblowers. The act aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector, by enhancing and augmenting established procedures for such matters; protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures; and providing for disclosures to be properly investigated and dealt with. The NSW Ombudsman has carriage of this legislation. However, in spite of the passage of the National Competition Policy Act (1995) and its related requirement for competition on a level playing field, no similar requirements for corruption control are placed upon the private sector. Freedom of information legislation also relates only to the public sector, although the preserve of the courts is guaranteed through legislative exemptions which mean that a wide range of information can only be provided in this adversarial context. Secrecy is often the most common institutional response to public demands for information. The growth of democracy is consistent with breaking it down to achieve the public interest.

BRAITHWAITE ON SHAME AND REINTEGRATION: AN AUSTRALIAN VIEW

In Australia, Braithwaite and others have argued that the way the justice system punishes people who commit crime does not lead to an outcome that aids rehabilitation of either the victims or offenders, but is more likely to result in social exclusion and pushing them into subcultures beyond the reach of broader education or community help. This argument has recently been put in reports on Crime Prevention through Social Support produced by members of the Legislative Council of NSW. Braithwaite argued that punishment or public **shaming** should be done in a way that does not primarily seek to stigmatise offenders or communities, but requires them to take responsibility for their actions. According to Braithwaite, where there is a high degree of value consensus that recognises certain offences are not permissible, then there is a chance that shaming will succeed in making the offender repent the offence and rejoin the moral community. Where there is a high level of conflict generated by inequalities of class, ethnicity, gender or race, the result is likely to be the generation of subcultures that support and induct new members into activities which are defined formally as criminal, and which are policed in a context of social conflict over moral values. In Braithwaite's view, shaming as a socially integrative device will only be effective when people are involved in multiple discussions and social relationships with high levels of interdependency among groups, in broadly communitarian societies sharing common values and a common round of life. Where punishment and shaming are separated from each other, they lose their legitimacy and are seen as just another part of an unjust, oppressive system of power and brutality that operates in response to class or race or gender sets of interests.

The kind of societies that Braithwaite seeks appear to depend strongly and of necessity upon constant and effective communication. However, many sociologists, including Braithwaite, seem to have a comparative lack of interest in the traditional group requirement for secrecy – which democratic societies may also conceptualise as intrinsically related to the potential for corruption and maintenance of continuing control by those already powerful. Many feminist writers have pointed out that secrecy may hide violence in some families, and that many practices destructive of the weak, such as rape and child abuse, were not brought to public attention in Australia until

the renewal of the feminist movement in the 1960s. Only in the last few years have Aboriginal women had the community support to question the sexually or otherwise casual or violent treatment meted out to them for generations, at the hands of dispossessed men.

The traditional British justice system which Australia has inherited is designed as adversarial and to keep the opposing lawyers in control of all proceedings. From a modern scientific or common sense perspective these proceedings are often mystifying because they have been developed on the basis of the necessity to follow the letter of particular law and ancient legal rules, designed primarily to protect each combatant from the other. This structure, which also 'privileges' the secrecy of all the information a lawyer gains from his client, is unlikely to encourage more broadly informed community discussion which might also lead to wider social consensus about the apparent truth about complex matters and community self improvement. Thus the lawyer's role is to secretly develop a winning case, supposedly with the paramount interests of his client principally held in view, rather than to search for truth. Lawyers then enter into battle with each other. Apparent victims, alleged perpetrators and their communities are routinely confused by ancient legal language, silenced or cross questioned and subjected to attack. This adversarial justice structure almost seems designed to promote continuing social conflict. The courts do not routinely collect performance information which could be used to assist the development of prevention or rehabilitation related programs for individuals or communities. No other Australian social service, for example in health or education, operates with such a paucity of data related to the nature and effectiveness of its work, its throughput and its outcomes. Will they get better?

A MULTICULTURAL SOCIETY REQUIRES AN INTERNATIONAL PERSPECTIVE

The dominant or majority beliefs of any group tend to be implicitly equated with general and ideal moral norms. From the group perspective, the term 'deviant' tends implicitly to equate statistical deviation from these comparatively narrowly held norms as unacceptable behaviour. This is why discussion of deviance may easily become a discussion of the treatment of minorities at the hands of majority or controlling groups, who may also use psychiatrists or other convenient experts as their tools in order to control their 'problems'. It is also why the term 'challenging' behaviour is generally preferable to 'deviant'. As the psychiatrist, Thomas Szasz has pointed out, the group – especially if it is or believes itself to be under attack – values erroneous consensus more highly than contest truth. The quest for truth often tends to be divisive. This may particularly be so if conducted through courts, by adversarial lawyers armed with their ancient rules of battle. The court process may silence or distort all other views of behaviour and its effects, including scientific perceptions. The delivery of justice in any social context therefore needs to go beyond this legalistic approach and take international or national society as its holistic starting point of intellectual, evidence based and related moral analysis.

International, national and comparative perspectives applied to regional development are ideally necessary for all related community analysis and decision making. This includes the achievement of justice through the settlement of disputes. These perspectives are also necessary for the effective implementation of an evidence based approach to continuing development of community and government policy and practice which also aims at harmonious and effective management of social difference, to improve its expression. (Does this mean people should stop swearing? Personally I don't think so.) In the absence of the very broad perspectives recommended, group dispute settlement practices may lead to increased social differentiation between groups and also to a general increase in social intolerance, greater moral confusion and social conflict at the margins. Commencing analysis with a very broad and inclusive concept of the public interest, rather than with the narrower norms and values of the court or local group,

may provide better remedies for settling conflict and improving general understanding. But this assumption needs research.

The Universal Declaration of Human Rights provides an obvious starting point for such development and outcome monitoring. It was signed in 1948, by member nations when the United Nations (UN) was first established, in response to the atrocities and crimes against humanity perpetrated during World War II. The Universal Declaration of Human Rights states that:

All human beings are born equal in dignity and rights without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human beings are claimed also to have the right to a standard of living adequate for the health and well-being of the family, 'including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond control'. (United Nations, 1948). This must mean governments commit themselves to providing the means for this. So far, however, little or nothing happens if signatories cannot or will not comply. In 1963 the convention on elimination of all forms of racial discrimination affirmed the fundamental equality of all persons and confirmed that discrimination between human beings on the grounds of race, colour or ethnic origin is an offence to human dignity and a violation of human rights.

In 1996 the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were both adopted. As a triad, the Declaration of Human Rights and the two covenants are known as the International Bill of Rights. By 1992 the Covenant on Economic, Social and Cultural Rights had been ratified by one hundred and fifteen nations. It deals with rights to:

- Work in just conditions
- Have social protection and adequate standards of living and health
- Gain education, cultural freedom and progress

The International Covenant on Civil and Political Rights is more contentious internationally. It discusses rights to:

- Freedom of movement
- Equality before the law
- Freedom of thought, conscience and religion
- Freedom of opinion, expression and peaceful assembly
- The right to freedom of association and participation in public affairs
- Protection of minority rights

Since the mid 1970s in Australia, state based anti-discrimination and related Commonwealth legislation has gradually extended the range of rights, which the individual is supposedly guaranteed in this society. For example, the current NSW legislation forbids discrimination on the grounds of a person's sex, pregnancy, race, colour, nationality, ethnic or ethno-religious background, marital status, family responsibilities, physical or intellectual disability, homosexuality or age. In addition the key principles of the Community Relations Commission and Principles of Multiculturalism Act 2000 are that:

- All individuals in NSW should have the greatest possible opportunity to contribute to, and participate in, all aspects of public life in which they may legally participate.

- All individuals and institutions should respect and make provision for the culture, language and religion of others within an Australian legal and institutional framework where English is the common language.
- All individuals should have the greatest possible opportunity to make use of and participate in relevant activities and programs provided or administered by the Government of NSW.
- All institutions of NSW should recognise the linguistic and cultural assets in the population of NSW as a valuable resource and promote this resource to maximise the development of the State.

By placing protection of social difference in the national mainstream, in the context of all related international and national goals, one gains a perspective and potential set of inclusive and pro-social benchmarks which can assist research and development and which clearly values the individual as well as the broader community. For example, the WHO definition of sexual health is **the integration of physical, emotional, intellectual and social aspects of sexuality in a way that positively enriches and promotes personality, communication and love**. Such a definition provides a tool for investigating and judging sexual behaviour, which is more inclusive and pro-social than almost any of those which traditionally spring from a narrower religious or cultural discourse about how people should have sex. People may then explain their actions to the broader community in terms of the requirements of this universal discourse, a form of which may also be found in duty of care and rights related legislative requirements.

In the absence of a global approach to society, sociological discussions about deviance may easily degenerate into a discussion of whose side one is on – the side of the ‘normals’ or the ‘deviants’, the majority or the minority, in any small collective. A more fruitful way forward is to adopt an international idea of normalisation, using UN principles, which have also been embraced by Australia. In this context normalisation or community based rehabilitation may be defined as **the use of culturally valued means in order to enable people to lead culturally valued lives**, with each individual and community being provided with very broad rights and duties in relation to personal choice and action. This is also consistent with the general requirements of a tolerant, communicative and informed approach to community self-management.

RESTORATIVE JUSTICE AND ITS APPLICATION

It is increasingly accepted in Australia that coordinated and targeted community health, crime prevention, education and employment programs should try to reduce the general level of community stress and also focus on providing more support to poor or troubled families and children. NSW has commenced a policy of locating publicly subsidised housing within the larger population of employed people. This ‘social mix’ strategy aims to avoid development of ghettos and to increase opportunities for comparatively unskilled people to find work. Education and reform of health and community services are being considered in this primary development and cultural context. Research has consistently recommended more programs to support families in crisis, greater recognition of the potentially nurturing role of childcare centres and schools and concerted action against school bullying. More constructive methods of managing public areas so that young people can use them safely without being needlessly harassed are being investigated.

A United Nations working party has recently produced a draft Declaration of Basic Principles on the Use of Restorative Justice Programs in Criminal matters which may provide appropriate

guidelines for community based crime prevention and treatment, including shaming and reintegration strategies. Strang and Braithwaite, as well as many others, have practiced and written extensively about community conferencing. Reports on Crime Prevention and Social Support produced by the Standing Committee on Law and Justice of the NSW Legislative Council recommended further trial of circle sentencing in Aboriginal communities. Particularly in their studies of insurance, Australian governments have noted the many inadequacies of court practices and data in relation to risk management and premium setting. Their adversarial process has been criticized by for its generation of continuing anger, ever increasing cost and distortion of a properly scientific approach. Intimidating cross-examination remains a problem, especially for children. Asked if they would report sexual abuse again after their experience in the criminal justice system, only a third of NSW complainants said they would. There must be a better way.

NSW legislation provides for community justice centres offering mediation and conflict management services. A charter of victims' rights provides for counselling, and assists recovery of money from convicted offenders. The NSW Young Offenders Act sets out an integrated, hierarchical scheme of police warnings, cautions and youth justice conferences designed to divert offenders from formal court processes for certain offences. Requirements for community aid and community justice panels are outlined. Families, extended families, victims and supporters, police, and the child's lawyer are entitled to involvement in proceedings. A drug court has also been piloted successfully. It allows those convicted of drug crimes to receive treatments such as methadone and community based rehabilitation rather than prison. A recent Commonwealth report on child custody arrangements in the event of family separation recommended the establishment of alternative dispute resolution procedures, including parenting plans, to address current problems resulting from an adversarial and slow family court. Changes have recently been made to legislation to clarify new expectations for child maintenance in family break-up. These rules primarily involve the attempt to cost and allocate parental responsibility for care and upkeep more equally between parents. The effects of their implementation must be monitored.

A wide range of Australian decision making structures currently involve people in gathering evidence and making decisions in non-adversarial contexts, to discourage the more aggressive and expensive treatment methods of lawyers and their courts. For example, the Social Security Administrative Appeals Tribunal makes thousands of decisions each year using a three person administrative structure. One of the panel members is from a representative organization of the client community. Members of these tribunals have argued that it would be helpful if complainants had access to appropriately qualified assistants who could help them express their case more clearly, honestly, and effectively than might otherwise be so. There are many other models for resolving disputes which may be modified for effective use in community contexts. The general hypothesis is that such dispute resolution practices are likely to be more conducive to crime prevention, rehabilitation, community development and cost containment than the courts. More research is needed so that the best ways forward can be found for all.

CONCLUSION

Deviance is a statistical term. However, the dominant or majority beliefs of any specific group also tend implicitly to be equated with ideal moral norms. The sociological discussion of deviance therefore tends to be a discussion of the treatment of minority groups by the majority and by powerful elites. An international and nationally applied comparative perspective is needed for more effective sociological analysis and also for the implementation of community management strategies which are more positively related to social difference. In the absence of this, social practices may easily be promoted which lead to increased social group differentiation, but also to increased social intolerance and moral confusion. In the absence of a universal

approach to society, sociological discussions about deviance may degenerate into discussions of whose side one is on – the side of the ‘normals’ or the ‘deviants’. A more fruitful way forward is to adopt international ideals about community rights and to apply all related UN principles which value each individual’s right to protection, expression and information. This is consistent with general management requirements for tolerant, communicative and evidence based approaches to community and self-development, aimed at improving comparative outcomes for everybody.

FURTHER READING:

National Alternative Dispute Resolution Advisory Council. www.nadrac.gov.au

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