Academics’ Criminals
The Discursive Formations of Criminalized Deviance

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Electronic version
URL: http://journals.openedition.org/champpenal/3143
DOI: 10.4000/champpenal.3143
ISBN: 978-2-8218-0588-0
ISSN: 1777-5272

Publisher
Association Champ pénal / Penal field

Electronic reference
Nicolas Carrier, « Academics’ Criminals », Champ pénal/Penal field [Online], Vol. III | 2006, Online since 16 November 2007, connection on 02 May 2019. URL : http://journals.openedition.org/champpenal/3143 ; DOI : 10.4000/champpenal.3143

This text was automatically generated on 2 May 2019.

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In contradistinction to their relatively simple and constant portrayals in mass medias, academics produce various and highly complex discursive forms of criminals. In this paper, I propose an analytic ordering of academics’ criminals, suggesting a sociology of sociology of deviance which tries to grasp its ways of thinking. My wish is to reflect on the variety of both theories and epistemologies through which truths on criminals take form on the academic scene. Truths that cross over that scene and penetrate the social, bringing words to talk about criminalized individuals - which is already a way to intervene on them. The following pages do not offer an analysis of the social effects of academics’ discourses, but the paper could be read as proposing conceptual tools and epistemological investigations preparing the ground for such an analysis.

The thesis to be exposed is the following: the totality of scientific utterances regarding criminalized deviance can be distributed in three sets, on the basis of the meaning given to crime. As I would like to show, theories referring to deviance or social control take criminalized deviance as being the result of a pathology, of a rational choice, or of constitutive social practices. The methodology employed in the constitution of these three sets has drawn its inspiration from the one suggested in Foucault’s *L’archéologie du savoir* (1969). My project here is not to meet the requirements proper to this *oeuvre*. I simply propose a first isolation of three discursive practices. Pathology, choice and social construct are their respective fundamental axiomatic principles, establishing distinct forms of discursive regularities in academics’ works related to criminalized deviance and its control.

Foucault’s concept of “discursive formation” refers to a set of relations, enabling and imposing regularity to discursive events. It is not horizontally, but vertically, that the unity of a discursive formation is given. A discursive formation can be individualized not from its elements’ homogeneity, but from the practice’s regularity making such elements possible (Foucault, 1969, 95). The individualization of the discursive formations proposed in this paper is limited to what Foucault called “the primary differentiation of objects”. “Discourse, writes Foucault, is something else than a site on which would depose and
stack up themselves, as on a simple surface of inscription, objects that would have been instituted in advance” (1969,58). What is at stake is the description of modalities organizing discourses, that is, “practices which form the objects of which they speak” (1969, 66). My suggestion is thus that there are three ways to discursively produce the object criminalized deviance. Or, to write it slightly differently, that each discursive formation autonomously, in its own original way, differentiates an object proper to itself. This does not imply that the concepts of one particular discursive formation are not being observed inside another one. But it implies that all relations governing their mobilization are proper to each discursive formation.

I do not pretend, in individualizing those discursive formations through their axiomatic principles, to realize an archaeology. Such an endeavour would notably suppose, in each case, the identification of “the function that the studied discourse has to exert in a field of non discursive practice” (1969, 90). I also do not pretend to an exhaustive account of the conceptual and theoretical variety inside the discursive formations that I construct. In the following pages, I do not offer the reader a complete sociology of deviance, let alone a complete coverage of the theories, particularly the genetic-biological and psychological ones, that can be found in discourses enabled through the pathologization of difference. Rather, the theories that I will catch sight of shall be used as symptoms of the three major deviance referent of social control discourses.¹

1. The Product of Evil

Theorizations which place in any form of evil the source of deviance, of which I shall soon show the main manifestations, constitute the usual way to think about normative transgression in academics' ivory tower - maybe also outside of it. This has been particularly illustrated by Foucault's analysis of knowledge production in fields such as criminology, psychology and psychiatry. Numerous sociological analyses of social control also testify to the importance of discourses positing that deviance is, in the first place, symptomatic. This is notably the case of analyses which form themselves around notions of inequality or social exclusion. The extraordinary variety of theoretical utterances linked to this first discursive formation is easy to apprehend. In effect, in this system, one can theoretically travel from human body chemistry to political economy's mutations, maybe after having stopped by, among the many possible destinations, Freud and God.

1.1. Deviance as Sin

Usually, the story written by sociologists of deviance on the evolution of the forms of social control highlights the problems which would grow out of a conception of deviance as sin. These are problems that the XVIIIth century utilitarian penological reform will try to solve - notably those related to obtaining avowal through torture.² But constructing the normative transgression through a reference to God can not - despite His death - be conceived as pertaining only to those past days in which humanity was not enlightened by Reason. There is no academic production in which a given deviance would be considered to be caused by a transgression to the divine will. Rather, contemporary sociology uses deviance as sin in the same way that sociologists usually use ideology: it is always outside oneself (Ricoeur, 1997), in a diabolized Other. If we ignore Mannheim’s paradox,³ we can notably find traces of deviance as sin in the social construction of illicit
drug use. One example is the justification of public police’s ‘fight’ against supply in asserting that the availability of products is source of temptation for certain people. Another example can be found in drug prohibition critics who, like Oschapella (2000), associate it to a “witch hunt”. We also need to mention the development of a sociology that I may qualify as naturalist, which is said, by its representatives, to be inspired by either the phenomenological tradition or the more recent Cultural Studies. Here, one tries to understand deviance as sin through the temptation that normative transgression would exerts. Such a movement of Criminological Verstehen (Ferrel, 1998) may have received its first determinant impulsion in Jack Katz’s Seduction of Crime: Moral and Sensual Attractions in Doing Evil (1988). I will focus on it later, for the ultimate cause of evil is located in Modernity, in an unequalitarianistic perspective.

1.2. Biopathologized Deviance

Brain laterality is (...) related to criminality. Most individuals are right-handed and left-hemisphere dominant; however, 10 percent of the population is left-handed and either right- or left-hemisphere dominant. Many more males are left-handed, and many more left-handed males are criminals than right-handed males. Whatever is responsible for this pattern of hemispheric dominance, it does influence criminal and antisocial behavior (Jeffery, 1994).

After having examined deviance as sin, writings in sociology of deviance usually then look at the so-called ‘classic’ period of criminology, where the attention is directed towards the use of reason to establish just punishments. This is chronologically correct. Nevertheless, I wish to postpone the analysis of this Enlightenment movement - in which some place the act of birth of criminology - because it is located in the second discursive formation of criminalized deviance. Discourses proper to such a ‘classic’ period represent an emergence, not a break from the discourses of deviance as evil. Of course, there is a rupture if we compare chronologically both discursive and non discursive practices. But the utilitarian philosophy of reformers such as Beccaria (1764) and Bentham (1789) operate ‘elsewhere’ than in, or on, the first discursive formation. A new way of conceptualizing deviance and control, a new object is born. The first discursive formation’s structure - let us imagine that Foucault could have tolerated such a word - is not even lightly touched. Gall’s (1758-1828) and Spurzheim’s (1776-1853) phrenological theories, which posit that the shape of our skulls explain our conforming or deviating behaviour, are testimony of the endurance of the first formation; but also, and more than anything else, the ‘other’ birth of criminology: the publication, in 1876, of Lombroso’s Uomo Delinquente. In it, the body was offering itself as the first vector of expansion of the modern construction of deviance as a product of evil. The ambient positivism then drives the search of the cause, to liberate society from the men, and today, also the women, that would endanger it.

The delinquent man to which Lombroso gives birth, and whose survival raises the threatening spectre of his eternal life, is, in front of our species’ evolution, a regressed being. His regression would be anthropomorphically observable.4 Darwin’s influence is clear in the creation of this atavistic criminal who, in sum, is adapted to the cruel laws of savage life, not to the peaceful and a-conflicting commerce of men of reason. Lombroso’s principal legacy is the idea of a “born criminal”, the object deviance as the product of a bad biological determination.5 It was simply a matter of time for science to furnish the
basis for the installation of what has been thinkable since then: anticipatory forms of control of the deviant body before the actualization of its determination.

Theses on atavism did not survive empirical tests, even though they were developed on such a basis. Nevertheless, biopathological deviance was still, in the mid 1960s, conceptualized on the basis of observable biotypologies, notably in the young School of criminology of Université de Montréal (Ellenberger, 1969). Sheldon’s work (1949) has had a deep influence; it established three essential shape of the human body (to caricature: the frail green onion, the solid heavyset and the soft melon), to which different behaviour were associated. The Gluecks’ hulking works (1950, 1956) were also to contribute importantly to contemporary biopathologization of criminalized deviance. But, for Sheldon as for the Gluecks, the object deviance goes across the body and reaches psychology (through personality). Most of the criminological works of the last century suggest the force of psychological and sociological theorizations of deviance as a product of evil: positivistic empirical analyses usually conclude that biology is not the sole determinant of deviance, if it is a determinant at all. This is the case, for example, in studies on heredity, particularly interested in comparing twins’ behaviour, and in studies proposing the hypothesis of a biochemical deficiency to explain shortcomings in learning (Eysenck), or a pathological seeking of stimulation (Quay). But contemporary scientific progress in the field of molecular biology may lead to the conceptualization of an a-social and a-psychological deviance, a pure abnormal biological determination.

1.3. Psychopathologized Deviance

To initially counter the patient’s defensive attitude toward treatment, the therapist might briefly summarize his problem as a lifestyle disorder that has roots in childhood or early adolescence, develops over a long period of time, and has serious negative consequences. It may also be pointed out that ASPD [Antisocial Personality Disorder] is a silent menace because persons suffering from this disorder usually can’t recognize the symptoms in themselves, and typically do not feel any discomfort until the disorder is quite advanced (Beck and Freeman, 1990).

I entered the universities’ world through undergraduate studies in clinical criminology at Université de Montréal. Among the body of knowledge that I was asked to minimally possess to obtain a diploma were various theses on the “criminal personality”, which refer to the notion of antisocial personality or, more often, to that of the psychopath. We (group/class) were asked to learn to recognize a psychopath, with analytical grids, while watching Hollywoodian productions. Ideal-typical forms of the psychopaths that we, ‘wanna be’ criminologists, were certainly to keep watch over, and maybe to help; such forms were illustrated by Brad Pitt’s persona in Kalifornia, and Robert de Niro’s in Cape Fear - to cite but two examples. Learning to produce pathological difference through what behaviour reveals of the psychic economy: this was the project established after the invention of the born criminal by Ferri and Garofalo, Lombroso’s most talented students.

By extending the physical atavism of the ‘animal’ delinquent to the bit of psyche ‘it’ was acknowledged to possess, they furnished a second, modern and positive, vector of expansion of the discursive formation of deviance as the product of evil. Its logical corollary is that the punishment of the deviant has to accord not with the act, as suggest philosophical ideas, but with the actor revealed by the act. Besides, the psychologization of the cause of the difference revealed by deviant conduct was to furnish quite an important motive legitimating the positivistic criminological endeavour; that is, the
possibility to improve the nature of such dangerous beasts. If psychological theories have changed, the essence of the construction of psychopathologized deviance remains the same, as the introductory paragraph of this section suggests. Evidently, and even if he did not heavily write on criminals, Freud was to provide a tremendous contribution to this subset of the object deviance as the product of evil (notably with the invention of the unconscious, of the it-ego-superego triptych, and of the psychosexual phases of object-relation development).

Psychiatric and cognitive-behaviouristic approaches constitute without doubt, at least on North American soil, the two main sources of the discursive formation of psychopathologized deviance. While, for institutional reasons, the psychiatric approach is often near biopathologized deviance, the cognitive-behaviourist one can construct the difference in the psychopath by his sole skill to think the wrong way. Are thus identified 52 (Yochelson and Samenow, 1976), 8 (Walters and White, 1989), 10 (Walters, 1995), etc. “thinking errors” proper to “criminals”. Such errors are then put together to constitute inventories of abnormal thinking styles. Among such inventories establishing psychopathology, we can also mention Hare's influent 20-items checklist (1980). Sociologists' classic critic of psychopathologized deviance is that items of such checklists often testify less of pathology than of a gap with “society's norms”. To illustrate the social nature of the definition of normality, it is habitual to mention that homosexuality did figure for a time in the powerful American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM).

If, as I have suggested, one can imagine the possibility of observing the formation of the object deviance on a purely biological basis, this seems quite difficult in what regards psychopathologized deviance. The psychiatric approach is too linked with biopathologized deviance, and psychoanalytic, gestaltist, humanist and cognitive-behaviourist schools are, at least certainly today, put in relation with the biological or the sociological (socialization, peers’ influence, etc.). Maybe this can be interpreted by the fact that contemporary biopathologists authorize themselves to pretend to a commensurate access to the causes of deviance, which would be devoid of any subjectivity (hormones, molecules, DNA, and so on), while contemporary explorers of human psyche no more authorize themselves such a pretension, or are discredited if they do so.

1.4. Sociopathologized Deviance

Crime occurs when citizenship is thwarted, its causes lie in injustice, yet its effect is, inevitably, further injustice and violation of citizenship. The solution lies not in the resurrection of past stabilities, based on nostalgia and a world that will never return, but on a new citizenship, a reflexive modernity that will tackle the problems of justice and community, of reward and individualism, which lie at the hearth of the liberal democracy (Young, 1998).

Sociopathologized deviance is formed, in contemporary sociological discourses, as a reaction to various kinds of injustice. Injustice is here understood in its liberal accepted meaning, that is, as any discrepancy on the plane of either liberty or equality. Such unequalitarianistic conceptualizations of deviance usually refer to a structuralist or stratified apprehension of society, which notably leads academics to place particular groups in a dominating position, and to think of social control as the exercise of a vertical power, from the top over the bottom.
Émile Durkheim's legacy is still weighty in contemporary conceptualizations of a sociopathologized deviance. His two main contributions to the sociology of deviance are his functionalist reading of normative transgression, and the development of the notion of anomie, of which he furnished an acclaimed illustration in his œuvre on suicide (1897). Anomie directly refers to the very birth of sociology, which institutionalized itself on the quest of solving problems attributed to Modernity. Before Durkheim, Auguste Comte has searched to single out the principles on which social unity could be founded anew. Such a project of medical sociology, bringing solutions and remedies to the pluralization of social norms, is particularly explicit in Durkheim’s *L'éducation morale* (1925). It is the feeling of having lost collective landmarks which is so central to a deviance given meaning through the prism of anomie: the cause of normative transgression is to be located in a fragilized unity. The pathologized difference is conceived as the result of a too wide heterogeneity of the forms of socialization. In order to preserve a presumed normative community, evil should be attacked at its roots: the (deficient) socialization of children. This is notably the core of Hirschi’s thesis (1969): the deviant has had a deficient socialization, which impairs self-control and commitment to social institutions. The object criminalized deviance is then conceptualized on the basis of its lack of attachment, of investment, on both levels of values and behaviour. The notion of anomie will thus lead academics, for example, to try to empirically demonstrate that religiosity is inversely proportional to deviance (Hirschi and Stark, 1969). Another example can be found in Talcott Parsons’ œuvre. As Durkheim, he did not see any problem in taking as referent a normatively united society. He proposed, with Shils (1951), that delinquency is an incomprehensible, irrational behaviour, which would result from the failure of the social mechanisms functionally devoted to produce unity, particularly socialization, which precede the ultimate means that coercion is. Such a formation of the object deviance with a reference to anomie has been severely criticized in Mills’ *The Professional Ideology of Social Pathologists*, in which he argued that such a notion was supported by a romanticized rural community. Although anomie is still used in conceptualizations of sociopathologized deviance, it is as a rhetorico-nostalgic tool or secondary cause. As noted above, the cause of evil has become injustice in its liberal accepted meaning.

Once anomie is relegated to a more peripheral role, the object deviance corresponds to a reaction to the differential repartition of social opportunities.11 If the link between deviance and opportunities is frequently associated to Merton’s use of the durkheimian notion in the study of the criminal question, it can also be found in the ecological and topological sociology of the first Chicago School, notably in Thomas and Znaniecki’s *Polish Peasant* (1927), and in Shaw and McKay’s *Juvenile Delinquency and Urban Areas* (1942). In the case of Merton, the formation of the object deviance is conceptualized as a reaction to the unequal access to legitimate means of realization of society’s promoted goals, the first one being economic success. The author typologized modes of social adaptation, those being function, on the value axis, of cultural goals and of the institutionalized modalities assuring the possibility of their actualization: conformity, innovation, ritualism, retreatism and rebellion (Merton, 1957). Cloward and Ohlin (1960) will later suggest that access to illegitimate means of realization of culturally promoted goals is, as the legitimate ones in Merton’s view, unequally distributed in the social.

The conceptualization of the object deviance as a reactional formation to the gap between means and goals constitute the core of contemporary sociology of social exclusion. Are also incorporated here, on the level of the roots of evil, the idea of a breaking off of the...
normative community and, following interactionists’ works, social reaction as a factor solidifying the object deviance. According to Xiberras (1993), for instance, deviance is the result of a failure to perform, to actualize what would be consensually considered as our social norms (education, professional career, marriage (!), etc.). This would lead to a “break up of the institutional link” in which “failure towards a performing picture of the self (...) can be defined as a rupture to the knowledge or recognition of the self” (p.29). According to her, the object deviance thus forms itself on the basis of a failure to realize the “winners’ model”. The incapacitating effects of such a failure could be magnified by social reaction, at least when individuals do not “exclude themselves from a world in which they have no place” (p.17). Another illustration of the unequalitarianistic perspective is given in Philippe Bourgois’ ethnographic analyses of the object deviance in the realm of prohibited drug use (1998, 1995, 1992). The author notably maintains that illicit drug use, along with implications in the related underground economy, are modalities of adaptation to the “structural victimization” of particular groups. The discrimination against them would thus produce the object deviance:

The individual living in the ghetto which does not strictly conform to the current modes of interaction in the white and wealthy society shall be fired, or even worse, he will be forced to submit himself in being turned into a fool (...) The potential working class from poor neighbourhoods in cities’ center is systematically humiliated in seeking a job in the service sectors of business districts. The street thus offers both an economic alternative and an ideological framework enabling pride and respect of oneself (Bourgois, 1992, 78).

The formation of the object sociopathologized deviance also manifests itself in what is called Radical criminology - the birth of which being, in the 1930s, Rusche and Kircheimer’s application of the Marxist perspective to the analysis of the punishment regime. Following Rusche and Kircheimer’s impulsion, the Marxian idea that law is an instrument of domination of the bourgeoisie will notably be reaffirmed in Turk’s Criminality and Moral Order (1969), and in Chambliss and Seidman’s Law, Order and Power (1971). Its most influential criminological formulation will be given in the New Criminology of Taylor, Walton and Young (1973). Such a construction of the object deviance notably opened up two new fields of sociological inquiries. In the first one, at the center of preoccupations are white collar crimes and State criminality (Hogg, 1998; Bequai, 1978). The second corresponds to what has been termed ‘left realism’. In this perspective, authors such as Lea and Young (1984) and Lowman and MacLean (1992) insist on the necessity for sociologists to turn their attention to the micro-social victimizing effects of capitalism on proletarian reality.

The conceptualizations of the object deviance which will later be realized in an anarchistic perspective - which is also frequently associated with Radical criminology - participate to the establishment of the third discursive formation. This is so because anarchism posits the illegitimacy of all forms of authority, that which includes the authoritative descriptions of science on deviance and its causes (Ferrell, 1994). The epistemological critics towards unequalitarians which resulted from such a posture led to some rehabilitating attempts. This is notably illustrated by the publication of the New Criminology Revisited (Walton and Young, 1998), in which most essays try to answer anarchists’ and postmodernists’ critics. In it, the authors particularly argued that to limit injustice’s existence to its sole discursive constitution is, to borrow the words of Lea (1998, 185), to associate oneself with the “power of the Capital”. It is the abandonment of
all ‘grand narratives’ (Lyotard, 1979) - here Marxian capitalism - which is discredited by the authors. The abandonment of ‘grand narratives’ would lead to the incapacity to analyse the shapes taken by domination and power in our Late Modernity. Anarchists may well feel that their critique of authority is answered by an authoritarian scientific description.

I shall close this section by briefly looking at the conceptualization of sociopathologized deviance proposed by the criminology that I qualified as naturalist. Such criminology particularly develops itself through the ethnomethod that Lyng (1998, 1993, 1990) named “edgeworking”: one has to penetrate ‘inside’ normative transgression to grasp its attraction, of which the causal nature is posited. This means that the sociological practice supposes an immersion in a ‘deviant culture’, taking risks, and eventually committing criminalized acts. Such naturalist ethnomethodology is justified in the following way:

Criminological theories are abstract constructions about behavior that criminologists have, for the most part, never seen. What criminologists know about crime and criminals has come from studying criminals in captivity (jails, prisons) and from crimes reported, though frequently not observed, by local police and other law enforcement agents. The validity of criminological theories is then tested with measurements (statistics) collected by instruments (surveys, interviews) used on criminals who have been removed from native environments. This sanitized style of studying criminals and crime has brought us dozens of criminological theories and dozens more strategies to intervene in criminal behavior. If any of these theories were correct and interventions effective, we wouldn’t need so many of them (Fleisher, 1998, 55).

Exception being made of the already addressed conceptualizations of the object deviance as adaptation to the discrimination proper to inequality in social opportunities, trying to understand normative transgression in approaching its phenomenological dimension leads to a new variant in the construction of sociopathologized deviance. Deviance would answer a need of transcendence in the context of an alienating and rationalizing Modernity, which leaves no room for the expression of the irrational and the affective. Risk taking - edgeworking - nevertheless does not suffice to construct the object deviance. The ultimate cause is still the differential distribution of opportunities, not to realize the “winners’ model”, but to experience transcendent experience through legal means.

As a consequence of the inequality of resources in society, some of the ways of transcending mundane life are more open to some groups of people than to others. Skydiving, for example, may offer a transcendent experience, but it is unlikely to be available to many young black members of the urban underclass. Crack, on the other hand, may provide a similarly transcending experience (which is only more "artificial" on a very narrow reading of artifice), but unlike skydiving is available to all, rich or poor. Moreover, the poor, perhaps more than any others in modernity, are faced with lives in which meaninglessness and the destruction of the self are ever-present possibilities. For this reason they have less to lose if they choose to prefer short-term (and relatively certain) pleasure and excitement over long-term (and uncertain) calculative rationality (O’Malley and Mugford, 1994, 209).

1.5. The Symptomatology of Difference

Even if I only caught sight, and quite selectively, of the immensity of theoretical universes attached to most common varieties of the discursive formation of deviance as the product
of evil, we can easily grasp the powerful penetration of the notion of symptom in reflections on difference. Apprehending difference is here realized in a symptomatological fashion - underneath deviance is a body defect (from skull shape to its biochemical economy), a psychic problem (from Oedipal conflict to a bad way to interpret reality), a social injustice (from deficient socialization to the organization of economic relations), or a mix of the preceding. This supposes that the possibility to identify both difference and its cause is posited. Here, whether we are in biological, psychological or sociological realms, the object deviance is formed in the very act of seeking the pathology which would have caused it, simply because difference is established by its pathologization. We are in murky waters, mixing cause and effect in a schizophrenic genesis: the pathology that difference would reveal is comprehensible only through a given form of symptomatology of difference.

The discursive formation of deviance as the product of evil presents no epistemological variations: (post)positivism reigns. (Post)positivism posits the possibility of a complete (or approximate) apprehension of the object deviance, taken as independent of this very act of apprehension. All manifestation of biopathologized and psychopathologized deviance are inscribed in this epistemology. The object deviance presents an abnormal body/psyche of which science can reveal the mystery. Questions guiding the scientific practice are (for example): what explains illicit drug use? What are the risks that Jane Doe’s embryo will turn out delinquent if Mrs. Doe smokes tobacco? If she does not? Etc. In many cases, the sociology of deviance sits in the same epistemological chair. For instance, it is the case in all unequalitarian analysis which do not take into account the problems confronting constructionists (these will be examined in looking at the third discursive formation.) The construction of sociopathologized deviance then leads to question similar to those raised by bio- and psychopathologists: What? Who? Why? For example: what explains illicit drug use? What are the ‘subcultural’ values which enable adhesion to a ‘deviant lifestyle’? Why won’t crack users work for Bill Gates? Etc. That the cause be located in the body, in the psyche or in society, the object deviance is taken as given: normative transgression is a symptom of abnormality which can be objectivized. His body, her psyche, our society is sick.

2. The Product of the Strategist

While the medical model reduces crime, suicide or drug addiction to the status of symptom, strategic or actionist analysis posits that the deviant act can be conceived as a solution to a problem, or as a means towards an end. It is useful to presume that, in the situation proper to a murderer, a thief or any other deviant, he had “good reasons” to behave the way he did (…) Reasons to deviate are numerous, and it is not certain that they really are different from the reasons for which we act in conformity to social rules (Cusson, 1992).

The emergence of the second discursive formation of criminalized deviance corresponds, as noted above, to what is referred as ‘classical’ criminology. Historians’ teleological habit results in the fact that it is usual to attribute the cause of the XVIIIth century penological reform to civilization’s progress towards a greater humanity (Weiss, 1987). That is, the move “from revenge to constraint” (Cohen, 1985, 76) is often interpreted as a profoundly positive achievement. It is true that one of Beccaria’s influential treatise’s foundations is to humanize punishment in an era of public infliction of pain. But revisionists did rewrite this story. Foucault’s Surveiller et punir replaces the cause of a progressively more humane
social response to normative transgression by a generalized movement of punishment, in
which the ‘power to punish’ inserts itself “more deeply in the social body” (1975a, 98).
Here, it is less important to take side in the debates around the causes of the birth of
classical criminology, than to examine the new way to think the object deviance that was
generated.

2.1. Strategic Deviance

Beccaria, Bentham and Mill are classical utilitarianism’s noteworthy representatives.
Their thoughts deeply influenced the second discursive formation of criminalized
deviance. Their common quest is the realization of a just society. In their view, as Rawls
summarized, a society is just “when its major institutions are arranged so as to achieve
the greatest net balance of satisfaction summed over all the individuals belonging to it”
(1971, 22). From this principle of utility, defined as the maximization of satisfaction and
minimization of unhappiness for all society’s members, springs the following one,
particularly explicated in John Stuart Mill’s On Liberty (1859): any constraint to the liberty
of an individual has to be founded in harm to others, for no legitimate limitation of
liberty can be founded on preventing harm to oneself. Utilitarian’s formation of the
object deviance thus excludes all that which pertains to morality when harm to others
can not be demonstrated. Asserting on this basis that any punishment which is not
grounded in an “absolute necessity” is an act of tyranny, Montesquieu will profoundly
inspire Beccaria’s critic of XVIIIth century criminal justice:

Disorders constitute a continuum, its first degree being represented by those that
tend to destruct society directly, and its last one by the smallest harm done to one
of its members (...) Any act which is not included within those limits (...) can not be
named an offence, nor be punished as such, except by those who find their interest
in naming it that way (Beccaria, 1764, 73-74).

In another part of his chapter on “Proportion Between Offences and Punishment”,
Beccaria strengthen his argument by suggesting that the meanings of notions such as
“good citizen” and “criminal”, and virtue and vice, change from time to time, and that
those changes do occur not for “the common interest, but because of legislators’ passions
and mistakes” (p.74). Thus, utilitarianism proposes that the formation of the object
criminalized deviance should be realized on the sole basis of the unjust advantage that
one individual takes over one or many members of society. Strategic deviance is born.
The conception of human behaviour as driven by a desire to maximize happiness and
avoid displeasure asks for a normalization of criminalized acts. As a corollary: if two
offences are punished identically but present “unequal prejudice” to society, then
“nothing shall refrain any individual” from committing the most harmful offence if it
bears “the greatest advantage”.

The central theme of the second discursive formation is thus reason - excluded is the case
of ‘criminal madness’. While psychopathologized deviance assumes that it is abnormal to
try to gain advantage over one another, strategic deviance posits that it is the result of a
normal, rational choice, exerted towards well-being in the absence of constraints. Let me
cite Beccaria once again:

There is no one who would spontaneously leave a part of his liberty for the public
good. It is only in novels that such a wild dream can exists; if it was real, everyone
of us would wish that pacts binding others do not bind oneself; every man look at
himself as the center of all possible combinations on the globe (Beccaria, 1764, 63).
Utilitarians’ philosophy shall be discredited by the scientificization of the pathologization of difference. The Italian positivistic school will play an important role in that matter, by pretending to objectively and empirically demonstrate the determinants of deviance as product of evil. Nevertheless, strategic deviance is still of actuality since other utterances, also claiming a scientific status, modernize classic criminology. Indeed, an actionist criminology (Cusson, 1992), more often designated by the perspective or theory of strategic analysis (Cusson, 1993b, 1986), has taken form. Academics outside this Montreal School prefer to speak of a “criminology of the act”, while Anglophones will usually qualify it a “rational choice approach” (Cornish and Clarke, 1986).

In its contemporary manifestation, the discursive formation of deviance as the product of the strategist is still deeply associated with reason and free will. But these notions have been softened. The importance that Beccaria placed in macrosocial processes of social control is maintained. But its analysis is today coupled with the micro context in which action takes place.

The reason of the strategist is relativized by the concept of “limited rationality”, or of “subjective rationality” (Cusson, 1992; Crozier and Friedberg, 1977). For instance, Cusson and Cordeau (1994, 94) write that if any human being is “intellectually active”, that “normally he has good reasons to behave the way he does”, this never refers to the “omniscient decision-maker of some economic models”. The rationally limited individual would not, in front of subjectively appreciated problems, seek the “best”, but the “more satisfying” solution (Cusson, 1998b, 70). Action, not the actor, is what is at stake. Thus, instead of being fundamentally the product of a pathological determination, criminalized deviance is here discursively formed through the sequential decomposition of the rational journey of a strategist whose actions are influenced by its anticipated effects (1986, 55). We are in front of an a-moral behaviourism, since action’s driving belt would not be its end, but its results (1989, 83).

Offence is conceived, in strategic analysis, as a behaviour oriented towards results, with its own rationality, taking account of the opportunities offered to the actor, as well as of his adversaries’ actions (...) Strategies are a man’s actions on his surroundings and, above all, on others: his offensive and defensive moves; his tactics to influence someone else; to persuade, manipulate, dominate, constrain, suppress him. This is what crime is (Cusson, 1989, 76-77).

The last citation introduces the notion of opportunities. The “totality of actions taken against crime”, those institutionalized, as well as those of single individuals, enters into strategic analysis. Criticizing the construction of bio/psychopathologized deviance on the basis that it would lead to forget the “structuring effect of social control”, Cusson takes it as one “independent variable influencing crime” (1998a, 1993a, 38-39). The argument is loyal to the author’s economic decisionism: the more a behaviour provokes an effective social reprobation, the less frequent it is. We now know why, for example, there are less robberies in banks than in small shops. Or, but it is the same thing, why our strategist generally attacks small shops instead of banks. The macrosocial thus furnishes a first pole around which takes place the rational endeavour of the strategist in his evaluation of “criminal opportunities”; social changes (technological advances, etc.) are taken into account criminal and opportunities evaluated in the spaces and times in which the strategist travels. In their simplest expression, those opportunities are favourable conditions to prohibited acts in a given time-space; the contact of the strategist with a mouth-watering prey. For instance, Gassin (1988) spoke of “precriminal situations”.

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Of importance is the fact that the social opportunities spoken of by unequalitarians can be, in the second discursive formation, constructed as resources that the strategist may use in his jousts against others. Indeed, Matza (Sykes and Matza, 1957; Matza, 1969) developed the concept of “techniques of neutralization” to enable a classical interpretation of free will in his rejection of etiological criminology. When referred to deviance as strategy, the use of those techniques can be conceived as the individual’s strategic modification of values. In explicit contradistinction, conceptualizations realized in the first discursive formation conceive the use of these techniques as ‘thinking errors’ (to cite but one example). Strategic deviance could thus posit that actors are able to ‘grasp’, signify and use what is taken as the cause of pathologized difference in theories on deviance as the product of evil. Considering numerous sociopathologists’ discourses, strategic analysis thus has the merit to avoid looking at the actor as a “cultural dope” (Garfinkel, 1967), such as the one created by, among others, Francfort-style critics (see Joas, 1996; Denzin, 1992) and Bourdieu’s habitus (see Rubenstein, 2000).

Informed readers of Cusson may nevertheless assert that he does not depart from the symptomatology of difference. Moreover, the moral judgements that cross over his writings may strengthen this eventual assertion. And, above all, the fact that everywhere he speaks of “delinquents” (one of his books is entitled *Délinquant pourquoi?*, he defines the criminal tactic as an “answer of the delinquent to a criminal situation”, etc.). If strategic analysis postulates an inclination to deviance, how can we think of strategy as an axiomatic principle independent from evil?

Such inclination is not postulated. Rather, it is taken as “a solid fact that it would not be fair to contest” (Cusson, 1986, 54). Nevertheless, Cusson tells us that the existence of an *Uomo Delinquente* can not nurture an understanding of the processes through which his pathological determinations are materialized. In sum, nowhere an inclination to deviance is a foundation of the methodological individualism in which strategic deviance is constructed. Cusson informs us that in all individuals having committed criminalized acts, we find “a great number of normal people”. As he maintains, we only find “a minority of abnormal people and an even more little minority of truly mentally ill individuals” (1998b, 68). Thus, finding the abnormality of the strategist could only be a ‘conclusion’ of strategic analysis, which defines itself a discursive space independent of any symptomatologization of difference. That Cusson personally believes that deviants are naturally abnormal, and that this belief is or not evidenced in his writings, is not important. The influence of his works and that of other representatives of the rational choice approach has provided the scientific basis for a contemporary construction of criminalized deviance as a normal product of an economic decision (in the broad meaning of the expression). With or without *Uomo Delinquente*, there is no deviance without opportunity.

The idea that the object deviance can be formed without any pathological determinant can not be accepted by bio- and psychopathologists. Some sociopathologists make the same critic, while constructionists bring forth a critic which I take to be stronger. It is the idea that strategic deviance is conceptualized in an uncritical relation to the penal norms which enable its creation, and to the repressive activities, which guarantee its formation. For example, one could conduct a strategic analysis of someone’s implication in the illicit drugs black market. But only if the laws which create all the object pieces are maintained.

When Cusson (1998a) devotes one chapter of his *Criminologie actuelle* to drug trafficking,
the discursive formation of strategic deviance thus seem to have sunk (a nevertheless
claimed) utilitarian position into oblivion.

37 We can easily see that the epistemological posture that the discursive formation of
strategic deviance supposes is a (post)positivistic one. Its result is an “activist reason”
(Tibon-Cornillot, 1992); a scientific practice oriented towards the management of things,
enabled through the clear rupture between knowing and the known. Because strategic
deviance leads the sociological eye, not on what is, but on what does the object, and
because its modern construction is laid on the postulate that the illicit induces harm to
others, it is quite logical that academics’ conclusions focus on the means to limit criminal
opportunities, and to orient the delinquent towards the “less criminal option” through
technical prevention.24

Increase in burglary in the second half the XXth century is largely the result of
choices that most of us made. Instead of fortifying our houses to block access to
intruders, we have preferred to absorb burglary consequences in assuring ourselves
against theft and in placing our money in bank accounts (Cusson, 1993c, 55).

3. The Product of a Social Construction

38 Inside the third discursive formation of criminalized deviance, the object is not taken as
resulting from a determination which can be associated to pathology or to a normalized
profitable choice. The object is seen as a product of the social practices which constitute
it as such; deviance is constructed by the social practices which apprehend it. We can
identify three variants in this discursive formation, constructed, produced and uttered
deviance. The first one refers to discourses positing the existence of acts which are
constructed as deviance through moralizing and criminalizing processes. The second
refers to the work of Foucault, in which the object deviance is not only socially
constructed, but also technologically produced. In the third, uttered deviance would be
conceptualized as the sole result of a language creating reality. Its timid manifestation
place this variant mainly on a plane of possibility. In all cases, in the third discursive
formation, the object deviance is approached at the junction of words and things. In
contradistinction to discourses examined thus far, the ontological status of the object is
problematized, being conceived as dependent of the epistemological posture adopted by
sociologists. The problematization is realized as the break between ontology and
epistemology is reduced, or even abandoned.

3.1. Constructed Deviance

Deviance is not a quality of the act committed by an individual, but rather the
consequence of the application, by others, of norms and sanctions to a
“transgressor” (Becker, 1963)

39 In the 1920s United States, in the intellectual effervescent climate that the
representatives of the Chicago School (Burgess, Park, McKay, Shaw, Thomas, Znaniecki)
have installed, Edwin Sutherland begins to elaborate his theory of differential association.
A first form was proposed in 1934, and with it a whole new section of sociological
research will open up. In posing as a principle, notably, that criminal behaviour is
learned, and this through the same mechanisms implicated in learning any other
conduct, Sutherland had the cheek to propose a huge relativization of the object
deviance. Sociopathologized deviance was becoming an object produced in social
interactions implying conflicting normative universes. If the theory did not focus on the interpretation of the qualification of a given behaviour as deviant, such a focus was suggested in making criminal conduct a skill learned through mechanisms akin to those implied in acquiring the skill to lace one’s shoes. Sutherland’s inspirations can be placed in Gabriel Tarde, Thorsten Sellin and the fathers of symbolic interactionism, James, Mead, Cooley and Dewey (see Denzin, 1992). That we should give credit to Sutherland or to his intellectual fathers for the revolution that the publication of the theory of differential association would operate is a matter of little importance.

In introducing the notion of “secondary deviance”, Lemert (1942, 1951, 1967) was to promote an increase in the attention that sociologists devote to the potentially negative effects of institutionalized reaction on the formation of the object deviance. The notion of secondary deviance refers to a ‘solidification’ of deviance through its contact with governmental agencies charged to repress it. As Trasher (1927) and Tannenbaum (1938) did earlier, Lemert suggested - event if deficient socialization was still taken as the primary evil - that “active social control” can make things worse. Solid theoretical basis is given by the philosophy of symbolic interactionism’s fathers, which was to be sociologized by Herbert Blumer (1969). A supplementary impulsion will be given by police interventions and juridical processes, transforming counter-cultural activists into delinquents (Pfohl, 1985). The object deviance will be completely transformed: the cause of evil becomes the repression of difference.

Becker’s Outsiders (1963) and Goffman’s Asylum and Stigma (1961, 1963) are amongst symbolic interactionists’ œuvres which have profoundly marked constructionism. Labelling theory lead to a critique of the activities of agencies devoted to the repression of criminality. This is so because their interventions would induce the introjection of a negative concept of self in individuals, particularly by the institutionalized construction of their conducts on the axis of abnormality. Labelling theorists invite readers to infatuate themselves with the controlled ones. The basis of human behaviour theorization in symbolic interactionism is that actors constantly re-signify the meaning of social objects through human interaction, and deviance is presented as one outcome of highly symbolically charged social intercourses. The constructed nature of the object deviance remains similar to that proposed in previous theorizations. Indeed, if the cause has been moved from the determinations of the body, the psyche or of primary socialization to significant - that is, degrading (Garfinkel, 1972) interaction, deviance is still sociopathologized. This may have been different if the search for the cause had been abandoned to the profit of the sole analysis of activities conferring it such a status. A first theoretical step in this direction will be the determinant contribution of Spector and Kitsuse (1977) - but we may also think of Cohen’s first work (1973), in which he notably studied the role of mass medias in the creation of Folk Devils and Moral Panics.

In Constructing Social Problems, Spector and Kitsuse suggest that the object deviance, and, more generally, social problems, result from conflicting definitional processes, in which social groups manifest themselves through claims-making activities seeking to establish or maintain the amoral or criminal status of a given conduct. Let me take an example to illustrate both constructionism and its epistemological problem: all socio-historical accounts of the drug prohibition which do not try to find motives to justify it are written in constructionism’s perspective. Xenophobia is identified as one causal factor, to name but one. But, in so doing, the authors find themselves in the same position than the one occupied by the people whose discourses they analyse: they construct the construction of
prohibition’s story. That is, they suggest a definition of reality operating on the same mechanisms than those they study, while according a distinct epistemological status to their own claims-making activities. Woolgar and Pawluch notably criticized Spector and Kitsuse’s "ontological gerrymandering".

It would seem that constructionism formed the object deviance as the product of a constitutive language. But in my view, this is only partially the case, and only since Ibarra and Kitsuse (1993) suggested transformations to constructionism associated to postmodernism, which I will examine later. The distinction is epistemological: constructionism refers to what I may call an ethico-constructivist epistemology, while postmodernism establishes itself on a pretension to an epistemology that I will call radical constructivism. The distinction is operated throughout a higher integration of reflexivity in radical constructivism, which would help solve epistemological and theoretical problems in conceptualizing, notably, language and communication in constructionism. To (maybe) write it more precisely, the ethico-constructivist posture, in contradistinction to the radical one, maintains a distinction between language and social reality. The result is, for example, that constructionism is interested in the construction of drug addiction as a social problem, while postmodernist utterances would posit that there can be drug addiction only by the performance of a language giving it its existence. Thus, the ethico-constructivist posture rests on the pretension that there ‘are’ social problems, their degree of moralization/criminalization varying.

In works affiliated both to Spector and Kitsuse and to symbolic interactionism, constructionist perspectives have been heavily criticized by unequalitarians. For instance, for what regards the Chicago School of the 1960s, one paper published in 1972 has caused a great commotion in the community of sociologists of deviance. In Liazos’ Nuts, Sluts and Perverts, their sensibilities to small times crooks is depicted as diverting the attention from the real cause of (sociopathologized) deviance: capitalistic oppression. Unequalitarianism influence is such that it is quite rare to find, in contemporary sociology of deviance, works inspired by constructionism which do not adopt the so-called critical posture of unequalitarians. But the latter do not take into account the epistemological questioning that contemporary constructionism can not avoid, as they usually only retain the interactionists’ view on the solidifying effect of social reaction on the object deviance. This is simply because doing otherwise may suppose that injustice is a social construction instead of a tangible reality.

### 3.2. Produced Deviance

Michel Foucault’s unclassified Surveiller et punir illustrates a second variation in the discursive formation of deviance as a social construction. I shall name it the carceralist perspective. The author giving power an ubiquitarian quality may constitutes one dimension of his thesis enabling us to see how he distinguishes himself from the above variant of the discursive formation of deviance. Indeed, in carceralism, the power constituting the object deviance is omnipresent, instead of being in the hands of a dominating group controlling it (unequalitarianism) or constructing it (constructionism). Carceralism posits that the penitentiary logic has colonized the social, giving birth to a disciplinary society.

In carceralism, deviance refers to the indocile or abnormal body. It is formed through the care given to its defects in regard to norms established by different social institutions -
prison, school, factory, etc. In the same movement, such an intervention is seen as marking out normality in various spaces and times put into an order towards the production of utility. According to Foucault, the formation of the object deviance is the result of a circular logic, in which the production of the object rests on the institutionalized normalizing efforts devoted to redress it, such efforts leading to a finer and finer construction of the reality taken as object. He thus writes that processes objectivizing the indocile body “are born in the very tactics of power and in the arrangements of its exercise” (1975a, 121). Knowledge constitutes the abnormal body, this knowledge being in turn constituted through the power operating the institutional normalization of bodies. For what regards delinquency, the Lombrosian born criminal thus becomes the product of the knowledge developed through institutional intervention on the offender. In contradistinction to the first discursive formation, in which delinquency is formed on the basis of criminal offending, produced deviance is conceptualized as a result of the institutional response to offences.

The penitentiary technique and the delinquent man are like twin brothers (...). Do not think that the internal elaboration of penitentiary methods finally revealed the “objective” existence of a delinquency that could not be seen in juridical abstraction and stiffness. They did appear together, and in each other’s extension, as a technological set forming and cutting up the object on which its instruments are applied (Foucault, 1975a, 296).

The institutional social reaction to normative transgression, in such logic, would not result in the transgressor being corrected, but, instead, in the delinquent being produced. Prison fabricates delinquents, and delinquency is “the prison’s revenge against justice” (1975a, 297). The production of delinquents in prison is notably realized, according to Foucault (1975a, 310-313), through the imposed standards of life. Prison strives for incarcerated people’s docility in mandatory useless work, in a context where incarceration “takes place on the mode of abuse of power”. Such conditions guarantee inmates’ solidarity, that which plays in favour of the creation of ‘criminal networks’. Prison is a crime school. The production of delinquency is also realized in condemning individuals to become recidivists, in closely monitoring offenders constituted in delinquents as they are set free anew. The object deviance is thus the indocile body resisting discipline and normalization. It is the “fortunate expression” of individuality and of our incompressible human nature. Deviance is an “energy standing up straight” (p.339).

The production of delinquency is thus twofold. On the one hand, the delinquent is fabricated by the knowledge developed on bodies which are the focus of a normalizing power in institutions. On the other hand, the very exercise of this power transforms the subject as transgressor into a delinquent subject, ‘materializing’ the knowledge born in the meticulous examination of his body and psyche (see also Rose, 1999). To write it otherwise, for Foucault, the object deviance is both discursively and technologically created, in discourses on offenders and in social practices taking charge of them. Deviance is thus not simply socially constructed. It is also materially produced.

Can delinquency be at the very same time an “energy standing up straight” and the material product of the alloy of power/knowledge in the body? Foucault’s association of indocility to a political form of resistance can be read in at least two ways. A first reading would judge that the ‘dialectic’ between subjection and subjectivation is one of the most fertile theoretical contributions of the ‘second’ Foucault. I prefer the second reading, which instead points towards a problematic theorization of resistance to power. The
problem is to render subjection identical to 'liberty practices', and thus ‘power effects’ to resistance to power. The problem is abandoned in L’usage des plaisirs and Le souci de soi, where Foucault moves his attention from discursive practices of power/knowledge to “the slow formation, in Antiquity, of a hermeneutic of the self” (1984a, 13). Overall, the Foucaultian position leads to the oxymoron of a powerless power,30 and to that of a positive constraint.31

3.3. Uttered Deviance

He explained to her that this is what differentiates his conflict theory of criminology from the others. She understood this: that the content of conflict criminology differed from the more conventional science of the causes of crime. But did it differ in its contentment? Did it differ in the fundamental pleasure which positioned the imagination of the criminologist materially in history as master of the natural facts of crime? This question disturbed her significantly. As she pursued this question she found herself losing her center; a slide into a different pleasure - the pleasure of difference; a slide into a different criminological practice - a politics of difference; a different conjuncture of power and its relation to knowledge. When she spoke to him of this disturbance and its different pleasure he had nothing to say. He had been telling her about his conflict theory of criminology, but she was speaking of a criminology that conflicts (Pfohl and Gordon, 1986).

In 1993, Ibarra and Kitsuse tried to correct constructionism to face epistemological criticisms denouncing that social reality was still placed somewhere else than in language. Pretending to use Wittgenstein’s conception of language, Ibarra and Kitsuse suggest that constructionism should, from now on, form the object through the analysis of “typifications of socially circumscribed activities and processes - the society’s classification of its own contents - used in practical contexts to generate meaningful descriptions and evaluations of social reality” (1993, 30). The object deviance would thus be formed in language, the meaning of which being found in its practical use, as Wittgenstein suggested (1951, 1945).32 The rupture between constructionists and postmodernists is realized on the level of the theorization of language: postmodernism posits that there is no social reality outside of the words through which it is apprehended, that an a-textual reality is impossible. This does not means, as the dumb critic of postmodernism maintains, that the sociologist comes to doubt the existence of the seat on which she sits while writing down her flights of fancy. The postulate of the textual nature of social reality refers to ones of C.W. Mills’ popular aphorism: “the first rule for understanding the human condition is that men live in second-hand worlds” (1959, 405).33

Sociologists whose utterances are based on a non-essentialist vision of reality, apprehending it as a text which is always dialogical, and which can not bear a fix, non-contingent and absolute meaning, adopt two exclusive postures. Either they adopt a purely deconstructionist and playful attitude - which is habitually condemned for its nihilism (Best and Kellner, 1997; Gubrium and Holstein, 1997), or an affirmative attitude, in which the ‘infinite regression’ of deconstructionism is interrupted and reconstruction propositions are made. Those two ways of conceiving the sociological work in a textualized reality nevertheless share numerous characteristics, which (paradoxically enough) constitute the ‘nature’ of the postmodern adventure in sociology.34 Among them, we may note: negating the possibility to distinguish between object and subject, thus negating the possibility of a representational epistemology; (following poststructuralism)
‘de-centering’ the subject, which is notably leading to an impossibility to think of action anywhere near utilitarians’ homo economicus model, and; negating the possibility of a universally valid and objective knowledge, that is, refusing the very notion of truth, and thus also the pretension to elaborate a theory of the social (in its modern accepted meaning).35

Schwartz and Friedrich’s (1994) opinion, according to which the postmodernist perspective, in its playful posture, has yet to mark criminology is, it seems to me, still valid. Some authors nevertheless frequented this playground. Among them is Bruce Arrigo, who adopts a deconstructionist attitude towards criminalized deviance, on the basis that “violations of human rights and social acts of wrongdoing are not absolute”, and that one can find no foundation to sustain the truth of any explanation of victimizing acts (Arrigo and Bernard, 1997, 48; Arrigo, 1995). Another playful criminologist is Stephen Pfohl (1993a, 1993b, 1990; Pfohl and Gordon, 1986). His postmodernist approach of criminalized deviance leads him not only to produce unconventional texts destined to an academic audience, but also audio-visual assemblages seeking to present a non-linear, and full of conflicting signifiers, narrative on delinquency. We could compare these performances to some of David Lynch’s movies (Lost Highway, Mulholland Drive, Fire Walk with Me), and also to ethnographers privileging writerly texts over readerly texts (Silverman, 1982; Tyler, 1986), and theatricalizing ethnographic narratives. One would like the reader/spectator of those productions to be confronted with a void of coherent rhetoric related to the objects (the criminals or other ones), thus being obliged to appropriate herself meaning without any anchoring point which could not be questioned. We thus see an audio-visual construct in which Bentham and his Panopticon, Foucault and his anatomo-politics of the body, and Baudrillard and his America’s Disneyland are confronted. Pfohl creations thus represent a suggestion (in a psychological sense) to deconstruct the foundations of criminologists’ and mass medias ‘true’ discourses, depicting criminals otherwise than as the effective operation of local and contingent language games. The whole exercise rests on the (however politicized) pleasure of deconstruction; on a desire to enter into a destabilizing relativism, constantly questioning the processes through which we establish difference (here, the criminalized one). Such playfulness is violently criticized for its elitism, its idealism, or even for its obscurity. But, above all, it is criticized for it could imply a denial of experiences of suffering and the urgent character of some “social crises”.36 Sociologists would then become “helpless spectators” whose deconstructive activities change nothing to the world (Lea, 1998, 173).

Postmodernist playfulness seems to find few followers in sociology of deviance. Such an attitude can only be the privilege of academics no longer having to care about justifying the social pertinence of their works to obtain pay or grants (delivered from still ‘modern’ criterions). Lea’s above mentioned point of view also seems to suggests that postmodernist playfulness is not popular, in sociology of deviance, for it would be a-political (in my view, this is quite debatable). Can we have fun with crime? Such a question, in the end, refers to intellectuals’ role. Since the 1990s, affirmative postmodernist criminology is developing around the works of Dragan Milovanovic, Stuart Henry and T.R. Young (Arrigo (1998, 1997) also joined the gang). At the center of its political considerations is the necessity, for criminologists, to impose some “replacement discourses”. I won’t deal here with the political project of a Newsmaking Criminology (Barack, 1988). Instead, I would like to try to understand how affirmative postmodernist
Criminologists unite deconstruction and reconstruction of the language-based constitution of criminalized deviance.

The theoretical complexity of this postmodernist criminology clearly shows its affirmative nature, in contradistinction to a playfulness of which the theory’s core is found in analytical philosophy (its political project is held in the idea of continuing discussion in a tolerant pluralism; Rorty, 1991b, 1991c, 1991d, 1980). To constitute itself affirmative, ‘postmodernist’ criminology takes two theoretical avenues.

The first one essentially takes over the Francfort School legacy, and presents itself as a critique of the dominant ideology in the making of criminalized deviance. One then seeks to identify the “master signifiers producing and reproducing the dominant social order” through their action on reality, and particularly to show how “the desiring subject is imprisoned in restrictive discourses” (Milovanovic, 1997b, 1995, 10, 1994a, 1993; Henry and Milovanovic, 1991). The authors’ critical position leads them to note the “subjugation” of certain knowledge/discourses, and to identify the dominant narratives constructing criminalized deviance. The conceptualization of criminalized deviance which operates in this perspective is formulated this way: “crime is defined as an expression of energy to make a difference over others, to the exclusion of those who, in the instant, are rendered powerless to make their own difference. Crime is the power to deny others” (Henry and Milovanovic, 1996, x). Law becomes the ‘cause’ of crime for its violent categorization of conflicts. Such a conceptualization is inscribed into a refusal to construct crime as constructionists do, that is, as the sum of criminalized conducts. This notably permits the authors to assert that some ‘crimes’ are not criminalized (ex.: “a lot of what occurs in family life”, some governmental policies, etc. (Pepinsky, 1997, 1991; Henry and Milovanovic, 1996, 116)). In sum, delinquency here becomes a manifestation of power, unequal relations, behaviour causing harm and suffering, of which the meaning is constructed in a dialectic of power and control implying dominant social narratives (ideology) and their phenomenological correlates in conflicting interactions. Such a vision would permit an emancipation from positivistic conceptualizations of deviance, establishing a difference between criminals and non criminals; an emancipation which would be made particularly possible by the abandonment of the search for the cause of this very distinction (Young, 1997a; Milovanovic, 1995, 1991). In contradistinction to the playful attitude, the affirmative one aims to go beyond postmodernism, in authorizing itself to develop “contingent universalities” (Henry and Milovanovic, 1996, 119), universalities without which the ‘denying of others’ could not be established. What is at stake is thus the (re)construction of crime in equalitarian politics; deviance is still sociopathologically conceptualized.

The second avenue that affirmative postmodernist criminology takes is constituted by the presentation of theorists foreign to sociological interpretations. Thus we are presented with summaries of some dimensions of Thom’s, Heisenberg’s, Godel’s, Poincarré’s, Feigenbaum’s and Lorenz’s discoveries. The texts of such a criminology start (and are usually almost completely constituted) by a vulgarization of concepts proper to topological theory, such as the Mobius-band and the Klein-bottle (Milovanovic, 1997a, 1994b); of the very popular chaos theory, with its strange attractors and the Mandelbrot set (Henry and Milovanovic, 1996; Young, 1997a, 1991a, 1991b); of quantum mechanics; of non-Euclidian geometry, and so on. To this theoretical and conceptual shambles brought from so-called ‘hard’ sciences, that I will designate as “chaos etc.”, authors sometimes also mix poststructuralism, Piercian semiotics, Giddens’ theory of
structuration (1984), or Luhmann’s (1999, 1995) and Teubner’s (1994, 1993) autopoietic communication. Lacanian psychoanalysis is also part of the game in Milovanovic’s work. Chaos etc. and the Lacanian unconscious (structured as language) constitute two truths of these ‘postmodernists’ fiercely condemning any faith in the possibility to determine a truth distinct from the thinking operation establishing it. The frequent absence of any justification for the importation of chaos etc. in the sociological practice may irritate many readers. Two justifications are uttered: the heuristic value of chaos etc. (Milovanovic, 1994b, 42), and its ability to take account of social complexity, which would even permit “better” predictions (Young, 1997a, 48-49; Milovanovic, 1997b, 197). The introduction of chaos etc. in sociology of deviance seems to naturally associate the latter to postmodernism, since ‘hard’ science theories mobilize, as analytical philosophy does, catch words such as undetermined, contingent and randomness.

Contrarily to what is pretended by its representatives, this criminology does not abandon the ‘modern’ search of causes. Rather, the notion of causality is modified with the help of the “postmodern science” (sic): “a nonlinear assumption may lead researchers to develop model of causation that allow for the discontinuous, the random, the spontaneous, ironies, contradictions, and chance events that have no other explanation” (Milovanovic, 1997b, 217; Henry and Milovanovic, 1996, ch.7). Chaos etc. would thus bring better predictive tools for the “behavioural science” that criminology would be (Young, 1997a, 44-45). Used in conceptualizing criminalized deviance, chaos etc. would enable us to ‘understand’ that (to borrow an example from biopathologizing works) two monozygotic embryos produce one “delinquent” and one “non delinquent”, or else that very little changes in taxation policies cause a disproportionate increase in crimes against properties. Still another ‘heuristic’ application of the popular “butterfly effect”:

In a basin with two attractors (each of which can be viewed as a torus loosely connected to each other), the geometry of behavior becomes ever more uncertain; one may move between anti-social and prosocial behavior; one may be involved in both criminal and prosocial behavior at the same time. Indeed, the one act may be criminal while the next unpredictable run of acts is prosocial. The concept of “the criminal” becomes very fuzzy while the geometry of crime becomes very complex (Young, 1997b, 82).

Using chaos etc. thus reveals itself as a pretension to go beyond the possibilities offered by mainstream criminology, characterized by its (post)positivistic epistemology and its absence of epistemological reflection on the object criminalized deviance. As illustrated by the above examples, affirmative criminology using chaos etc. reveals itself as an attempt to positively found anew its scientific basis. It is in vain that the reader may look for constructivist considerations when pieces of data are placed in the theoretical universe of chaos etc.. We thus note the authors’ incapacity to theoretically conjugate deconstructionism, chaos etc., structuration theory, semiotics, etc. Henry and Milovanovic (1996) pretend to achieve such a conjugation, but the use of the two theoretical avenues that I have delineated is realized in distinct times (de/reconstruction or chaologization). The poverty of chaos etc. in the interpretive endeavour is made clear as we see the authors leaving this universe and invoking Merton’s or unequalitarians’ theses, alienation and consumerist capitalism, or even Baudrillard’s hyperréalité (1981), to ‘understand’ the ‘chaotically ordered’ moves from prosocial to antisocial conduct (Young, 1997a, 47, 1997b, 87; Milovanovic, 1997b, 231, 1994b, 251). Reflections on the language-based constitution of criminalized deviance have disappeared to make room for an essentialization of criminals, as individuals exerting a power over others.
3.4 Ethical and Radical Constructivism

In the third discursive formation of criminalized deviance, the epistemological posture that is taken by constructionist and carceralist utterances is the one I call ethical constructivism. We could also call it selective constructivism. In these utterances, we see a certain distancing from the object deviance, reminding the Durkheimian imperative to “systematically discard any prenotion” (1895, 34), and the epistemology suggested by the authors of Le métier de sociologue (Bourdieu, Chamboredon and Passeron, 1980). In a first time, interpreting the construction of difference is conducted inside a search for the material modalities of the social construction of the ‘thing’ that the ‘social fact’ deviance is. In a second time, it is realized inside an examination of the discursive modalities of the social construction of the object deviance, which could then have no existence without these modalities. I have wanted to show how Foucault attempted to reunite these two epistemological moments, and to catch sight of some of the resulting confusions.

Constructivism is ethical because it is inscribed in a so-called critical sociological practice, the possibility of which being given by keeping a scission between the constructed object and its sociological construction (selective constructivism). In my view, it is for political reasons that this scission is maintained: if analyses of the discursive modalities constructing the object deviance take place in a scientific practice which finds its purpose in emancipating projects - (post)positivistic epistemology is rather oriented towards technical management of things and human beings (Habermas, 1976). The new kind of questions that this posture calls for is: how? For example: how is the object deviance discursively formed in criminological utterances? Thus, in ethical constructivism, the object is taken as the result of a process of designation, or of an institutional intervention, which become the objectivized symptom, not of any form of abnormality, but of a potential victimization or oppression having material, not simply discursive, effects. The existence of ‘reality out there’ is still taken as independent of the utterances constructing it. This very independence is put into question by postmodernists, who should, in a refusal to dissociate language and reality, pretend to radical constructivism. But I have shown that the constitution of an uttered deviance is more a possibility than a practice. Authors self-labelling themselves “postmodernists” usually practice an ethical constructivism after having established, through their critics of ‘modern’ criminology, the need for a radical constructivism. The evoked project of establishing “replacement discourses”, enabled through the authorization to develop “contingent universalities”, clearly shows that the interruption of deconstruction is realized on the political battlefield. Epistemologically, this “postmodern” criminology cannot be distinguished from the works of unequalitarians having a constructivist moment. Finally, for what regards ‘chaologists’, their espoused epistemology is obviously (post)positivistic. Their endeavour is postmodern only if we understand this qualification, not as it is usually done in social sciences, but simply in that way: the “science” chaos etc. comes after ‘modern’ science. Modifying the notion of causality does not impede the search for the cause of a still pathologized difference, which is at the center of this scientific project.
4. Last Words

In the selective browsing that I have proposed of the scientifically situated utterances about criminals, I did not strive to establish a history of ideas on criminalized deviance. Confronted to constructionists’ critique of positivistic criminology, and, above all, to the absence of a constructivist critique of constructionism in this field, I wanted to propose some anchorage points for a reflexive sociology of sociology of deviance. I have tried, following Foucault’s (1969) suggestion, to construct discursive systems whose rules are internal, instead of trying to interpret texts as symptoms of external modalities of social organization. Luhmann did show more clearly than Foucault how such systems are both autonomous and permeable (open through closure), and the impossibility, in this paper, to adequately discuss the relations taking place between discursive formations constitute one of the important limits of my contribution - let alone the social effects of these formations, particularly their deep influence on a juridical system always seeking ‘reasons’ to prohibit and to punish.

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NOTES

1. See Carrier (2006) for a survey of the problems which spring from the use of the social control concept in what has been termed ‘the social reaction to deviance perspective’.

2. Against witches, for example, one method to ascertain the presence of evil was to drown the women. As everybody knew, a demon can survive even if deprived of oxygen. Obviously, this method was inconvenient for it was killing innocents.

3. Mannheim’s paradox is held in the following question: “what is the epistemological status of a discourse about ideology if all discourses are ideological?” (Ricoeur, 1997:27).

4. According to Shoemaker (1990:17), Lombroso’s list of elements symptomatic of atavism also included, among jaws, cheeks, ears and others, the item “tattoos”.

5. For more details on Lombroso and the criminal personality constructed by his students, see notably Garland (1985), Pföhl (1985), Yochelson and Samenow (1976), and Ellenberger (1969).

6. See the critical survey of this topic offered by Sutherland and Cressey (1978).

7. For a survey, see Andrews and Bonta (1994), and Doren (1987).


9. For an epistemological critique of the cognitive-behavioural approach, see particularly Rorty (1991a, 1980).

10. Yet another example, less often evoked, is that of drapetomania: an insidious mental disorder which only manifested itself in black slaves of colonial America. Its main symptom was a frenzied runaway towards the limits of the master’s domain (see Ben-Yehuda, 1990).

11. The notion of opportunity is quite differently understood in the second discursive formation, where it refers to the possibility to commit a prohibited action in a given situation.

12. One can also find other examples of the formation of the object sociopathologized deviance around the notion of social opportunities in Paugam (1991), Castel (1995a, 1994), and in analyses of the American “underclass” (Sliver, 1994; Herpin, 1993).

13. Such conceptualizations usually lead their authors to conclude that deviants, being products of structural inequalities, are in need of assistance instead of punishment (see, for example, Mathiesen, 1994). We could thus see the production of a victimized deviance. Habitually, such critics are articulated around analyses suggesting the endangerment or the end of the Welfare State.

14. See Garland (1990, ch. 4 and 5) for an extensive survey of Marxist variations in sociology of deviance.

15. Another attempt is Caputo and Hatt’s Beyond Critique: Toward a Post-Critical Criminology (1996). The authors’ suggestion is to replace criminality and the criminal, criminology’s traditional objects, with governance.

16. For a survey of this approach, see Ferrell and Websdale (1999), Ferrell (1998), and Hamm and Ferrell (1998).

17. This citation reveals a conception of the ethnographic practice which corresponds to its dominant forms until the 1970s, maybe the 1980s. But since then, such a conception has been heavily put into question. Proponents of a naturalist criminology seem, by the epistemological posture they espouse, to have failed to hear the debates. This is particularly clear in the very absence of epistemological and theoretical questioning on the role of writing in the formation of
the Other and his ‘culture’ – here, the deviant. See particularly on this Denzin (1998, 1997), Marcus (1998), Gubrium and Holstein (1997), Atkinson (1990), and Clifford (1986).

18. This summary should not lead to associate Rawls to utilitarianism; on the contrary, his theory of justice is conceived as an alternative to it.

19. See Nozick’s (1974) strong critic of such a conception.

20. In what regards reason, Melossi and Paravini (1977) showed that Bentham’s Panoptical project, applied to prison, was conceived to produce fully rational subjects out of the ‘dangerous classes’.

21. One could ask: on which basis can we consider that to justify ‘rationally’ an action suffices to explain it?

22. Although strategic deviance is founded discursively on an independent basis, we see how it is nevertheless penetrated by bio/psycho/sociopathologists’ discourses. On the interpenetration of independent discursive logics, see Foucault (1969), Luhmann (1995), and, for a less abstract discussion, Carrier and Quirion (2003).

23. Among the other critics that can be addressed to strategic analysis, one would refer to Habermas’ concept of communicational action (1987) and put the expressive dimension of human behaviour under the spotlight.

24. Control measures established in this perspective give rhetorical munitions to contemporary prophets of the Orwellian Big Brother thesis. This is notably the case in Gary T. Marx’s “Maximum Security Society” (1985).

25. For some postmodernists, the cause of evil is also located in the repression of difference. But repression is then conceived as an authoritarian abolition of difference in the creation of a unitary form, of an object, and, in ethnography, of the Other. See notably Crapanzano (1986), Tyler (1986) and Pfohl (1993a).

26. For a commentary on Spector and Kitsuse’s work’s influence, see Miller and Holstein (1993).

27. In the Canadian case, for example, numerous authors suggest that a desire to control Asian people on the West coast is one of the main factor explaining the birth of the prohibition, which was first to prohibit non-medical opium trade; see Carrier (2004).

28. The constructivist posture implies a fusion of ontology and epistemology (Guba and Lincoln, 1998), an anti-essentialism (Schwandt, 1998) which is not assumed by the authors of Constructing Social Problems.

29. One could thus blame me for having situated Becker’s works in constructionism instead of in unequalitarianism.

30. Be it by the threat of law’s force, by pastoral charity, by a permanent and thorough disciplinary grid examining utility, performance and conformity, or else by governmental strategies such as vaccination and urban spaces’ configuration, the Foucaultian power always circulates inside other kinds of relations: “power is always born from things different from itself” (1978:631). For Foucault, as such circulation of power shows, power is a relational matter having no substance: “in fact, power is a set of relations” (1977:302). According to him, power is too uncertain and moving, too weak and powerless (178:629), to be thinkable in terms of capacity. It is the idea that power relations are reversible and labile, or that power is, in the end, powerless, which enable many formulas to bear some meaning; formulas like the following ones: “where there is power, there is resistance” (1976c:125); “if there are everywhere relations of power, it is because there is liberty everywhere” (1984c:1539); “that through which power was strong become that through which it is attacked” (1975b:1623). Such powerlessness of power rests on a conception of power relations in which what is at stake is to direct others’ conduct (1981b). Others’ “liberty” is necessary: “power is exercised only over free subjects, and only insofar as they are free” (1982:221). Liberty is here simply taken as one’s possibility to choose irrespectively of any constraint: in a completely unequal relation, Foucault would see “a certain form of
31. The oxymoron of the positive constraint stems from the Foucaultian attempt to bring forth a de-juridicized conception of power. According to Foucault, the “negative” forms of power hide the panoply and extensive character of seductive strategies, of which the “vocabularies of motives” (Mills) would articulate themselves to positive values. Despite all expressions of a “negative” power - a power saying no and acting through “uttering the rule” - power relations are, before all, more like a soft technology of pleasure and well-being, somewhat like Huxley’s Brave New World. Despite all Foucault’s attempts to de-juridicize power, he does not manage to dissociate it from the idea of constraint. The positive constraint is to obey power in a non-masochistic pleasure (1981a:1019). This might be, in Nikolas Rose’s formula (1999), “the obligation to be free”.

32. Nevertheless, as did Spector and Kitsuse in the 1970s, Ibarra and Kitsuse practice a selective constructivism, since their descriptions of the modalities through which an object is constructed are realized as if it were escaping the practical context of their utterance. In sum, Ibarra and Kitsuse quite partially answer the epistemological problems of constructionism: if the object is constituted by language-related processes, which define it without any reference to its ‘materiality’, the scientifically located description of these processes is still based on an access to the ‘real’ which is not a simple language game. In my view, the authors try to maintain the authority of the scientific definition of reality, without which the sociological activity may seem to lose its meaning. For two different critics, see Michalowski (1993) and Troyer (1993).


34. It is postmodernism, not postmodernity, that interests me here. That is, not to propose a discourse on the arguments establishing the (near or past) constitution of a postmodern society, but only to describe the postmodernist endeavour in academic institutions, particularly in sociology of deviance. On some of the above mentioned arguments, see notably Freitag (2002, 1995, 1986), Luhmann (1998), Wagner (1994), Bauman (1992), Giddens (1990), Lipovetsky (1983) and Lyotard (1979).


36. For example, Bourgois (1995:14) wrote:

Deconstructionist “politics” usually confine themselves to hermetically sealed academic discourses on the "poetics" of social interaction, or on clichés devoted to exploring the relationships between self and other. Although postmodern ethnographers often claim to be subversive, their contestation of authority focuses on hyperliterate critiques of form through evocative vocabularies, playful syntaxes, and polyphonic voices, rather than on engaging with tangible daily struggles. Postmodern debates titillate alienated, suburbanized intellectuals; they are completely out of touch with the urgent social crises of the inner-city unemployed. Scholarly self-reflection often degenerates into narcissistic celebrations of privilege. Most important, however, radical deconstructionism makes it impossible to categorize or prioritize experiences of injustice and oppression. This subtly denies the very real personal experience of pain and suffering that is imposed socially and structurally across race, class, gender, sexuality, and other power-ridden categories.

37. These texts start by educating the reader about the theories and concepts of this non-exhaustive list, in a way which reminds us of the examples on which Sokal and Bricmont’s Impostures intellectuelles (1997) fed themselves.

38. Moreover, nowhere are we informed about why individuals would conduct themselves as do nanoparticles, or why we should think crime and criminals in reference to them instead of
referring to visible objects in a Newtonian framework (which is, despite its ‘modernism’, still taken as valid in the analysis of visible objects’ movements).

39. It seemed to me intellectually stimulating to construct these systems on the three proposed axiomatic principles. A reader may propose that there is only two such principles, placing strategic deviance inside deviance as the product of evil. This could be done, maybe, by pathologizing action by the idea that, in the end, ‘crime does not pay’, and that the action is thus symptomatic of the strategist abnormal reasoning. A feminine reader may propose four axiomatic principles, in stating the existence of a feminist standpoint epistemology – maybe in placing law as a patriarchal instrument outside of a typically sociopathologizing practice (this would be, from my ‘mannish’ viewpoint, problematic).

ABSTRACTS

This paper puts forward an analytic ordering of academics’ criminals, suggesting a sociology of sociology of deviance which seeks to grasp its modes of thinking. It is proposed that the totality of scientific utterances regarding criminalized deviance can be distributed in three sets, on the basis of the meaning given to crime. Pathology, choice and social construct are the three fundamental axiomatic principles organizing discursive regularities in academics’ works related to criminalized deviance and its control.

Dans cet article, je propose un ordonnancement analytique des criminels des universitaires, principalement en tentant une sociologie de la sociologie de la déviance visant la compréhension des opérations de ses pensées. Les énoncés scientifiques sur l’objet déviance criminalisée peuvent être répartis en trois ensembles sur la base du sens ou de la signification qu’y prend la délinquance. La maladie, le choix et le construit social représentent les trois principes axiomatiques fondamentaux permettant d’établir des formes distinctes de régularités discursives dans les travaux entourant la question de la déviance criminalisée et de son contrôle.

INDEX

Keywords: Control, Crime, Criminology, Deviance, Discourses, Sociology

Mots-clés: contrôle, crime, criminologie, déviance, discours, sociologie

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