

# HUMANITIES, CRIME and CRIMINALS

a collection of essays



PROCEEDINGS OF A CONFERENCE  
presented by the  
JOHN HOWARD ASSOCIATION OF HAWAII

Ala Moana Americana Hotel  
Honolulu, Hawaii  
April 29, 1985

Supported in part by a Grant from the  
HAWAII COMMITTEE FOR THE HUMANITIES



## CRIME AND DEVIANCE IN CULTURAL PERSPECTIVE

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We are living at a time when citizens are awake to the hope that they can protect themselves by means of the law, defend themselves by means of the law, and change the system by means of the law.<sup>1</sup>

### INTRODUCTION

Anthropologists are well aware that from the standpoint of law and the application of sanctions, all societies are pluralistic. Even in the simplest societies men and women are treated differently when they break the rules, as are the old and the young. In more complex societies social differentiation is more extreme, and with it come greater inequities in the political, economic and legal domains. In relatively homogeneous societies, like modern Japan, these inequities are mitigated by the fact that the majority of the population share a common heritage, so that there is general agreement on the rules of the social game. But where the ruling elite comes from a different tradition, as in Hawaii, the problems of administering justice are greatly complicated. In the words of Roscoe Pound, who recognized these complications nearly eight decades ago when immigration to the United States was in its heyday:

Justice, which is the end of the law, is the ideal compromise between the activities of each and the activities of all in a crowded world. The law seeks

to harmonize these activities and to adjust to the relations of every man with his fellows so as to accord with the moral sense of the community. When the community is one in its ideas of justice, this is possible. When the community is divided and diversified, and groups and classes and interests, understanding each other none too well, have conflicting ideas of justice, the task is extremely difficult.<sup>2</sup>

During the first half of this century the legitimacy of pluralism was smothered in the myth of the "melting pot," the notion that everyone would become an "American" if given the chance. But in retrospect we have come to see that cultural values are more deeply rooted than we suspected, and that ignoring the reality of pluralism leads too easily to negativism and a disrespect for the law and legal institutions. The challenge, then, for a society committed to a notion of justice for all its citizens, is to incorporate as much of the diversity as possible into its basic institutions, and particularly into its legal institutions and criminal justice system. As a beginning we must make a serious attempt to understand the values of each cultural group and the premises upon which they organize their social lives.

Some of the differences I am referring to are well known in Hawaii. As an example, take cockfighting in Filipino culture. Although it is illegal, everyone is aware that cockfights take place regularly, and that law enforcement agents turn a blind eye most of the time. Although do not believe many of us truly understand the place of cockfighting in Filipino culture, or the values associated

with it, we are prepared to go soft on it because not too many people care all that much about chickens and petty gambling. But there are similar but more deeply rooted values and cultural conceptions that, though they may be far less obvious, are of much greater consequence for the way people treat one another.

Let me provide an example. In every society I know of, it is considered wrong to murder a person within one's community without strong provocation. That statement seems straightforward enough until one tries to apply it in different cultural contexts. The first problem is defining "person." In Catholic dogma, as soon as conception takes place a fetus is a person; hence abortion is murder. Even most of those who advocate abortion set some limit on how many months a pregnancy can proceed before the fetus is considered a person usually about six or seven months. In some cultures birth marks the beginning of personhood; but in others, infants are not persons until they mature enough to interact socially. They may not be given names for a year or more and are considered outside the community of human beings. Under such circumstances, infanticide is equivalent to abortion rather than murder; indeed, it might be labeled "post-partum abortion." At the other end of the age spectrum, elderly individuals who are gravely ill may be considered to have lost their personhood and thus are no longer entitled to civil treatment. In contrast, corpses may be treated as persons long after death. The point to be made is that there is no "natural" marker to the semantic boundaries of terms like "person." Culture is a mechanism for sanctioning what is inherently arbitrary, and each culture does it differently. I could

go on to provide endless examples using concepts like "sufficient provocation," "child abuse," "cruelty to animals," "theft," "rape," and so on, but I trust my point has been made.

#### CULTURAL MINORITIES AND THE LAW

Those who advocate harsh treatment of law violators are often the same individuals who are least responsive to notions of cultural variations. For them crime is usually a simple matter of black or white, right or wrong. They see punishment as the vital deterrent, without which human beings would run rampant in an orgy of criminal self-indulgence. But their view runs counter to the anthropological evidence, which demonstrates that the threat of negative sanctions is one of the least important means of maintaining social control. Far more important are the positive commitments individuals have to their fellows. In most societies people are preoccupied with their reputations within the community, with the honor of their families, with their relationship to God or the gods. It is gossip, peer pressure, ridicule and religious beliefs that are the primary sanctions, and these are aimed at strengthening commitments to community values rather than punishing violations.

The lesson to learn is that we ought to pay more attention than we do to why people within different ethnic communities obey laws or live up to community standards. We need to find ways to strengthen the commitments of cultural minorities to our community and to do this we must make a special effort to give them a voice in articulating the values that inform the laws. We need to engage them in genuine

dialogue rather than dictate values from a position of dominance. We need to administer justice under their advisement, even though we cannot be responsive to every cultural idiosyncrasy.

The traditional approach to cultural minorities in the United States, and particularly the ethnic poor, has been to portray them as deficient.<sup>3</sup> Social scientists have contributed to this misconstrual as much as institutional agencies and must share the blame. There are two main types of deficiency formulation, although in practice they are frequently combined. The first focuses on attributes socially valued by mainstream groups that are observed to be absent or weakly represented within particular minorities. At the group level this type is indicated by the use of such terms as "disorganized," "normless," and "unstable," while individuals are described as "ego deficient," "immature," or "lacking in motivation, self-control or the ability to delay gratification." The second type focuses on attributes socially devalued by mainstream groups that are supposedly characteristic of certain minority groups. Descriptions of families as "matricentric" and individuals as "prone to violence," "hedonistic," or "present oriented" are indicative of this type. Such conceptualizations share a concern for deviations from valued attributes. They imply a failure or inability to behave in appropriate ways and so imply social and personal deficiencies.

The first type conveys little information about the groups and individuals so labeled. It calls attention to the ways in which people do not behave rather than how they do act, and to ways in which they do not organize themselves rather than ways in which they order

their social lives. The second type yields more information, but of a highly selective kind. By focusing on deviations from mainstream norms, it turns attention away from alternative social forms and organizational principles that may be of central importance within the group. To the extent that these social forms and principles differ from those mainstream groups, such an approach leaves an informational void.

Joyce Ladner eloquently summed up the mainstream sociological conception of Black Americans in the following terms:

Blacks have always been measured against an alien set of norms. As a result they have been considered to be a deviation from the ambiguous white middle-class model, which itself has not always been clearly defined. This inability or refusal to deal with blacks as part and parcel of the varying historical and cultural contributions to the American scene has, perhaps, been the reason sociology has excluded the black perspective from its widely accepted mainstream theories.

Mainstream sociology, in this regard, reflects the ideology of the larger society, which has always excluded black lifestyles, values, behavior, attitudes, and so forth from the body of data that is used to define, describe, conceptualize, and theorize about the structure and functions of American society. Sociology has in a similar manner excluded the totality of black existence from its major theories, except insofar as it deviated from the so-called norms.<sup>4</sup>

The same could be said of other ethnic minorities, whether Japanese-American, Chinese-American or Polynesian-American.

In my own research I have found that the deficiencies attributed to minority groups cluster around five basic themes: control and mastery; rationality; orientation toward the future and long-term planning; self-development; and a sense of order based upon clearly bounded, corporate groups. The values associated with these five themes played an important role in the industrial revolution and in the modernization of societies, and they have come to be considered part of the "natural order." Quite obviously, these are highly serviceable values in a society undergoing industrialization. For the emerging middle-class entrepreneur, rational long-term planning coupled with new technology helped create unique opportunities for controlling resources and using them to further specific ends. In this pursuit, self-development became an important motivating force, providing a justification and rationale for personal strivings. It became linked with such pragmatic needs as the acquisition of knowledge through formal education, the application of long-term planning to careers as well as to industry, and the capacity to assert oneself in shaping personal relationships that achieve one's ends. Rational control over self in the interest of future accomplishments became an integral part of the developing cultural paradigm, at the same time that control over one's children's fate as an extension of one's own career led to the sanctification of the nuclear family.

The consequences on this equation of these particular values with a natural order have been tremendous. Identifiable segments of the population, particularly the poor and especially the ethnic poor,



came to be regarded as "social problems" insofar as they deviated along key indicators of these values in the form of divorce, school dropouts, and crimes of passion or aggression. Based on such a perspective, applied social science has concerned itself largely with identifying the conditions leading to these deviations and has attempted to use research findings to formulate programs for correcting them. Rarely has consideration been given to patterns of behaving and thinking that are viable alternatives to these mainstream norms. As a result, government programs have almost invariably been "remedial" and seldom constructionist.

The tendency to regard certain forms as "normal" and to question deviations from them is well illustrated by work done on the family in American society. Until quite recently most observers assumed that permanent monogamous marriage is natural and proper, or at least highly "functional" within our society. Their view derives from the sanctification of the nuclear family and its alleged suitability for carrying out the basic tasks in modern society. Indeed, it is often treated as the primary anchor in an otherwise unstable social system -- the very basis for stability itself. Therefore divorce and separation are made to appear problematic, while conjugal bonds are taken for granted. The basic question has always been, "Why do couples 'fail' to make their marriages work?" -- a question that ignores entirely the difficult problem of understanding how two people of differing backgrounds and undergoing constant change can live together compatibly for a lifetime.

This extreme interest in the stability of the nuclear family has

been based on the assumption that unstable families lead to psychologically unstable (and deficient) children, since parents are considered to be their main socializers. That was the logic behind the highly publicized Moynihan Report on the "Negro family,"<sup>5</sup> which held that since black families frequently have missing fathers, male children are deprived of a suitable model and hence are prone to psychological disturbance and deviance.

There are two points I would like to make about that kind of analysis. First, the data showed that in fact three-quarters of black families at that time were "complete" -- they contained both a husband/father and wife/mother. Thus according to this indicator, the vast majority were in fact stable; the judgment of instability was made only in relation to white families, of which nine-tenths contained both parents. Thus a difference of approximately fifteen percent was translated into a qualitatively different characterization of black families as unstable, white families as stable. Second, if the comparison group had been upper-class families, among which divorce rates are comparatively high, the black family would have appeared unremarkable or even relatively stable. Furthermore, since the 1960's, when the data were collected, rates of divorce, desertion and separation among white families have risen sharply. But when rates of family dissolution among middle-class whites began to escalate rapidly, the basic research question changed to one of whether or not the nuclear family is still a viable social institution, thereby implying that middle-class marital problems are due to institutional breakdown and not the shortcomings of individuals.

To take a second example concerning perspectives on the family as an institution, attachments within the nuclear family have been "naturally" regarded as more important than relationships outside of it, even to the extent of labeling them as "primary." If, for example, a man spends his income to maintain friendships at the expense of his family, he is likely to be considered "irresponsible," and reasons are sought for his deviation. Or if couples take into their homes "distant" relatives and end up with an unusually large household, it is likely to be perceived as "disorganized." Yet in the Polynesian cultures I have studied, peer group ties may be considered as important as family ties; and the commitment to the extended family may supercede the commitment to the nuclear family. In other words, other societies get along perfectly well without glorifying the nuclear family, and there is nothing at all "natural" about it being treated as sacrosanct.

Opposed to the deficiency perspective is what I would call the substantive viewpoint, by which I refer to a frame of reference that calls for learning more about the ways in which our minority group members do order their lives and about the positive values and commitments that guide their actions. This means learning more about what their actions mean to them. It requires taking into account the contexts in which behavior occurs, something the deficiency view tends to ignore (because the "problem" has already been located within the person). To ignore the context has the effect of treating behavior as the product of mechanical forces and of reducing individuals to the status of physical objects. They are thereby deprived

of their humanity, justifying manipulative intervention into their lives without seriously considering their goals, wants and values. The result is a situation in which information about the ethnic poor is used against rather than for them.<sup>6</sup>

The substantive perspective has implications quite different from the deficiency viewpoint for the way we deal with ethnic minorities. The implications of the deficiency viewpoint are clearcut. The current macrosystem is taken for granted, mainstream norms are accepted as valid, and the solution to social problems is to create conditions that will make it possible for minority populations to achieve a reasonable level of success and social respectability, and ultimately to assimilate. The strategies called for are remedial, involving the removal of deficiencies by correcting inappropriate organizational patterns, attitudes, and behaviors. Appropriate cognitive skills and motives are to be instilled so that performance levels can be raised to acceptable standards. The tactics called for vary, depending on the specific deficiencies at issue and their presumed causes as well as upon pragmatic assumptions concerning what is practicable, but the goals are inherent in the perspective itself.

From the standpoint of criminal justice, the deficiency model portrays criminal deviance as the result of failures to constrain one's behavior in appropriate ways; and the response to criminal deviance, whether punitive or remedial, aims to instill the mechanisms of constraint where they are presumed absent or inadequate.

From a substantive viewpoint the issues are far more complex. The current structure of the macrosystem and its mainstream norms are

regarded as problematic. Indeed, the perspective calls into question the viability of such a system over the long run, and at least one significant issue it poses concerns alternative macrosystemic structures that would reduce inequality and nurture cultural pluralism. Many believe such a radical restructuring to be a prerequisite to any lasting solution to the problem of minority groups, although there is considerable difference of opinion as to what a viable structure would be like and how it could be evolved.

But even if the current system is accepted as given, the substantivist position entails a different view of the issues and suggests a different set of strategies and tactics. Whereas failure to perform adequately according to mainstream norms is interpreted as an indication of general incompetence from a deficiency standpoint, from the substantivist point of view it is evidence, at most, of an inability or unwillingness to perform under specific conditions. From the latter perspective, general statements concerning competence can be inferred only after performance has been examined in a range of contexts that duplicates the variety of circumstances in which people ordinarily behave. This means taking into account an actor's subculture and the way it defines situations and standards for determining the adequacy of performance. In other words, poor performance in one cultural milieu does not necessarily preclude the possibility of competence -- the ability to perform adequately -- in another. This view presumes that complex societies like ours are multicultural by nature and that minority group members are likely to be bicultural, or multicultural, in at least some senses.

If we accept the proposition that competence in the mainstream culture is desirable for everyone, on the grounds that an inability to deal with its complex demands are costly both for the individual and society at large, then the strategy suggested by the substantivist perspective calls for identifying those areas of competence people have developed in their subcultures and building upon them. Instead of dwelling upon deficits, this calls for focusing upon their strengths. The assumption is that it is easier to build upon existing competencies and motives, such as interpersonal sensitivities and affiliative motives, than it is to deny them or attempt to eradicate them.

A criminal justice system based on substantivist premises would thus pay more attention to the contexts of deviance than to the personality characteristics of the offender, and remedial responses would aim at strengthening the participation of offenders in those contexts in which they enjoy social competence.

The deficiency perspective, by labeling people as "incompetent," tends to generate remedial structures that perpetuate powerlessness and dependence, thereby validating the initial judgments. By taking a substantivist position we will not only come to recognize, but will reward alternate competencies and, by so doing, will optimize conditions in which all parties can increase the scope of their adaptive repertoires.

#### POLYNESIAN CULTURE PATTERNS AND THE LAW

Twenty-five years of experience with Polynesians has convinced me that the vast majority of them, whether Hawaiian, Samoan or

Rotuman (among whom I did my first field work), have a great respect for authority and for the law. Indeed, this respect for authority is the hallmark of Polynesian social life, but the ways in which it is expressed are sometimes detrimental to their interests. When confronted by authority figures -- whether traditional chiefs or judges and parole officers -- Polynesian etiquette calls for extremely deferential behavior. The forms that this takes, however -- avoidance, cast down eyes, hesitancy in answering questions -- are apt to be mistaken for non-cooperation or even guilt by middle-class officials. This is not to deny that some of our Polynesian citizens commit offenses, but it is easy to lose sight of the fact that the vast majority do not get in trouble with the law and do manage to cope effectively with whatever hardships confront them. My plea is that we try to learn about the coping strengths of those who have adapted effectively, so that we will be in a better position to help those who have not.

It is also important to note that there are some fundamental value conflicts between traditional Polynesian cultures and the culture of middle America. For both Hawaiians and Samoans, the extended family rather than the nuclear family is the primary unit, and it is within this broader network of relations that problems are worked out. Concerning the centrality of the extended family to Samoan social life Fay and Vaiao Ala'ilima have written:

It is difficult for someone steeped in Western individualism to grasp the Samoan idea that the smallest political unit is a family group. The family is regarded not as a plurality of individual opinions, but as a single political organism. True, it may have internal parts: its old

people providing experience, its young people acting as arms and legs, and its chief being the central brain for formulating decisions. The strength of such a body depends, however, not on individual rights but on how effectively these organs perform their different functions collectively. Any glory gained by the family is shared by all. ...the organic family concept means that decisions about community affairs are left to family chiefs with little resentment by other members. The arms and legs simply assume that the brain will operate on behalf of them all. A Samoan adolescent was recently asked, "What do you want to be when you grow up?" He answered without hesitation, "My chief has decided I shall be a pastor." Probing for signs of adolescent rebellion, the interrogator continued, "Yes, but what would you like to be yourself?" The boy acted surprised and confused. He couldn't say, not because he felt suppressed by his chief but because he had not thought of this as his individual decision before. Unlike a Western adolescent he did not sharply dissociate his personal opinion from that of his family on the matter. In some ways a Samoan boy may be freer than a Western boy. Chiefs are notably tolerant of the dress, social activities and personal habits of their young men; but only so long as these do not affect the strength of public image of the group. When it comes to defending family reputation, position, and interests, traditional chiefs are expected to direct and their families to obey.<sup>7</sup>

To middle-class Americans it may appear that households are disorganized because they include so many individuals who are only



vaguely related to one another, but that is not the case. In the vast majority of cases, the extended family provides strong supports for individuals and guarantees them the coping resources they need. This is particularly well-documented for Samoan immigrants to New Zealand and the United States, where the extended family is a source of housing, jobs and emotional support during the adjustment period.<sup>8</sup>

Whereas middle-class Americans place a great deal of emphasis on accumulating material resources and economic wealth for the benefit of the nuclear family, Polynesians are therefore motivated to invest in social capital. In Nanakuli, where I did research some years ago among Hawaiian-Americans, family income was directly correlated with the number of friends and relatives with whom active relations were maintained. This follows from the fact that exchange is the glue of social relations in Polynesian communities, and having a good job (preferably one that gives access to scarce supplies, like building materials) provides the resources one needs to engage in exchange.<sup>9</sup>

Therefore what seems from a middle-class American perspective as a squandering of resources, in fact is a means of maintaining one's network, which can be relied on in times of need. It is in that context that the drinking behavior of Hawaiian men must be understood. They are not just "pissing away their money;" drinking with friends is symbolic of solidarity and a way of affirming relationships. Here we have an example of the importance of understanding the meaning of behavior in its cultural context, as discussed in the previous section of this paper.

Another basic conflict is the differential emphasis placed on personal property. From a Polynesian perspective, middle-Americans fetishize personal property, as reflected in the obsessive attention given to property rights in American law. I can provide a personal example to illustrate this. At one point in my life I was married to an alien who was trying to get a waiver of an immigration requirement that she leave the U.S. for two years. The only acceptable legal grounds were for us to prove it would cause a "financial hardship" for me. Emotional and psychological strain from being separated for two years did not provide valid grounds for appeal. In contrast, in Polynesian societies property is thoroughly subordinated to interpersonal relationships. At times, I believe, Polynesians get in trouble with the law because they fail to appreciate the degree to which Americans sanctify personal property.

Still another example concerns the issue of child abuse. Although American culture originally permitted, indeed perhaps encouraged, the physical punishment of children for misbehavior, our current mores have come to strongly condemn it. But in most Polynesian societies, particularly those that place a heavy emphasis on obedience to authority figures, physical punishment is central to discipline. As Eleanor Gerber points out in her discussion of Samoan child-rearing, Samoan children not only come to expect physical punishment, they report that it is a sign of parental love. Thus Polynesian parents are sometimes baffled by complaints from social workers, public health workers and others that they are abusing their children simply because they strike them.<sup>10</sup>

Finally, I would point out that in traditional Polynesian societies, the period of "youth" (from the onset of adolescence through the 20's) was one of considerable license, during which young men in particular were expected (and in some cases encouraged) to be "wild" and beyond normal social controls. However, with very few exceptions, they were eventually reintegrated into communal life as responsible adults. To be a good citizen meant to have one's current affairs in order to have balanced the books through apologies, gifts and other forms of exchange. Past deeds were explained by circumstances rather than by character defects and were essentially irrelevant to one's prestige within the community. It was how one was contributing now that counted. I think this is a fundamentally different approach than ours, which treats criminality as a moral deficiency and the ex-offender as a lesser human being.

There is one further point I would like to make, and it relates to the quote with which I began this paper. A fundamental premise of the law is that it exists to protect citizens as well as to punish them. But I believe that many of our citizens of Polynesian ancestry, and particularly the recent immigrants, do not fully understand that. In my opinion there is a profound need to educate ethnic minorities about their rights under the law, as well as their responsibilities. Perhaps this could be accomplished by forming special legal advisory centers, with educational programs attached, specifically geared toward the various ethnic minorities in our State. After all, the more all citizens understand the law and have input into its construction and administration, the more likely they are to find it worthy of compliance.

## FOOTNOTES

- <sup>1</sup> Nader, L. and B. Yngvesson. "On studying the ethnography of law and its consequences." In J. Honigmann (ed.), Handbook of Social and Cultural Anthropology. Chicago: Rand McNally, 1973, pp. 883-921.
- <sup>2</sup> Pound, R. "The causes of popular dissatisfaction with the administration of justice." Reports of the American Bar Association 29, pt. 1, pp. 295-417. Cited in Nader and Yngvesson, ibid., p. 904.
- <sup>3</sup> This discussion of deficiency formulations is abstracted from Howard A. and R.A. Scott. "The study of minority groups in complex societies." In R.H. Munroe, R.L. Munroe and B.B. Whiting (eds.), Handbook of Cross-Cultural Human Development. New York: Garland, 1981, pp. 113-152.
- <sup>4</sup> Ladner, J. "Introduction." In J. Ladner (ed.), The Death of White Sociology. New York: Random House, 1973.
- <sup>5</sup> Moynihan, D.P. "Employment, income and the ordeal of the Negro family." Daedalus, 94 (1965): 745-770.
- <sup>6</sup> Hampden-Turner, C. From Poverty to Dignity: A Strategy for Poor Americans. Garden City, N.Y.: Anchor, 1974.
- <sup>7</sup> Ala'ilima, F.C. and L.A. Vaiao. Fa'a Samoa: Traditional Samoan Perceptions. Unpublished Manuscript, 1968, pp. 13-14. See also, Holmes, L.H. The Modern Samoan Family. Wichita State University Bulletin #71, 1967; Howard, A. "Households families and friends in a Hawaiian-American community." Working paper no. 19, East-West Population Institute, Honolulu, 1971; Linnekin, J. Children of the Land: Exchange and Status in a Hawaiian Community. New Brunswick, N.J.: Rutgers University Press, 1985.
- <sup>8</sup> Graves, T.D., N.B. Graves, V.N. Semu and I. Ah Sam. "The price of ethnic identity: Maintaining kin ties among Pacific immigrants to New Zealand." Paper presented at the XV Pacific Science Congress, Dunedin, New Zealand, February, 1983; Pitt, D. and C. Macpherson. Emerging Pluralism: The Samoan Community in New Zealand. Auckland: Longman and Paul Ltd., 1974; Ablon, J. "Retention of cultural values and differential urban adaptation: Samoans and American Indians in a west coast city." Social Forces, 49 (1971): 385-393.
- <sup>9</sup> For an excellent discussion of the importance of exchange for contemporary Hawaiian-Americans see Linnekin, J., ibid.

<sup>10</sup> Gerber, E. The Patterning of Emotion in Samoa. Ph.D. dissertation, Department of Anthropology, University of California, San Diego, 1975. This is not to deny that some disciplinarians go to extremes, even by Polynesian standards, and cause injury to their children. But for Polynesians it is a matter of the degree rather than the form of punishment.