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Chapter 1

Defining Deviance and Crime

The aims of this chapter are to familiarize the reader with:

- a definition of deviance as a negative reaction to behaviours, ideas, attributes
- informal and formal as well as external and internal reactions, and their relationship to processes of social control
- issues in the definition of deviance: the tension between objectivism and subjectivism, connections between deviance and rarity, links between deviance and crime, and voluntary and involuntary deviance
- the importance of social context — audiences, actors, and settings — in the definitions of deviance and crime
- the nature of criminal law: politicality, specificity, uniformity, and penal sanction
- the elements of criminal law: *actus reus*, *mens rea*, and motive
- criminal defences: mistake of law, mistake of fact, justification, necessity, consent, duress, provocation, intoxication, automatism, insanity, and entrapment.

INTRODUCTION

Deviants? Criminals? "We" know who "they" are. "They" are the highway-men, pirates, and quacks, the rapists, gamblers, robbers, and axe killers, the satanists, hunchbacks, and gangsters, the winos, child molesters, and nut cases, the pushers, potheads, and psychos, the con artists, hookers, and assassins — misfits or soldiers of fortune at best, sinners and outlaws at worst. These are "the children of the night," the denizens of an underworld we read about and see on television but know little of personally. They are the stuff of myth, legend, and romance.

Our fascination with deviance, crime, and especially violence is as glaring as it is boundless. Brutal killers Gary Gilmore and Ted Bundy died by executioners' hands while faithful and enchanted onlookers held candlelight vigils just beyond their prison walls. Albert De Salvo, Charles Manson, and others like them have become the protagonists in popular movies and best-selling books (*The Boston Strangler* and *Helter Skelter*). Lizzie Borden, Jack the Ripper, Billy the Kid, and Robin Hood have spawned veritable industries. Contemporary songwriters from rocker Bruce Springsteen to singing cowboy

Ian Tyson have provided lyric portrayals of the dastardly deeds of modern-day outlaws like Charlie Starkweather and Claude Dallas.

Common sense and popular culture tell us that what makes people shady characters and outlaws is that they have traversed the line between conformity and deviance. "They" have crossed the thin line that separates the rather ordinary realms in which "we" go about our daily lives from the shadowy and exotic worlds in which "they" get high, buy and sell kinky sex, and prey upon innocent victims. Where we conform, follow the rules, and obey the law, they do not. They deviate from the straight and narrow; they lurk in the shadows along dimly lit city streets. They live outside the law.

Deciding what is and what is not deviance, however, is not nearly so straightforward as it appears. In their efforts to cast light through the haze that envelops this twilight zone, sociologists and criminologists subject deviance in its various forms to meticulous examination. They focus on questions concerning its definition, incidence, patterns, causes, consequences, and costs, as well as on its control. Their enterprise and resolve call common sense into question. Some of the images of deviance so deeply imbedded in popular culture are cracked if not altogether shattered when subjected to such close scrutiny.

The questions confronting sociologists interested in studying deviance are legion, and their answers — although complicated and a shade obtuse — are absolutely fascinating. First and foremost, what is deviance? What is the relationship between deviance and crime? By what means and with what degree of accuracy can we count such disparate incidents as sexual assault, environmental crime, illegal gambling, alcoholism, devil worship, and group sex?

Once deviance and crime have been defined, counted, and described, other aspects demand explanation. Why are most murderers, burglars, and mafia members male? Why has bank robbery become the domain of amateurs when, during the early part of this century, it was a thriving criminal profession? Why does prostitution continue to flourish in the face of continuous and determined efforts by concerned citizens and law enforcement agencies to stamp it out? Why are crime rates lower in Newfoundland than in southern Ontario? Why can being caught in your own home getting high on a marijuana cigarette land you with a fine and a criminal record while getting drunk on a bottle of Canadian Club whisky, in the same circumstances, cannot? Despite the tremendous potential for lethal harm, why are industries able to continue dumping toxic chemicals into lakes, rivers, oceans, and air? This book explores these and other issues in the study of deviance and criminality. It begins by examining the complexities inherent in defining deviance and crime.

DEFINING DEVIANCE

The understanding of deviance rests in the reactions of observers. Something is deviant because an individual, group, or society takes offence and reacts negatively (Cohen, 1966; Lofland, 1969). Consider an inebriated professor babbling on in a lecture hall filled with students. Think of a group of

teenagers frolicking naked in a city park on a hot summer afternoon or of a young father on an airplane beating his screaming infant. Onlookers would almost certainly disapprove of all three acts. These are behaviours that most people would designate as deviant.

While deviance is usually thought of as a certain type of behaviour, this need not be the case. Deviance can encompass both ideas and attributes (Sagarin, 1975). Many Canadians and Americans think it deviant for someone to worship Satan or swear allegiance to the Communist Manifesto. People's attributes can also be the source of shunning and rejection. Although they might be unaware of it or deny it, many Canadians treat as deviant those who are disfigured, obese, ugly, crippled, or mentally handicapped. While most of this book focuses on deviant action, nonconformity is much broader than behaviour.

Negative reactions occur because onlookers interpret what they see and hear as wrong, bad, crazy, disgusting, strange, immoral or some combination of these (Higgins and Butler, 1982). A large segment of Canadian society views mate-swapping for the purposes of sexual recreation as wrong. Virtually everyone believes that the sexual molestation of children is bad. Most people think that adults who talk to trees are crazy and that men who masturbate during strip shows are disgusting.

Negative responses do more than simply demarcate deviance; they serve as mechanisms of social control. Negative responses and the social controls they represent vary in intensity from mild to severe and in conventionality from informal to formal. Informal negative reactions include epithets, avoidance, ridicule, criticism, and gossip. Consider some examples. Those who have been standing in line patiently for hours greet latecomers who butt in with derogatory comments that may or may not be uttered under their breath. Residents of a small community gossip about a teacher having an extramarital affair with a student. People with physical abnormalities are frequently avoided and excluded from get-togethers because others feel awkward in the company of the disabled.

These examples of informal punitive responses are external to the individual, but such responses need not be so. Negative reactions often are internal. In such cases, people in a very real sense represent their own audience. Many spouses who covertly cheat on their partners react negatively to their own infidelity, despite the fact that their deceptions remain hidden. Many closeted homosexuals worry about their sexual preference, clandestine activities, and secret identities. Shame and a guilty conscience define as deviant our surreptitious actions, our hidden ideas, and our concealed traits. At the same time, guilt and shame compel us to desist or cover up (Douglas, 1977).

Formal negative reactions are by definition external. They include official warnings, legal punishments, and various forms of treatment. The police, and later the courts, may formally penalize the drunken party-goer stopped in a roadside spot check. Not only may she spend a night in jail, pay a \$500 fine, and enrol in a rehabilitation program for drunk drivers, but she may suffer the indignity of having her name published in the newspaper and endure an enormous increase in her car

lunches, and many designated as mentally ill may be officially and involuntarily required to undergo various forms of corrective therapy.

Whether informal or formal, negative and potentially coercive reactions such as these define conduct, beliefs, and personal traits as deviance and define the people doing the behaving, believing, and appearing as deviants. At the same time, these responses serve as social controls. Varying in their power, these controls may or may not limit or drive underground the occurrence, appearance, or expression of deviance. Fundamentally, behaviours, ideas, and attributes that fail to elicit negative responses from audiences cannot be considered deviant.

Although the basic elements of a definition of deviance have been introduced, an understanding of deviance is fraught with complexities that warrant further consideration. Among the more important of issues to be considered are the tension between positivist and humanist conceptualizations, the connection between deviance and statistical rarity, the relation of deviance to crime, and the role of voluntariness in the definition of certain acts, ideas, and traits as deviant (Higgins and Butler, 1982).

ISSUES IN THE DEFINITION OF DEVIANCE

OBJECTIVISM AND SUBJECTIVISM

Sociologists have for years debated to what degree deviance is a matter of objective fact or of subjective interpretation. Early sociological discussions tended to treat deviance as the simple violation of pre-existing and concrete societal norms. This conceptualization rested squarely on the conviction that social norms were somehow given, external to individuals, and therefore objective. Initially objectivists viewed norms as absolute. They assumed that within society there was widespread consensus about the behaviours, ideas, and attributes that were proper, acceptable, and conformist and those that were improper, objectionable, and nonconformist. Conformity meant adhering to pre-existing societal expectations and rules, while nonconformity meant violating them (Parsons, 1951; Merton, 1971).

On the consensus issue, virtually all Canadians consider murder, rape, robbery, and theft intolerable and deviant. The same cannot be said of smoking marijuana, having an abortion, hiring out as a prostitute, selling pornographic materials, or making love to a person of the same sex. People simply disagree on the extent to which these latter activities are reprehensible. In recent decades, sociologists have begun to pay a great deal of attention to the nature of these disagreements and to the implications of a lack of consensus for the definition and explanation of deviance. Those working in a subjectivist or humanist tradition emphasize the problems associated with the social construction of societal norms and the differential application of social rules.

Subjectivist or humanist sociologists point out that rules do not appear out of thin air. People create and interpret the standards that determine

whether behaviours, ideas, and attributes are acceptable or unacceptable. Deviance, they maintain, is a social construction and as such is a relative concept. Like beauty, it is in the eye of the beholder. Deviance from one vantage point could well be conformity from another (Erikson, 1962; Becker, 1963).

Contemporary sociologists of deviance reside in two camps: objective positivists on one hand and subjective humanists on the other. Neither group totally denies the validity of the other's position; their differences in perspective are more a matter of degree. Many social scientists continue to work in the objectivist, positivist, and "scientific" tradition. While they recognize that rules do vary by place and over time, especially in heterogeneous societies such as Canada, objectivists focus most of their attention on explaining why people violate social norms and how they can be dissuaded from doing so. Alternatively, sociologists working in the humanist tradition do not take social norms as given. Rather, they emphasize their origins, implementation, and impacts. They particularly emphasize the critical roles of social definition and social power in the creation of deviance.

THE LINK BETWEEN DEVIANCE AND RARITY

There is a certain intuitive appeal in the notion that part of defining something as deviant depends on the rarity with which it occurs (Higgins and Butler, 1982). After all, murder, rape, homosexuality, prostitution, and mental disorder are infrequent when compared with other human events, activities, and conditions. The first difficulty with this idea is that many rare occurrences produce positive rather than negative public responses. Being the fastest person on two feet and being adept in directing a black disk at high speed and with deadly accuracy are not the stuff of which deviants are made. Indeed, rather than condemning their exploits, Canadians hail Donovan Bailey as a conquering hero, and affectionately refer to Wayne Gretzky as "the Great One." Rarity is not a critical component in defining acts, beliefs, or traits as deviant.

What happens routinely can also be considered deviant. There are, for example, certain behaviours in which virtually everyone engages but which people treat as deviant nonetheless. In the early 1980s, despite research suggesting that virtually all male and many female Canadian university students masturbated regularly, many participants felt guilt and shame about this covert sexual activity (Knox, 1984). More so than with other widespread and perfectly healthy forms of sexual release, masturbation was forbidden. Comments made by Canadian young people surveyed by Edward Herold (1984) reflect these sentiments. Two of Herold's respondents summed up their feelings:

Masturbation is about the only taboo subject still remaining among my women friends at university. (p. 29)

Masturbation had been a major source of guilt throughout my sexual development and I blamed many of my problems such as delayed physical development and lack of enjoyment of my initial heterosexual experiences as punishment from God for being "perverted." (p. 30)

THE LINK BETWEEN DEVIANCE AND CRIME

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Most people consider crime a serious violation of formal rules that are designed to protect people from being harmed by others. From this standpoint, crime is deviance in its gravest form. Talk of rising crime rates usually conjures up images of ever more frequent murders, rapes, robberies, and thefts. Compared with crime, deviance is generally considered to be less serious, more frequent, and more pervasive. This view implies that while not all deviant acts are criminal, all criminal acts are deviant. Again, this conceptualization of the deviance-crime relationship is simplistic. It is true that many forms of deviance can by no means be thought of as crimes. Wearing a Hawaiian shirt to a funeral may cause a commotion, but it is not a violation of Canadian law. There can be no crime, technically, without a law prohibiting an act.

Even where laws prohibit certain actions, however, not all contraventions of legal codes elicit much in the way of negative response. Speeding on the highway, cheating on income taxes, and pirating computer software are all technically illegal. Even so, enormous numbers of Canadians habitually engage in these acts without being penalized either formally or informally. Crime is not always deviant.

Neither is there a hard and fast connection between an act's harmful consequences and its designation as criminal or deviant. Many actions that result in the serious injury and death of large numbers of people are not prohibited by law. Corporate executives routinely decide to market unsafe products to consumers, to place workers in unnecessarily dangerous environments, and to contaminate the biosphere with toxic pollutants. Many countries have no laws whatsoever that forbid such actions (Gomme and Richardson, 1991).

Since the relationship of deviance to crime is not hard and fast, sociologists work with a variety of definitions of criminal conduct (Hagan, 1991). Some restrict their definitions of crime to a violation of the Criminal Code. Others extend the definitional boundaries to include the violation of other statutes intended to protect the public. For example, laws outside the Criminal Code shield Canadians from the deleterious impacts of the restriction of competition in the marketplace, the operation of unsafe workplaces, and the pollution of the environment. At the other end of the spectrum, a few sociologists and criminologists broaden their definition of crime to include virtually any socially harmful activity. Human rights and human justice, they contend, are socially and not legally defined. From this perspective, corporations laying off workers and thereby increasing unemployment and poverty violate human entitlements. Similarly, a government's failure to adequately fund health care — thereby inflicting pain and premature death on its citizens — is socially harmful and therefore criminal.

The main difficulty presented by a definition as broad as the latter one is that it transforms virtually all social problems and issues into crime (Schwendinger and Schwendinger, 1975). For our purposes, the intermediary definition of crime is most useful. In this book, "crime" generally

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means a violation of law, although not necessarily of criminal law. Most of the criminal activities discussed in this book are violations of the Criminal Code. Many of the criminal activities discussed in the chapter on business crime, while harmful, are under-regulated or totally uncontrolled. In this area, as in many others, the simple existence of a law is no guarantee that it will be enforced.

VOLUNTARY AND INVOLUNTARY DEVIANCE

People who voluntarily commit a deviant act are more likely to be punished than are people whose deviance is beyond their control (Higgins and Butler, 1982). Involuntary deviance increases the probability of a helping response. Killing one's rival in a love triangle or selling drugs for a living are voluntary acts. Consequently, perpetrators tend to be held fully responsible for these crimes. On the other hand, few consider the mentally ill or the physically disabled to be deviant by choice. Because members of these latter groups are not considered responsible for their deviance, other people's reactions tend to be more sympathetic and treatment oriented.

Falling between the poles that separate punitive from rehabilitative responses are cases such as drug addiction and alcoholism. People hold addicts and alcoholics partially responsible for their deviance because their initial decisions to use drugs or to drink to excess are matters of choice (Verdun-Jones, 1989). Once initiated, however, these practices can lose the quality of voluntariness when physiological or psychological dependence sets in. In such cases, the importance of therapy (as opposed to pure punishment) increases. When substance use contravenes statutes, it is not unusual for court judgements to require "involuntary treatment." For example, courts often force persons convicted of drunk driving or cocaine possession to enrol in addict rehabilitation programs.

Perhaps the most extreme and controversial cases in which voluntariness figures prominently are those involving people found not guilty of a crime "by reason of insanity." Legal and medical authorities often forcibly "admit" these "patients" into treatment programs. The state deprives the criminally insane of their liberty, and, regardless of the seriousness of their offence, refuses to release them until they are "cured" (Carrithers, 1985; Menzies, 1991). Convincing psychiatrists and judges that one is no longer mentally ill is extremely difficult.

People with physical and psychological defects are not the only ones for whom criminal responsibility is reduced. The nonconformity and illegal conduct of children and youths produce different responses than do identical behaviours on the part of adults. Modern society considers the young as immature, malleable, and subject to worldly if not corrupt influences. When the young err, their parents, other adults, or society at large assume at least part of the responsibility. In cases where convicted adults are likely to face punishment, similarly circumstanced juveniles are more likely to be the objects of rehabilitative programs (West, 1984).

Canadian law considers children under the age of 12 incapable of committing a crime. Older children are held more accountable for their actions by the Young Offenders Act, which deals with lawbreaking by Canadian youth from the ages of 12 to 18. Maximum penalties contained in the Young Offenders Act differ markedly from those set out in the Criminal Code for adults. Grown-ups convicted of murder may spend the remainder of their lives behind prison walls. The maximum sentence for a young offender, by comparison, is considerably shorter. The Act's original 3-year sentence has recently been increased to 5 years.

DEVIANCE AND SOCIAL CONTEXT

The importance of social context in defining deviance was hinted at in the previous discussion of the tension between the positions of objective positivism and subjective humanism. Deviance for a person at a certain time and place can — if person, time, or context changes — become conformity. For example, the statement “I’ll fucking well change the channel when I’m good and ready!” scarcely raises an eyebrow among a group of young men lounging around a recreation room in a university residence. Indeed, the use of the

Box 1.1

TOPLESS OK IN OTTAWA

City council voted yesterday to prohibit women from swimming topless at indoor city pools but to make no rule for outdoor pools and beaches.

Councillor Allan Higdon was behind the motion to stop women from topless swimming indoors. “At least people know now if they really want to go topless they can go to a beach, not an indoor pool,” he said.

“Nobody’s sunbathing in a pool, so they tend to be used for swimming lessons, all year round with kids. I don’t think toplessness is appropriate there. So this deals with that problem.”

Councillors call the bylaw a compromise that will allow women to choose where and how they want to swim. They said it is neither an invitation nor a deterrent to women’s going topless outdoors.

Last December, in a widely publicized challenge by Gwen Jacob of Guelph, the Ontario Court of Appeal ruled women have the right to go topless in public. Ms Jacob was successful in having her indecency conviction overturned. She had been fined after taking a topless stroll on a hot day in July 1991.

Ottawa city councillors agreed they could prescribe what swimmers wear inside city facilities, but couldn’t legally do the same at outdoor parks and pools.

Signs will be posted about the indoor bylaw. They will say: “Women 10 years of age or older must wear tops. Violators will be asked to leave.”

Mr. Higdon said the bylaw protects family use of the city’s indoor pools. “There’s an appropriate time to introduce sexuality to young children,” he said.

Discussion Questions

The by-law prohibits women from going topless at indoor pools but not at outdoor pools. In light of this, does Councillor Higdon’s admonition that there’s an appropriate time to introduce sexuality to young children” make sense? What course of action do you think is likely if bare-breasted women at indoor pools refuse to cover up and refuse to leave? Given the decision of the Ontario Court of Appeal that women have the right to go topless in public, does the Ottawa by-law abridge that right?

word “fuck” signifies different things to different people. For many university students, the frequent and routine use of this descriptor may facilitate their integration into a desired group. The use of similarly colourful and descriptive language in front of one’s parents at home is normally much less conducive to reinforcing feelings of belonging. The deviant status of an act depends on the context in which it occurs. The composition of the audience, the traits of actors, and the characteristics of the situation each affect the degree to which people define something as either deviant or conforming. Moreover, whatever is considered deviant or conforming fluctuates over time (Higgins and Butler, 1982).

The audience that differentiates the disreputable from the respectable can be an entire society or, as is more often the case, a segment of a society. Although individuals may define deviance, it is the societal segment and the entire society that are of greatest interest to sociologists. Societies vary in what they treat as deviant. In Ontario, women were not permitted to lounge about bare-breasted on public beaches until recently, and even now, few appear to be taking the opportunity that the new court ruling provides. By contrast, in many European nations, this is accepted practice, and in some African societies, women rarely cover their breasts in public. In much of the world, the moderate consumption of alcohol is commonplace and accepted. In Saudi Arabia, however, drinking alcoholic beverages is prohibited by law and the penalties are quite severe. Alternatively, for a few types of behaviour, there is little variation from one society or time period to another. Virtually all societies condemn sexual relations among siblings and between parents and their children. The incest taboo is and has been virtually universal (Middleton, 1962).

Whether the defining audience is a society or a social segment is to a large extent a reflection of the size and complexity of the society. Size and complexity affect the degree of consensus surrounding the reprehensibility of particular behaviours, beliefs, and traits. Within large and heterogeneous societies like Canada, consensus on what is and what is not acceptable frequently varies according to the societal segment or subcultural group to which one belongs. Different subcultures may or may not view as deviant smoking marijuana, polluting a stream, purchasing a sexual service, striking

a child, or marrying two women. Intolerance of alcoholism and violence, for example, varies by ethnicity and social class. Alcohol abuse among some ethnic groups is very high, while in others it is virtually unheard of. The Irish, for example, drink heavily and accept public drunkenness (Bales, 1962). Among other ethnic groups such as Jews or Chinese, cultural norms stringently regulate alcohol consumption and prohibit overindulgence (Glassner and Berg, 1980). Similarly, "discipline" in one subculture is considered "battering" in another.

Different age groups have different conceptions of deviance. Adults have almost always viewed many of young people's customs and behaviours as disturbing. There was considerable turmoil surrounding the popularity of rock and roll in the 1950s and 1960s. Parents and teachers expended a good deal of energy in encouraging softer music, longer skirts, and haircuts. Ironically, the now-respectable "rockers" of this bygone era, some of them sociology professors, cringe at the sight of children of both sexes with green and orange hair, painted faces, and razor blade earrings. To these relics of the sixties, rap is simply noise.

Definitions of what is deviant vary not only across societies and subcultures but over time as well. In Canada, narcotics were both widely accepted and legal before the beginning of this century (Comack, 1985). Now, many Canadians are very concerned about heroin and cocaine use and support stiff penalties for their possession. On the other hand, since the 1960s the use of soft drugs across North America has become more acceptable. Canada and the United States have both reduced penalties for the simple possession of marijuana. Several American states have followed Oregon's lead and legalized the possession of small amounts of marijuana for personal consumption (Inciardi, 1986).

Tolerance of homosexuality in North America increased during the late 1960s and the 1970s. Canada and many American states repealed statutes prohibiting homosexual acts in private between consenting adults. There is some indication, however, that intolerance toward homosexuals is once again growing. One reason for this hostility is the widespread but inaccurate perception that AIDS is a gay disease and that homosexuality is responsible for its spread.

Tobacco smoking is perhaps the most recent example of a behaviour once accepted and encouraged but now labelled deviant. Smokers are being asked to butt out in some cases and forced to butt out in others.

Another aspect of context that affects deviant designations involves the statuses of the actors (Higgins and Butler, 1982). If someone present at a dinner defecates in his or her pants, the determination of this action as deviant is likely to be strongly influenced by the miscreant's age. For toddlers, this sort of impropriety is acceptable; for adult guests it is not.

Sex too affects the definition of deviance. The range of circumstances in which males can publicly shed tears without recrimination is much more restricted than it is for females. As for fistfights, while "boys will be boys," the same violent exchanges among females are more likely to result in a trip to the psychiatrist. Wearing a skirt is an acceptable practice for women, but for men (Scots aside) it is deviant.

The economic and occupational statuses of the actors also influence the degree to which certain behaviours are considered deviant. The Canadian Medical Association admits that there are physicians who misuse alcohol and other drugs to survive the rigours of their work days. When caught, these physicians are treated with greater sympathy than skid-row drunks and street junkies. There is a tendency to see the former as the victims of stress and worthy of rehabilitation, while viewing the latter as worthless "bums" deserving incarceration. Where the poor and the unemployed tend to receive fines or serve time for their addictions, the affluent and the employed are more likely to receive psychological counselling and medical care.

Many forms of deviance involve interactions among the actors. The ties connecting performers in social interactions can influence the extent to which audiences conceive of an interchange as deviant. When a man strikes a child, the status of the victim may modify onlookers' definitions of the situation. It is one thing for parents to "discipline" their misbehaving children, but quite another matter for them to strike the child of another. Similarly, when a man sexually attacks a woman, public reaction may depend upon whether or not she is his wife. Indeed, until recently, Canadian law considered husbands incapable of raping their own wives; by legal definition, women could be raped only by men to whom they were not married.

Box 1.2

HAVING HIS CAKE AND EATING IT TOO

The greatest of last month's Great Literary Dinners organized by the Writers' Development Trust was undoubtedly the party hosted by food writer Cynthia Wine. As guest of honor at the \$200-a-plate repast, the irrepressible Farley Mowat shocked and delighted the guests by climbing onto the dinner table and burying his face in a chocolate cake intended for dessert. Mowat insists that he could not resist.

"Bob Rae was sitting on one side of me," he said, "and I was really trying to be serious." Mowat also insists that he was sober. "I just got infatuated with a chocolate cake," he said, "so I climbed onto the table and, without disturbing so much as a salt cellar, I pounced. It was the most profound culinary delight I have ever laid a lip on." Said Wine: "If such a thing is possible, he crawled across the table like a gentleman. We loved it."

Source: *Maclean's*, January 14, 1991, p. 8. Reprinted with permission from *Maclean's*.

Discussion Questions

How might the audience's reactions have differed if this incident had involved someone of a different status than the irrepressible Mowat? What might the public's response have been if Bob Rae, premier of Ontario, had embarked upon a similar course of action? Would Premier Rae have been considered more deviant than Farley Mowat? Why or why not?

The settings in which we behave, in which we express our ideas, and in which we display certain attributes can also shape conceptions of deviance. If someone unexpectedly walks into a friend's home and discovers the friend walking around nude in the bedroom, it is unlikely that the visitor would consider the homeowner a deviant. But, if a student inadvertently opened the door to her sociology professor's office and found her sitting stark naked at her desk marking papers, she might think twice about hanging around to discuss Marx, Durkheim, and Weber. Setting is important.

In most cases, if one man were to beat another with his fists, the action would be considered an assault. If the victim were to bleed profusely, the assault might be upgraded to "aggravated." Were the assailant to use a stick, the action could be construed as assault with a deadly weapon. If the clubbing took place in front of thousands of witnesses and someone recorded the incident on videotape, our initial reaction might be to consider this circumstance a police officer's dream and a cakewalk conviction for even the most inept Crown prosecutor. Nonetheless, if the thousands of witnesses were cheering hockey fans and if the location of the assault were the ice in Maple Leaf Gardens, we might wisely revise our prediction of an easy conviction. Over the years, such incidents have occurred many times in NHL buildings. In only a few instances have stick-swingers been charged, let alone convicted.

Most Canadians believe that taking the life of another human being is the gravest human action. Few would dispute, on first thought, that this form of behaviour is almost universally prohibited. Killings are severely sanctioned as a matter of routine, with culprits suffering either life imprisonment in Canada or, in 38 American states, death. Canadians do not view all who kill in the same light, however. The child who inadvertently runs in front of a car and is killed by a sober driver dies by accident. If someone attacks another person with a knife and is killed by the intended victim, many Canadians would consider the killing self-defence and judge the homicide justifiable. Indeed, some who served in the Persian Gulf war and killed a great many Iraqis have been hailed as conquering heroes.

The definition of actions, beliefs, and attributes as deviant is a complex matter. Consideration must be given not only to the nature of the act, the idea, or the personal trait but also to the composition of the audience, the characteristics of the actors and their connections with one another, and the quality of the circumstance and setting.

While many of the acts of deviance and crime discussed in this book are committed by individuals and are governed by the Criminal Code of Canada, many are not. Many of the harmful acts examined in later chapters are perpetrated either by criminal organizations or by law-abiding businesses and fall outside the purview of the Criminal Code. Moreover, for some maleficent deeds, certain features of the Code make it an ineffective means of social control.

The discussions of formal social control in subsequent chapters require an introduction to the fundamentals of criminal law. The following sections outline the basic elements of criminal law and examine the principal defences available to persons accused of committing crimes.

Box 1.3

NHL GOONS ON SKATES

It's good that Thursday night's brawl between the Toronto Maple Leafs and the Chicago Blackhawks broke out late in the hockey game; fewer kids probably saw it on TV.

Hawk defenceman Steve Smith's bloodied and pulpy face and the pile of writhing bodies on the ice were, of course, nothing new for the National Hockey League.

But the sight of Hawk Stu Grimson, a thug on skates if ever there was one, running amok — with the home crowd roaring approval — was unforgettable.

As the fight subsided on the ice, Grimson, glassy-eyed and stripped down to his sweat-soaked undershirt, simply came unglued.

Suddenly, his own coach, Mike Keenan, couldn't hold him back at the bench.

Breaking from Keenan's grasp, Grimson first tracked down, then grabbed one of the linesmen by the head as if hoping to dash his brains out

against the glass.

When Grimson finally went to the showers, there was a telling moment when teammate Ed Belfour gave him a congratulatory send-off tap on the rear with his goalstick.

It was disgusting.

And someone could have been seriously hurt.

A night of half-decent hockey — a couple of pretty goals by the Hawks, classic goaltending by the Leafs' Grant Fuhr in a losing cause — ruined by 40 minutes of mayhem.

Starting with this episode of goonery, the NHL must clamp down on the violence that gives hockey a bad name.

Sitting in the comfort of their living rooms, Don Cherry-types may covet this kind of rock-'em, sock-'em stuff on skates.

But if it ever happened in a bar or a back alley somewhere, there'd be criminal charges — and maybe even a trip to the cooler.

Source: *Toronto Star* editorial, January 18, 1992, p. D2. Reprinted with permission — The Toronto Star Syndicate.

Discussion Questions

Explain why violent actions such as those alluded to in this editorial are neither considered nor treated as crimes. Why do law-abiding fans condone such behaviour? Why does it go unchecked? What outcomes would you predict for the game of hockey if such actions were prosecuted in court? What outcomes would you predict if similar acts of violence in back alleys and bars were responded to in a similar fashion?

CRIMINAL LAW IN CANADA

The Criminal Code of Canada defines crime as the intentional violation of criminal law without defence or excuse. Criminal law is a set of rules legislated by the state in the name of society and enforced by the state through the threat or application of punishment. It has four important characteristics:

Politicality

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because it is legislated by the state, the creation of criminal law is fundamentally a political process. In Canada, the federal Parliament enacts statutes that prohibit a variety of violent and property crimes such as murder, sexual assault, arson, and fraud. Judges appointed by Parliament and provincial legislatures frequently modify criminal statutes through case law. Case law sets legal precedent through court decisions and, in so doing, clarifies rules that are insufficiently precise or are not fully codified (Parker, 1987a).

Some criminal laws enjoy high levels of consensus. They concern offences known as *mala in se* or "bad in themselves," such as murder, rape, robbery, and theft. Almost all Canadians believe that these crimes are serious wrongs. Surrounding some criminal laws, however, there is much less consensus. Criminologists refer to these nonconsensus crimes as *mala prohibita* offences, meaning that they are illegal simply because the law says they are. The best examples of *mala prohibita* crimes are "morality offences," such as pornography, prostitution, drug use, and public drunkenness.

The large number of *mala prohibita* offences enumerated in the Criminal Code raises the spectre of overcriminalization. Criminalizing activities that much of society sees as legitimate runs the risk of undermining respect for the criminal law. Criminologists cite a host of problems stemming from attempts to legislate and regulate public morals. Laws about which there is a low degree of consensus, because they are not respected, are much more difficult to enforce. Their existence paves the way for discriminatory enforcement, for the corruption of the police and the courts, and for the draining of resources away from the regulation of more serious misconduct (Hagan, 1986).

A critical issue in the sociology of law is the extent to which laws truly represent the best interests of the majority of the population (Cotterill, 1984). The consensus approach envisages law as effectively mediating between the vested and competing interests of society's rival factions. This perspective conceives of the elected government of the state as autonomous. The state enacts legislation with the aim of striking a balance among competing interest groups in order to preserve the well-being of the greatest number of its citizens. The law, in short, protects the common good.

The conflict approach to the role of law in society holds that the law disproportionately reflects the best interests, not of the majority of citizens, but of a minority of affluent and powerful people who form the economic elite. Viewed from this perspective, the state is not entirely autonomous. Elected governments must rely on the goodwill of powerful economic elites in order to stay in power. The conflict perspective maintains that the state must cater to these elites and ensure that their positions of advantage are preserved. Where push comes to shove, the laws created by the government and the laws enforced by the state serve the interests of the powerful.

In sum, the debate between the consensus and conflict approaches revolves around the question of who benefits from the existence and enforcement of a law. Is the beneficiary society at large or only its more privileged segments?

SPECIFICITY

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Canadian criminal law has two major objectives: crime control and the preservation of due process. The crime-control function of law involves ensuring the safety of citizens' lives and the security of their property. In the pursuit of these goals, substantive law specifies both what constitutes a crime and what its punishment will be. Criminal law also sets out rules of due process. Through procedural law, it protects the rights of the accused. Among other things, procedural criminal law specifies the kinds of proof required for conviction, the legality of searches and seizures, and the rights of accused persons to counsel and bail.

From the standpoint of substantive law, the exact nature of prohibited acts must be clearly specified. While in legal terms there can be no crime without law, laws appear and disappear over time. This means that certain acts can be unlawful at some times and perfectly legal at others. While spirits could be consumed legally in Prince Edward Island in 1906, it became illegal to do so the following year. In Alberta and Ontario in 1915 drinking was lawful, but became a crime in both provinces in 1916. With the repeal of Prohibition, the consumption of alcohol once again became lawful in Ontario in 1923 and in Alberta in 1924. Prince Edward Island, however, remained "dry" until 1948 (Smart and Osborne, 1986).

Not only does criminal law specify what acts are and are not criminal, it also specifies the nature of punishment for a particular act. In all cases, criminal law clearly states maximum penalties, and for some offences it also states minimum penalties. Someone convicted of sexual assault with a weapon can receive as much as 14 years' imprisonment. Someone found guilty of smuggling narcotics into Canada from abroad can receive no less than 7 years. These legal specifications limit the discretion of courts. Judges cannot imprison someone for 20 years upon a first conviction for marijuana possession, nor can they institute a fine and probation for someone pleading guilty to first-degree murder.

There is considerable tension between the objectives of crime control and due process. Controlling crime at all costs is made easier by limiting the rights of accused persons. In such cases, the likelihood of mistakenly punishing at least some innocent people increases. Conversely, going to great lengths to enshrine defendants' rights to freedom from unwarranted intrusion by the law makes it more difficult to control crime. In these circumstances, the scales of justice are tipped toward freeing some who are guilty. Striking an acceptable balance is not always easy. Compared with the criminal justice systems of the United States, Canada has leaned more toward crime control than toward ensuring due process (Brannigan, 1984).

UNIFORMITY

Uniformly administering the law requires that the police, the courts, and the corrections system apply it equally to all citizens. Extralegal characteristics such as the sex, ethnicity, or social class of a suspect, an accused, or a convicted felon are not supposed to influence the application of criminal law.

Uniformity requires that decisions by criminal-justice personnel be made solely on the basis of legal factors such as the nature of the crime, its seriousness, and the perpetrator's prior record. The extent to which legal and extralegal factors affect the application of criminal law is a matter of some dispute among criminologists.

PENAL SANCTIONS

The application of the penal sanctions meted out by the courts to those found guilty of an offence is the responsibility of the Canadian corrections system. Imbedded in Canadian criminal law is the notion that the severity of the punishment should reflect the seriousness of the crime.

Although there is a growing movement in Canadian criminal justice toward various forms of victim compensation, Canadian criminal law places little emphasis on restitution. For the most part, restitution falls within the domain of civil law. When drunk drivers kill, they commit a criminal offence and are punished under criminal law. Nonetheless, the families of victims may seek monetary compensation from offenders through suits in Canada's civil courts.

THE ELEMENTS OF CRIMINAL LAW

For Crown prosecutors to obtain convictions under criminal law, they must prove three fundamental conditions: *actus reus*, *mens rea*, and the concurrence in time of *actus reus* and *mens rea*. *Actus reus* signifies the requirement of an act. Criminal law normally forbids doing, not being or thinking. One can be an addict. One can identify oneself as a prostitute. Only the *acts* of drug possession and "communication for the purposes of prostitution" are crimes. Similarly, one can contemplate a theft or sexual assault, but only when the plan is put into action does a crime occur.

Criminal acts are of two basic types: commission or omission. Commission implies doing something prohibited, such as assaulting or breaking and entering. Alternatively, omission signifies failing to do something required by law, such as filing one's income tax or caring for someone to whom one has a legal obligation. People are responsible, for example, for their own children and spouses (Verdun-Jones, 1989). Under Canadian law, the needs of children and adults to whom one is not legally attached can often be ignored without liability.

Mens rea translates as "the guilty mind." Criminal law requires that, to be convicted of a crime, one must be capable of forming intent, of knowing that an action is illegal. *Mens rea* operates on the assumption that people behave on the basis of their own free will. In other words, the law considers people able to govern their own actions through unencumbered choice and therefore holds them responsible for their deeds.

Intent means purposefully and knowingly wanting to act and accu-

APPEAL COURT CLEARS JAILED MAN

A Toronto man has been released from a federal prison after spending about three years in custody for conduct that Ontario's highest court says was not criminal.

Dexter Browne, 25, was convicted two years ago of criminal negligence causing death and sentenced to 4.5 years after he delayed seeking treatment for a woman who could not disgorge a plastic bag containing crack cocaine.

Audrey Greiner, 19, died in hospital on April 14, 1994, shortly after being taken there by Mr. Browne in a taxicab.

The court was told that, on suspecting police surveillance, Ms. Greiner had swallowed a plastic bag containing about 15 grams of crack cocaine and became ill after being unable to dispel it. Instead of immediately calling for an ambulance, Mr. Browne took her home, later calling the cab.

In passing sentence, Madam Justice Marie Corbett of the Ontario Court's General Division said Mr. Browne's actions involved a form of criminal negligence that was "in no way inadvertent."

But in overturning the conviction, a three-judge panel of the Ontario Court of Appeal said yesterday that the conduct in question lacked a vital ingredient for a finding of guilt.

The main issue raised in the appeal was whether Mr. Browne had breached a legal duty to the woman.

Speaking for the court, Madam Justice Rosalie Abella said that for a finding of criminal negligence in such cases there must be evidence that the

accused had undertaken to do an act that he then failed to do.

Evidence at trial showed that Ms. Greiner swallowed the bag to avoid its detection by police, who had the house the suspects were in under surveillance. Arrested as they left the house, they were both strip-searched without drugs being found, and on being released Ms. Greiner tied unsuccessfully to throw up the bag.

Mr. Browne took Ms. Greiner to his family's home, and at about 2 a.m. found her shaking and sweating.

In convicting him, the trial judge cited his testimony that at one point he had promised to take Ms. Greiner to hospital, and had called a taxicab, arriving at the hospital about 2:45 a.m. She was pronounced dead at 3:10 a.m.

But in ordering an acquittal, the appeal court said the "mere expression of words indicating a willingness to do an act cannot trigger the legal duty."

"In my view, the evidence does not disclose any undertaking of a binding nature," Judge Abella wrote.

Noting a lack of evidence that a call to 911 would have resulted in either an earlier arrival at the hospital or Ms. Greiner's survival, the court said that without an undertaking that created a legal duty, there could be no criminal negligence.

Russell Silverstein, Mr. Browne's lawyer, said his client has been released from Collins Bay penitentiary, where the sentence he was serving was in addition to about a year's pretrial custody.

Source: Thomas Claridge, *Globe and Mail*, May 21, 1997, p. A6. Reprinted with permission from the *Globe and Mail*.

Discussion Questions

Which court's decision seems to you to be the correct one in the case of Dexter Browne? Give your reasons for agreeing or disagreeing with the appeal court's decision.

...pointing a loaded gun at a person's head and pulling the trigger 24
will probably cause his or her death.

Situations in which the law holds accountable people who lack intent include negligence and recklessness. In cases involving negligence or recklessness, the law considers the accused to have disregarded consequences that should have been foreseen by any "reasonable person." Where the possibility of plausible foresight is less clear-cut, the crime is carelessness. Where the courts deem foresight entirely reasonable and consider the risks completely without justification, the illegal act is recklessness. Where a person is injured or dies as a result of someone racing a car down a crowded street or sighting in a rifle behind a school yard, the criminal charge would likely be recklessness.

There are a few instances in which prosecutors need not establish intent to prove that someone committed a crime. In such cases, proof of an act alone is sufficient to establish guilt through "absolute liability" (Parker, 1987b). In some jurisdictions, for example, having sex with a minor is a crime even if the accused honestly believed that the "victim" was an adult (there was no intent).

People's blameworthiness and subsequently the severity of their punishments increase with malice aforethought. For accidents, there is no malice aforethought and no punishment. The courts punish carelessness and recklessness less severely than they do crimes with clear intent because blameworthiness and malice aforethought are lesser in degree. Of intentional crimes, the criminal justice system sanctions those occurring with little premeditation, in the heat of the moment (such as homicide in a fit of jealous rage) less severely than those that are rationally premeditated (such as hiring a paid killer to murder on one's behalf).

Criminal law draws an important distinction between intent and motive. Intent involves the anticipated direct outcome of an act, in the specific and immediate sense. Motive, on the other hand, is the underlying rationale for committing a crime. In shooting his wife twice in the head, the husband's intent is to end her life. Suppose that she were terminally ill and suffering great pain. Motivated by his love and by the agony of seeing her suffering prolonged endlessly, he pulls the trigger — twice. His motive may be kindness and mercy, but his intent is to kill. Putting money belonging to another into your pocket and running away betrays an intent to steal. The thief's motive might vary from getting rich quick to staving off the starvation of his or her children. In court, motive is normally only corroborative. While motive may affect sentencing, a conviction hinges on the proof of an act, of intent, and of the coincidence of the two.

CRIMINAL DEFENCES

Many standard defence tactics are available to accused persons (Parker, 1987b; Inciardi, 1987), including mistake of law, mistake of fact, justification, necessity, duress, provocation, intoxication, automatism,

insanity, and entrapment. While most cases are defended on these grounds, 25
defence lawyers occasionally initiate more unique and celebrated tactics.

The "mistake of law" defence, in which those charged argue that they did not know that their action was against the law, is almost never effective. Canadian courts subscribe to the old adage that ignorance of the law is no excuse. Everyone, resident and alien alike, is presumed to know the laws of the land, even though federal, provincial, and municipal laws number in the thousands.

If suspected criminals try to establish innocence on the basis of "mistake of fact," they must prove that their crimes occurred as a consequence of honest errors. The accused must convince the court that when he took the victim's umbrella, for example, he truly believed it to be his own. The use of violence to defend oneself or others from physical attack is a common example of the "justification" defence. Justification is valid when someone perpetrates an act that, without its representing a pressing imperative, would otherwise be a crime.

Another defence available for acts that otherwise would be crimes were they not necessary to ensure the well-being of the accused is "necessity." Some people have successfully invoked the necessity defence by arguing that they used marijuana only as a painkiller, broke jail only to preserve their own safety, and engaged in cannibalism only to avoid starvation.

The "consent of the victim" defence requires the suspect to convince the court that the victim freely and willingly acquiesced to a request or demand. In cases of car theft or sexual assault, for example, absolution depends on persuading the judge or jury that authorization to take the car was given voluntarily by the owner or that permission to have sexual intercourse was granted without protest. Persons giving consent must be legally capable of doing so, which means that they cannot be insane, retarded, or under age.

The crime must also be "consentable." Murder, for example, is not a crime for which consent can be used as a defence. The fact that a terminally ill husband gives his wife permission to end his life is not an acceptable defence for homicide. Furthermore, consent cannot be obtained by fraud. Mechanics who misrepresent to car owners the state of their transmissions and subsequently perform unnecessary and expensive repair work cannot use as a defence the fact that their customers willingly signed contracts to have the jobs done. Finally, the person giving consent must have the authority to do so. One person cannot give consent to sell property that belongs to another.

To use the "duress" defence, accused persons must prove that they were coerced by someone else into committing the crime. Their costs for refusing to execute the illegal act must be immediate (not several days hence) and must involve the threat of personal rather than property victimization. The classic example is that of the bank president whose wife is kidnapped in the morning by thieves who threaten to murder her in the early afternoon if the manager refuses to steal on their behalf.

Both "provocation" and "intoxication" are partial defences. While they do not absolve the accused from responsibility for the offence, they do

MYSTERIES OF SLEEP AND DREAMS

One of the most disturbing sleep disorders, rare in adults, is sleepwalking, which generally occurs only at night. Last month, the Ontario Court of Appeal reserved judgment on an application by the Crown for a new trial for 29-year-old Kenneth Parks of Pickering, Ont., who was acquitted in May, 1988, of murdering his mother-in-law because he said that he did it in his sleep. The prosecution contends that trial judge David Watt erred when he told the jury that sleepwalking was not a disease of the mind. It was believed to be the first time in Canada that a person was found not guilty of a killing committed while sleepwalking.

Dr. Rosalind Cartwright, director of the sleep-disorders service at Chicago's Rush-Presbyterian-St. Luke's Medical Center, says that sleepwalking could have been involved in a widely publicized October, 1980, Illinois case as well. One night in the west-Chicago suburb of Oak Park, theology student Steven Linscott, now 35, reported that

he had had a two-part dream about murder. In the first part, a woman opened her front door to a man, apparently a salesman, whose friendly appearance turned evil as soon as she let him in. He was holding something behind his back, Linscott said later. At that point, he said, he awoke greatly disturbed and left his sleeping wife to wander around their apartment, trying to ease his agitation.

When he went back to bed, the dream resumed with the man beating the kneeling and bloodied woman to death. The next day, a policeman canvassing neighborhood residents called at the Linscotts' home, and Linscott said that he had noticed nothing unusual the night before. But afterward, he said later, he remembered the dream and went to the police, who were investigating the killing of a woman on the same street. Linscott's dream story included details that had not been made public. He was charged and convicted of murder, served seven years and now is free pending his appeal.

Source: Rae Corelli, *Maclean's*, April 23, 1990, p. 40. Reprinted with permission from *Maclean's*.

Discussion Questions

Upon what set of social values and beliefs does this defence rest? Could it have been used successfully 100 years ago?

reduce accountability. A man who returns home to find his wife in bed with another man might argue that, in killing his wife, he was provoked beyond the tolerance of a reasonable person. A convincing defence to murder would hinge on persuading a jury that the killing took place in the heat of passion. Success would result not in an acquittal but in a conviction for the lesser charge of manslaughter. Intoxication also reduces responsibility because it diminishes the capacity of an accused to form intent. In a controversial decision in 1995, the Supreme Court permitted a defence of extreme drunkenness in a sexual assault case. Parliament responded shortly thereafter, however, with a law prohibiting its use. Another defence, "automatism," applies where accused persons commit

criminal acts without free will because they are acting as automatons. Crimes involuntarily carried out while sleepwalking, as a consequence of epilepsy, or as a result of some other physical condition qualify for this rare but by no means unheard-of defence (Parker, 1987a; Verdun-Jones, 1989).

Defendants can use the "insanity defence" if they can show that they were in a "state of natural imbecility" or suffered from a "disease of the mind" at the time of the crime. Accused persons would also have to convince the court that one of these conditions left them incapable of appreciating "the nature and quality" of their act or omission or of knowing that their act or omission was wrong. The insanity defence is fraught with ambiguities such as the definitions of natural imbecility and disease of the mind.

Pleading insanity has not been a common defence strategy, although, at least for murder, it appears to be becoming more frequent. Part of the reason for this change involves the very lengthy sentences now meted out for homicide. Convincing the psychiatric community and the courts that sanity has been regained has historically been a very time-consuming activity. During the 1980s, however, sentences of 25 years or more for murder have made the risk of long-term confinement in a hospital for the criminally insane less of a deterrent to the use of the insanity defence (Menzies, 1991).

The "entrapment" defence hinges on the ability of accused persons to convince the court that they were induced by law-enforcement agents to commit a crime that they would not otherwise have contemplated. This defence occurs most frequently in cases of "victimless crime," such as drug dealing and prostitution, in which the "victim" is a willing purchaser of the prohibited good (drugs) or service (sex). Since willing victims rarely complain to the authorities, police must engage in "proactive" crime control efforts. When undercover police approach pushers and prostitutes, they run the risk of being overly enticing in their bids to trap their unsuspecting prey.

SUMMARY

Deviance is a behaviour, an idea, or a trait that elicits negative responses. Most of this book emphasizes the behavioural dimension. Negative reactions that define something as deviant may be both internal and external, both informal and formal. In many cases, negative reactions both define something as deviant and simultaneously serve as mechanisms of social control designed to suppress, eliminate, or drive underground an act, idea, or personal characteristic.

A number of complexities must be explored when developing a conceptualization of what is and what is not deviant. First, there is the tension between objective positivist and subjective humanist definitions. Objectivists see deviance as the violation of pre-existing and given social norms. Subjectivists emphasize that norms are socially constructed, and they view deviance as a quality conferred by some upon others. Those conferring deviant status usually differ from those upon whom deviant status is being conferred on the basis of social power. Deviance, humanists argue, is in the eye of the beholder.

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What is deviant should not be confused with actions that are statistically rare. What is deviant is determined not by infrequency but by the negativity of the response. Furthermore, deviance and crime are not related in a straightforward way. The popular conception of crime as deviance serious enough to be prohibited by law is faulty. Although it is true that much deviance is noncriminal, some crime is not deviant. It is also true that some noncriminal deviance is much more harmful to society than are many acts prohibited by the Criminal Code. Indeed, some noncriminal deviance is far more damaging to society than are the most serious Criminal Code offences.

Some deviance is voluntary and some is not. When people are voluntarily deviant, their decisions to violate rules are frequently punished. When deviance is less a matter of choice and more beyond the control of the offending individual, the response is likely to be more treatment-oriented. Nonetheless, treatment may be, and frequently is, coercive.

What gets defined as deviant is not inherent in the conduct, the belief, or the trait. Rather, the degree to which something is defined as deviant varies according to context. Within a particular context, deviant designations are also affected by the nature and composition of audiences, the characteristics of the actors (perpetrators and victims), and social context.

To set the scene for the discussions of social control contained in the following substantive chapters, several important features of criminal law have been examined (politicality, specificity, uniformity, and the requirement of sanction). Also discussed were the fundamental elements of criminal law (*actus reus* and *mens rea*) and the major criminal defences (mistake of law, mistake of fact, justification, necessity, consent, duress, provocation, intoxication, automatism, insanity, and entrapment).

Deviance is pervasive in Canadian society, both in terms of the range of phenomena represented and in terms of where these phenomena occur. Sex, violence, addiction, deception, theft, deformity, disease, Satanism, and many other behaviours, beliefs, and conditions elicit negative reactions from at least some Canadians. Deviance is not confined to the "dark side," to the seamy downtown vice districts of large cities, or to the "other side of the tracks." It exists in our homes and schools, where we work, and where we play.

REVIEW QUESTIONS

1. Discuss the essential components of a definition of deviance.
2. Outline the objective and subjective approaches to the definition of deviance. Which perspective do you think makes the most sense?
3. How are deviance and crime conceptually related to one another?
4. What is the difference between voluntary and involuntary deviance? How might the public and the authorities (police, psychiatrists, social workers, etc.) respond differently to involuntary and voluntary deviant behaviour?
5. What is the impact of social context on the designation of behaviours, ideas, or traits as deviant?

- 29.
6. What are the central characteristics of criminal law? Discuss their implications both for accused persons and for law-abiding citizens.
 7. What is the relevance of motive to the proof of crime?
 8. What are the major defences that can be invoked to counter a criminal charge?

DISCUSSION QUESTION

1. Under which circumstances could acts, ideas, or traits that are generally highly valued in society be defined as deviant?

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