

- good Hk!

THE SOCIAL CONSTRUCTION OF CRIME
IN CANADIAN ABORIGINAL SOCIETIES

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Excellent identification of your subject, purpose, and perspective. Also, good integration of "social construction".

The science of criminology is comprised of theories from many different perspectives, including sociology, psychology, economics, law and others; these theories are classified in many different ways. This paper will use the example of historic standards of justice in Canadian Aboriginal societies to explain one of the fundamental acknowledgements of sociological theories of deviance: that the definition of crime "varies by social location" (Hagan, 1991:1), in terms of both time and space. This "social construction of crime" (Hagan, 1991:21) consists not only of the end result (defined crime), but also of the component forces from inside and outside a society which result in that definition. This issue will be examined from a conflict perspective, in which the definitions of unacceptable behaviour vary according to whether or not the definition "is in the interests of the ruling class" (Jackson and Griffiths, 1991: 12). This macrotheoretical, structural look at crime and deviance focuses "on the way society is organized and its effect on behaviour" (Williams and McShane, 1988:4,6).

A truly accurate study of Aboriginal societies is made impossibly complex by three main factors. First, Canada's original inhabitants were not, and are not, a homogenous group, but "many peoples, cultures and languages in many regions"; any attempt to generalize their cultures is bound to fail because of over-simplification, and also runs the risk of stereotyping (Hamilton and Sinclair, 1991:29.) Second, the only record of Aboriginal cultures for the time before the arrival of Europeans

- excellent identification of the limitations of research!

in North America is oral history in the form of stories and legends. Those stories and legends may or may not have been passed down through the generations accurately, and may or may not shed light on the specific details which are needed for a complete picture of life in the pre-contact societies. This particular problem has been exacerbated by past government policies aimed at eliminating Native languages, and thus the vital oral histories (Hamilton and Sinclair, 1991:18). Finally, it is only in very recent years that attempts to study the cultures of Canadian First Nations peoples have admitted to, and tried to negate, the effects of Eurocentric attitudes on the part of the researchers (Hamilton and Sinclair, 1991:23). It can be argued that some recent researchers (for example, Farley Mowat) have gone full circle from the over-critical view that Aboriginal cultures were inferior to European, to the view that Aboriginal cultures were morally pure societies until tainted by the European presence. In consequence of this, there is an enormous amount of misleading information in the libraries and classrooms of the country regarding the past and current lives of First Nations peoples. As the 1988 Aboriginal Justice Enquiry of Manitoba pointed out:

- excellent use of a supporting quote.

Until we realize that [Aboriginal people] are not simply "primitive versions of us" but a people with a highly developed, formal, complex and wholly foreign set of cultural imperatives, we will continue to misinterpret their acts, misperceive their problems, and then impose mistaken and potentially harmful "remedies" (Hamilton and Sinclair, 1991:36).

Despite these problems, some common attributes of what were

considered acceptable and unacceptable attitudes and behaviours, the consequences of those behaviours deemed unacceptable, and the processes of development and continuity of those norms can be found.

Hamilton and Sinclair (1991:22) delineate a fundamental difference in the philosophies directing European and Aboriginal justice systems:

Again, excellent use of a supporting quote.

The emphasis [in European-based justice systems] is on the punishment of the deviant as a means of making that person conform, or as a means of protecting other members of society. The purpose of a justice system in an Aboriginal society is to restore the peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family who has been wronged.

good identification of cultural imperatives.

Any system of justice will obviously reflect the ethics of the culture in which it is developed and used. Dr. Clare Brant, a Mohawk psychiatrist, has categorized "at least 10 distinct Aboriginal cultural ethics" under the general headings of "conflict suppression", "projection of conflict", and "humiliating superego" (quoted in Hamilton and Sinclair, 1991:31). Dr. Brant considers the "ethic of non-interference" to be one of the most important rules in conflict suppression in Aboriginal societies; in "discouraging coercion of any kind, whether it be physical, verbal or psychological", it is often interpreted by Europeans as permissiveness. Another ethic which Dr. Brant deems important in a historic context, and problematic in current strelationships with the dominant society is the "exercise of emotional restraint", which can result in occasional explosions of violence. A difference in cultural ethics which Hamilton and

Sinclair (1991) find particularly troublesome is that:

the European concept of 'guilty/not guilty' runs counter to most Aboriginal philosophy, so much so that Aboriginal societies have no words for 'guilty' or 'not guilty' in their languages because they have not developed these concepts. (p.22)

good identification of the role of elders and views of human nature

In all North American Aboriginal societies, elders have always played a vital role in maintaining cultural norms, and thus standards of justice (Hamilton and Sinclair, 1991:19,20). An important basis of those norms is the belief in the holistic nature of a person's being; the belief that "the body, the mind and the spirit" must all be taken into account when assessing an individual's physical and mental state (p.19). This holistic perspective applies not only to individuals, but also to the world in general. Whereas Christian tradition teaches of man's right of dominion over the world, Aboriginal cultures stress varying degrees of near-equality between humans and animals: "Ojibway thought believes that man ...is the least important entity in creation" (Hamilton and Sinclair, 1991:21), and in the southern Yukon, "because humans and animals had to share the world, their first task was to learn how to get along together and how to respect each other's power" (Cruikshank, 1991:45).

only need pg. #'s for direct quotes.

excellent integration of Cruikshank.

A common way of assessing the severity of a particular form of deviance in Aboriginal society seems to be a judgement as to whether or not there was a threat to the community at large. The Inuit recognized two types of deviance, "private wrongs" and "public crimes":

a key concept of many Aboriginal cultures is "flexibility" in reaction to conflict c.f. Euro-Can. sys. of criminal code penalties.

Private wrongs became public crimes in Inuit culture when the behaviours involved were perceived by the community as constituting a threat to the welfare or survival of the group at large. (Cavan, quoted in Hagan, 1991:3).

good linkage to environment

Murder is one of the acts that Europeans generally consider a consensus crime, one that ^{a majority} all would agree is a crime. In Aboriginal cultures, though, that was not always the case. There seems to be a correlation between the severity of living conditions of a particular group and the severity of sanctions against any person who might threaten the security of that group: to the Inuit, who lived in conditions that Europeans usually considered unsurvivable, infanticide or abandonment of the sick or elderly was not considered a crime in times of food shortage. The hunter was the most valuable member of the family or tribe, and thus was the last to starve (Mowat, 1951:171). Even when both European and Aboriginal societies viewed a person's death as murder, it was viewed and treated in different ways:

In Europe murder was an offence against the state; among Indians it was an offence against the family of the victim. European law demanded the murderer's life as atonement to the state; Indian custom made his life forfeit to his victim's family. In Europe, the state apprehended the murderer; among Indians it was the family's obligation to do so. [In Indian cultures,] the obligation of blood for blood could be commuted into a payment of valuable goods by the murderers own kin-folk to the relatives of his victim (quoted in Hamilton and Sinclair, 1991:27).

Death in other forms was often viewed differently as well:

"Suicide is not lawful in our eyes but as it comes to the People it is a great, and a very heroic, sacrifice" (Mowat, 1951:172).

Slaves in tribes such as the Tlingit could be clubbed to death

- can you elaborate on the issue of community peace/harmony vs. reactions to conflict?

merely as a display of power or wealth, and anyone from outside the tribe who threatened their trading or hunting areas could be killed at will (Schwatzka, 1887:39.)

For most crimes, in most tribes, punishment was agreed upon by the community at large. Although the system appeared to many non-natives as being totally informal, the pattern of sanctions was in fact consistent within a tribe, being passed from one generation to the next by the elders. As long as group survival was not threatened, the sanctions were "usually mild in severity" (Hagan, 1991:3). "Behaviour was regulated by ostracism, shame and compensation for the victim's loss, even if only symbolic compensation were possible." (Hamilton and Sinclair, 1991:51).

Concepts of private property varied widely among the various tribes. The Inuit's view of theft was that "If someone took something which did not belong to him, it was assumed that he must be in dire need and that he would replace it quietly whenever he could do so." (Hagan, 1991:3). To the Tlingit, accumulation of material goods was a sign of wealth and power much as it is in European-based cultures. In contrast to Europeans, though, giving that wealth away at potlatches was a sign of power as well. As a result of these and other Native traditions, property crimes appear to have been rare (Jackson and Griffiths, 1991:23).

Hamilton and Sinclair (1991:18) note that "North American Aboriginal societies were dynamic cultures that adapted constantly to meet changing circumstances". With the arrival of

from a conflict perspective, you also need to address the "imposition" of Euro-Can. law on Aboriginal peoples. Not always a matter of Aboriginal peoples gaining advantage.

the Europeans, changes in the rules of acceptable behaviour were initiated by the Natives themselves as they sought to accommodate new trading partners. This was accomplished particularly through marriages: "fur-trade society developed its own marriage rite, marriage *a la facon du pays*, which combined both Indian and European marriage customs" (Hamilton and Sinclair, 1991:57). These marriages not only enhanced trade, but also, because of inter-family allegiances, prevented much violence between the two races on the Canadian frontier (Newman, 1985:202-204).

In the Northwest, the Hudson's Bay Company brought the first enforced non-native laws, though the Natives were not initially the prime target of those laws:

"In 1815, the HBC issued its own penal code that defined as illegal a restricted range of offences, clearly indicating that the company was interested in enforcing laws only when the offences involved threats to their monopoly of the fur trade. ... Actual crime was said to have been rare..." (Jackson and Griffiths, 1991:23)

As the numbers of Europeans increased, and the Natives became more and more a minority in their own land, the laws of the European majority were increasingly used against the Natives, enforced by the North West Mounted Police, and friction between the groups intensified. The police spared no expense when they deemed it necessary "to make it unmistakably clear [to the Natives] that the land was no longer theirs alone", and that "white man's law, not the traditional justice ... would prevail" (Moyle 8). The year-long search and subsequent trials of the Inuit men Sinnisiak and Ulukuk for the murder of two priests in

} significance of this stance is that it has continued into the 1990's - only one criminal law in Canada.

bring!

1915 is a classic example of colonial paternalism, with no respect for, or understanding of, the native culture. An act which was considered self defence by the Inuit men, who were fearful of being murdered by the priests, was considered murder by the Canadian justice system (Moyles, 1989).

The differences in cultural norms and concepts of justice between Canadian Aboriginal societies and the dominant European-based society continue to cause mistrust, misinterpretations, and discriminatory practices at all levels of the legal system. The "social construction of crime" is significant in a conflict perspective of Canadian society because of its message that only the interests of the dominant segment of society are to be considered. The resurgence and renewal of Aboriginal values may be the turning point in altering that concept, allowing different cultures to have different justice systems in the future.

Murray, your paper is well researched, clearly written, and directly addresses the assignment topic focus. Excellent work! particularly your integration of relevant spoken information! The 2 areas I would like to have seen you briefly elaborate on are: (1) your discussion of the social construction of crime, and; (2) specific conflicts b/w Aboriginal and non-Aboriginal systems of dispute resolution.

In brief, excellent identification of your theoretical perspective, the social construction of crime, Aboriginal cultural imperatives, and the major differences b/w Aboriginal and non-Aboriginal approaches to dispute resolution.

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Excellent research!

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