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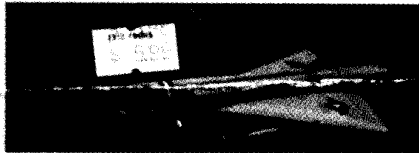


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Political Trials and the Social Construction of Deviance

Paul G. Schervish
Boston College

QUALITATIVE SOCIOLOGY is dedicated to the qualitative interpretation and analysis of social life. QS does not restrict theoretical or analytical orientation and welcomes manuscripts based on research methods such as interviewing, participant observation, ethnography, historical analysis, content analysis and others which do not rely primarily on numerical data. Every manuscript is reviewed by three scholars, and the results of the reviews are made known to the authors.

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ABSTRACT: In the 1960s and early 1970s deviance research, especially in the labeling perspective, was concerned with the question of how individuals or groups become defined as deviant. Since then, the political analysis of deviance has come to ask the more fundamental question of how deviance becomes constructed through political processes. A political trial is one particularly transparent situation in which narrower political processes for imputing deviance elicit more fundamental interpretations of political modes of deviance construction. In order to explore the workings of the deviance construction process, the present study examines the two defense strategies employed on behalf of the defendants in the trial of the Chicago 15, a group of thirteen men and two women who destroyed selective service files on the south side of Chicago in May, 1969. The first strategy is the previously studied "motivation defense," wherein the moral righteousness of the defendants' purpose is pleaded as cause for their exculpation. The second is the unique "cultural insanity defense," which asserts that the defendants were so profoundly deluded in their moral indictment of the government that the jury should return a verdict of culturally insane rather than criminally guilty. The first section of the paper summarizes the circumstances of the trial. The second and third sections analyze each of the two defense strategies, focusing on their legal and political logic and on the prosecution counter-strategies they engendered. The final section indicates a number of theoretical implications for the further development of the political model of political trials and of deviance construction in society at large.

In the 1960s and 1970s deviance research, especially in the labeling perspective, was concerned with the question of how individuals or groups become defined as deviant. Since then, the political analysis of deviance has come to ask the more fundamental question of how deviance is "created, maintained, and changed through political processes" (Lauderdale and Inverarity, 1980:36). This shift emphasizes relations of power not only in the imputation of labels but in the very construction and maintenance of the system of control. Given this general paradigm shift, the next logical research question is how the deviance determination process is played out in particular social settings.

A political trial is an explicit occasion in which adversarial parties contend over the normative legitimacy of the legal order as a whole rather than just over the distribution of outcomes within the existing legal dispensation.¹ The highly structured legal apparatus of a court renders explicit both the mechanisms of deviance determination and the construction of the order itself. Efforts to depart from or extend the procedural "rules of the game" are analytically transparent and

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raise the research question of why such departures may be so tightly, even improperly, constrained, on the one hand, and so avidly pursued, on the other. The answer, reached by virtually all students of political trials (e.g., Gray, 1970; Danelski, 1971; Hall, 1971; Hakman, 1972; Sternberg, 1972; Bannan and Bannan, 1974; Barkan, 1977, 1980; Parker and Lauderdale, 1980), is that the type and intensity of legal tactics is an index of the fact that trial actors are engaged in fundamental assertions and counter-assertions about the legitimacy of the political order, including the trial court which comes to represent the political system as a whole.

This recognition by researchers of the broader political meaning of political trials is characterized by Parker and Lauderdale (1980) as a shift from a status-degradation to a counter-denunciation model of power relations. More generally, Burawoy (1981) has distinguished between struggles over the distribution of power within a given dispensation (struggles *within* a terrain of contest) and struggles over the structural constitution or shape of power relations (struggles *over* the contested terrain). Reviewing the trials of the Catonsville Nine and the Chicago Seven as well as some less celebrated cases (Bannan and Bannan, 1974; Berrigan, 1970; Clavir and Spitzer, 1970; and Becker, 1971), Parker and Lauderdale outline six conditions for a political counterdenunciation. The essence of these is that the accused must embark on a dual strategy to undermine the legitimacy of the court and prosecution and establish the moral rectitude of their suprapersonal motivation. Other researchers documenting the strategies of political trials have emphasized how the moral presentation of self by the defendants becomes tied to the legal strategy of jury nullification. This occurred in the conspiracy trial of Dr. Benjamin Spock (Mitford, 1969; Lukas, 1970), the Milwaukee Twelve trial for draft file destruction (Gray, 1970), and the trial of Barkan and his associates for chaining themselves to the Federal Building in Hartford, Connecticut to protest the Vietnam war (Barkan, 1977).

The present study examines the two defense strategies employed on behalf of the defendants in the trial of the Chicago 15, a group of thirteen men and two women who destroyed selective service files on the south side of Chicago in May, 1969. The first strategy is the previously studied "motivation defense," wherein the moral righteousness of the defendants' purpose is pleaded as cause for their exculpation. The second is the unique "cultural insanity defense," which asserts that the defendants were so profoundly deluded in their moral indictment of the government that the jury should return a verdict of culturally

insane rather than criminally guilty. The present study extends the research on the broader political aspects of political trials in two ways. First, it introduces the novel cultural insanity defense, indicating how it reveals a yet unexplored strategy for transforming a struggle to distribute outcomes within a political order into a struggle over the order. Second, it draws out the strategic logic of both the motivation and cultural insanity defenses, comparing them as two sociologically different paths for the social construction of norms and deviance.

The first section of the paper summarizes the circumstances of the trial. The second and third sections analyze each of the two defense strategies, focusing on their legal and political logic and on the prosecution counter-strategies they engendered. The final section indicates a number of theoretical implications for the further development of the political model of political trials and of deviance construction in society at large. Information on the trial was obtained from over four thousand pages of official transcript, mass media reporting and commentary, first-hand observation of the trial proceedings, and discussion with the defendants and defense attorneys.

The Trial of the Chicago 15

The Event

On May 25, 1969, at around 2:00 a.m., a group of fifteen people, including two priests and a seminarian, broke into a South Side Chicago draft board. The fifteen men and women, who became known as the Chicago 15, invaded the draft board record room, poured paint on many of the records within the room, carted thousands of individual files and 1-A ledgers outside to an adjoining parking lot, doused them with gasoline, and burned them. There they awaited arrest by the police. Their prepared statement read in part:

Today, May 25, 1969, we enter the Chicago Southside Draft Board complex at 63rd and Western to remove and burn Selective Service records. . . . We are confronting an extremely urgent situation in which the twin evils of American militarism and racism are monstrously interconnected. . . .

Born and raised in poverty and oppression, young men from American ghettos are forced to burn and kill poor peasants in a land of the Third World in order to preserve a "freedom" which they themselves do not even enjoy in their own land. . . .

As white Americans, we bear a special responsibility with regard to the Selective Service System and the war machine it feeds; . . . for we can no longer tolerate the atrocities it perpetrates upon our brothers in America, in Vietnam, and in other parts of the world. . . .

Our action is negative, but also creative. . . . In our elimination of part of the death dealing and oppressive system we mark the prelude to the creation of life and freedom.

The Motivation Defense

The motivation defense followed a two-stage logic to transpose a trial of a particular act into a trial of the political order. First it sought to obtain the opportunity for the defendants to express the ethical motivation behind their law-breaking activity. Given this, it then attempted to secure from third parties political benefits—for example, the refusal of the jury to convict despite clear evidence or admittance of guilt (jury nullification) and the galvanizing of public opinion (cf. Barkan, 1977). Although it is clear why finding a way for the defendants to voice their moral concern served the purpose of educating and crystalizing public opinion, it is not so obvious how the presentation of moral sentiment could be translated into an acquittal. The answer is found in the principle of jury nullification.

Jury Nullification. Jury nullification occurs when a jury mitigates the application of a law in a particular circumstance based on its appraisal that mere judgment of fact would not serve justice.² The claim that the jury must limit itself exclusively to judgment of facts is grounded in opinions of the U.S. Supreme Court and is established for federal and most state courtrooms. Nevertheless, an opposing position also enjoys some precedent in English and American legal traditions. As far back as 1792, Fox's Libel Act in England required that the jury be judge of the matter of law as well as the fact in order to temper the government's attempts to repress political dissenters (cf. Thompson, 1963:123). In America, the founders of the Republic such as Adams, Hamilton, and first Chief Justice John Jay based jury nullification on the need to restrain any repressive tendencies in the government. Later advocates such as Granville Williams in 1955 and U.S. Supreme Court Justices Harlan and Stewart (1968), based their support of the jury's right to judge the substance of a law on the claim that the jury's responsibility must be greater than mere fact finding since for this function the jury is inefficient and unnecessary (cf. Van Dyke, 1970:21).³

In the case of the Chicago 11, the defense attorneys who focused on issues of motivation never explicitly formulated their plea in terms of jury nullification, since federal courts exclude such an option. Moreover, the prospects for informally pursuing such a course appeared bleak in view of the jury instruction recited by the U.S. District Court Chief Judge Edwin A. Robson as the trial commenced⁴:

The Trial

The federal government indicted the 15 on four criminal counts for damaging federal property, mutilating and destroying draft records, interfering with the administration of the Selective Service System, and conspiring to damage federal property. However, not all fifteen participants were tried in court. Only ten of the defendants appeared for pre-trial hearings, and by the time the trial commenced only one more was present. The remaining four had gone underground or had left the country. As the now Chicago 11 went to trial, judges across the country were becoming increasingly apprehensive about maintaining courtroom decorum. Various groups of political dissenters had attempted to use the trial proceedings as a forum for airing their moral and political views and, at times, for endeavoring to demonstrate the moral bankruptcy of the American court system. But as judges became increasingly leery, the defendants became ever more determined to present their convictions.

The prosecution portrayed the case as straightforward: the accused, as their statement admitted, had broken into the South Side Selective Service offices on May 25, 1969, and with malicious criminal intent had destroyed a designated amount of draft records. Furthermore, the action derived from an explicit conspiracy dating back to April 15, 1969.

Defense strategies were forced to be more circumspect, since the 15 had already admitted performing the specific actions designated by the prosecution. There were four defense lawyers for the eleven defendants. Three lawyers defended seven defendants with the conventional motivation defense; the fourth attorney defended the four remaining defendants with the novel cultural insanity defense. The next section reviews the strategic logic of the motivation defense. The subsequent section details the logic of the cultural insanity defense.

Ladies and gentlemen of the jury, when you took the oath as juror this

morning, you became a part of our system of justice. You, in fact became judges in this case. Until this trial is completed, you will be the judges of the fact.

The court will be the judge of the law . . .

[Y]ou . . . are to judge this case only on the facts as you hear them from the witness stand, . . . and the charge as to *the law as given to you by the Court* [emphasis added]. (Transcript: 348-6; cf. also 61; 218-28; 279-87; 374; 3942-4003 *passim*)

Although this instruction seemed to preclude testimony concerning the moral reasoning of the defendants, the defense countered by pointing out that the fourth count of the charges concerned conspiracy and hence the minds of the defendants. Therefore, the defendants must be allowed to report their own mental reflections in order to provide a suitable defense to the charge (Transcript:2265-2269; 2828-41). In view of other circumstances,⁵ the threat of appeal on grounds of denial of defense proved successful and a restricted amount of testimony was allowed concerning the defendants' thinking.

The presentation of the defendants' motives followed various lines of argument akin to Sykes and Matza's (1957) well-known techniques of neutralization.⁶ One technique was to chronicle the defendants' moral biography. A repeated effort was made to depict how each of the defendants had lived with and helped the poor or possessed profound religious or humanistic orientations (cf. Transcript:411-414; 2095-98; 2627-35; 2651-55; 2948 ff.; 3043).

Besides affirming the moral character of the defendants, the defense strategy to win a favorable response from the jury and public also required shifting the focus from the legal to the moral meaning of the draft board action. To this end, the defense depicted the draft file burning as good for rather than detrimental to society. Among others (cf. Transcript:389-423; 2198-2203; 2989-94; 3050-7; 3109-11; 3205-7), a prime example of this tactic was the testimony of Joseph Mulligan, a Jesuit seminarian, who argued that the destruction of draft files was incidental to his fundamental purpose:

My intent was not to destroy the draft records as such but to influence change in foreign policy. . . . I was doing it as an attempt to say something about the connection between war and poverty, or to put it differently the relationship between militarism and racism in this country. . . . By staying there and publicly expressing that I had done this was part of the communication that was the intent of the action. (cf. Transcript:1693-1708)

Later, in an extended altercation with one of the defendants on the witness stand, Margaret Katroschik, the prosecution repeatedly pressured her to admit that her motivation was to destroy the draft records. Doggedly she denied such an imputation replying that her purpose was "to save lives" (Transcript:2994, ff.).

More aggressive still was the argument of objective necessity. Although righteous motivation may provide license for an act, objective moral responsibility makes the act necessary. When pressed to defend how destroying government property could be reconciled with a commitment to non-violent civil disobedience, the defendants claimed that the atrocity of the Vietnam war legitimized their draft file destruction. Their reasoning, contained in the letter left by "The 15" at the draft board during their action and introduced as evidence by the defense, was that the existence of 1-A draft files abetted the perpetuation of an immoral war by forcefully recruiting civilians to wage it (Transcript:934-5):

Do not consider our action an attack on any of you [Selective Service employees] personally. We mean no harm to any of you. We act to save lives, and harm no one. After your anger has subsided please reconsider what we have done. All of us are human beings trying to live our lives as fully as possible. To us this meant action. We are not sure what it means to you. We would like to know.

We had to act, trying to end the murder of men in Vietnam and the rest of the world; 35,000 men is 35,000 too many. We act with peace and love. Try to understand, and we will try to understand also.

Moreover, they claimed a disproportionate number of underprivileged blacks had died in a war to perpetuate white privilege. The real injustice was not the destruction of the files but the war and the draft system (cf. Transcript:826-29).

To counteract these inroads, the prosecution focused on discrediting the moral integrity of the defendants, dramatically emphasizing the willful maliciousness behind the record burning, and repeatedly resisting the defense's focus on motivation rather than on the law.

First, the prosecution sought to establish that the defendants' so-called moral action was in fact merely an irresponsible expression of frustration rather than a constructive effort to solve the problems of society (cf. especially Transcript:2072-82; 2132 ff.). The United States attorneys pointed out that the defendants' claim to innocence on the grounds that they acted with "higher motives" or according to some "higher law" was fallacious. In his closing argument the U.S. attorney—combatting defense assertions that the defendants be com-

pared to Martin Luther King, who also “broke the law to change it”—claimed the defendants “rationalized their action by saying their goal was to end the war in Vietnam and end racism.” The attorney scoffed at this position as analogous to maintaining that “if we destroy enough we shall achieve peace on earth and good will toward men.” The defendants are “utter fools,” he chided, to compare America to Nazi Germany; and “anyone who destroys in the name of liberty is a friend to no one” (Transcript:3785 ff.).

The second tactic to combat the motivation defense was the prosecution’s detailed description of how the defendants’ actions were maliciously premeditated (Transcript:2931-35; 3809-17). To this end, the prosecution presented forty witnesses over a period of two weeks in its effort to emphasize the moral turpitude entailed in what the defendants had already admitted.

Finally, the prosecution adamantly resisted every attempt by the defendants under the motivation defense to focus on their political or moral motivation instead of their action. As I indicated, the judge reluctantly permitted testimony of the defendants’ state of mind but only to the extent it was required to allow the defense to present proper evidence against the conspiracy charge (cf. Transcript:1582-4; 1613; 1693-1714; 1803-6; 2264-8; 2451-76; 2862-3). But at many points the prosecution successfully prohibited such testimony (cf. Transcript:1803-6; 2264-8; 2420-1; 2515, 2832 ff.). In its final argument before the jury (cf. Transcript:3809-17; 3915-30), the prosecution emphasized that there was no disagreement between prosecution and defense concerning the actual actions of the draft record destruction. The difference, the prosecution observed, was the false assumption by the defendants that somehow their appeal to “higher motivation” or a “higher law” sanctioned an action that was in fact contrary to their cause of peace and the legal order.

The Cultural Insanity Defense

The cultural insanity defense combines the two-stage logic of the motivation defense into a unitary line of argument. Instead of depending on the response of third parties to determine whether broader political aims become fulfilled, the cultural insanity defense defines the situation such that these “neutral” third parties are brought squarely into the trial as allies or opponents. This is because the cultural insanity defense provides for only two alternatives: either the

defendants are correct in their beliefs about the system (in which case they deserve no punishment) or they are so profoundly deluded (in which case they must be declared culturally insane rather than legally guilty). A third option allowed by the motivation defense, namely to consider whether the trial of facts should be converted to a trial of moral and political authority, is excluded.

Third parties are not invited to judge whether the terrain of contest should be transformed into a contest over the political terrain; the trial is framed from the beginning as a contest over political power. It could be argued that on one level the cultural insanity defense merely functioned as an alternate strategy for the defendants to voice their moral and political concerns and win acquittal through jury nullification. In fact the prosecution, discerning this tendency, sought to expose the insanity pleas as just such a subterfuge:

[T]he main thrust of the Government’s point here is that this is not an attempt to interpose a defense, but rather an attempt to get into the motive aspect, which is clearly not allowed by virtue of the Moylan case, by virtue of the fact that that is irrelevant. It is an attempt to get through the back door that which they cannot get in through the front door. (Transcript:2200; cf. also 2111-23; 3818-35)

But as will be shown, this novel plea was not contained. Because it attached itself to the canons of the conventional insanity plea, the defense attorney was able to persist in his broader political line of argument even after the judge ruled that only medical testimony was admissible.

Following the English tradition, American law maintains that every crime is composed of two elements: a criminal *act* of law breaking and a criminal *intent* or *mens rea*—the guilty mind or intention to commit an injury (see Moran 1981:26). Technically, all that is needed to establish that a law-breaker possesses criminal intent is evidence that the person voluntarily intended to do that which is against the law.⁷ Any *defenses to crime* such as matter of accident or misfortune, age, mistake of fact, duress or compulsion, and insanity are valid only upon evidence that criminal intent is absent.⁸

Except for the doctrine of irresistible impulse, the English McNaughtan Rules establish the ground for criminal insanity:

[To] establish a defense on the grounds of insanity, it must be clearly proven that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from the disease of the

mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. (quoted in Moran, 1981: 2)

According to the judges in the McNaughtan case, motivation must not be confused with intent. Motivation concerns the rationale for an act while intent concerns the ability to know that an act, for whatever motivation, is contrary to law. The basis for a person's inability to reason adequately is, presumably, mental disease.

Superficially, the defense to crime by reason of absence of intent may be viewed simply as an example of the neutralization tactic of denial of responsibility.⁹ In this view, the four defendants were struggling to obtain the less consequential label of "insane" rather than "guilty." But since the jury was almost sure to find the defendants guilty, this characterization of the strategy's function is inadequate. Instead, given the risks accompanying this tactic,¹⁰ the actual rationale for this approach is to be found in the broader political concern to attack and discredit the moral authority of the government and others supporting the war effort. In this way, the judge, jury, prosecution, and public were informally put on trial along with the defendants. The court proceedings were transformed from a trial in which third parties apply one or another label to the defendants to a trial in which the application of a certain label to the defendants entailed the application of a correlative label to oneself.¹¹ For the sake of exposition, the unitary logic of the cultural insanity defense may be decomposed into three interconnected arguments: (1) opening the proceedings to testimony arguing for a cultural definition of insanity; (2) categorizing the radical political views of the defendants as "delusions" and thereby evidence of insanity; and (3) drawing out the implication that if the defendants are sane, those who disagree must be insane and incapable of passing judgment.

To establish the cultural insanity of the defendants, the defense (in the absence of the jury) introduced anthropological and social psychiatric testimony claiming that mental illness is defined ultimately by cultural norms and not by the presence of an objective organic disease (cf. Transcript:2061-72; 2538-94; 2625; 2686-93). Heeding prosecution objections, the judge disallowed any further such testimony¹² and ruled that the jury should determine the sanity of the defendants according to the "medical testimony" accumulated in the psychiatric examination of the four defendants (cf. Transcript:1645-57; 2730-2739; contrast 3349-51 to 3390-4 and 3355-59). This reliance on

the medical model was tested when the defense attempted to subpoena Vice President Spiro T. Agnew to testify concerning his earlier reference to some dissidents in America as "criminally insane." The judge quashed the subpoena however, because as he said, Agnew was not medically qualified to testify about mental illness (cf. Transcript: 1645-57).

Despite this setback, the defense was able to proceed even within these restrictions to its presentation of the delusions that plagued the minds of the defendants. Ironically, the widest aperture to such testimony concerning what came to be termed "the state of mind" of the defendants was provided by the prosecution. Seeking to counter the defense plea with traditional psychiatric evidence, the prosecution introduced testimony concerning the defendants' opinions and beliefs, thereby enabling the defense to counter with its own expanded cross-examination (cf. Transcript:2603-4; 3349-51; 3429-90).

A second element of the defense strategy was to depict the radical political ideas of the defendants as "delusions" and therefore grounds for acquittal by reason of insanity. The attorney pleading the insanity defense argued in his opening statement that since the defendants at the time of the draft file burning were under delusions concerning the important realities of American domestic and foreign policy, they could not be held criminally responsible for their actions (Transcript:411-22):

the evidence will show a number of such delusions that my clients are afflicted with, and those delusions . . . are evidence of their insanity. Now, at the conclusion of all the evidence, I shall invite the jury to find my clients not guilty, and I shall expect the reason for that verdict to be that they are, in fact, insane because of these deluded beliefs, or as evidenced by these deluded beliefs that they have. (422)

That these delusions are so diametrically opposed to conventional thinking, the attorney continued, substantiates his clients' insanity:

Well, then, in one very broad stroke, the delusions of these defendants go to the structure and the goals of our institutions. You and I as sane people know that our institutions have one kind of structure and certain sets of goals. These deluded people believe that our institutions have a structure very different from that which you and I as sane people would ascribe to. . . . They also have delusions as to certain details of present history. For example, they are deluded to believe that on November 15 of last year [1968] the most important thing that happened in Washington, D.C. . . . was the fact that something between 300 and

500,000 people went to Washington to call on the head of state. That is a delusion of their part. . . . We as sane and undeluded people know that the most important event on that day was the football game between Purdue and Ohio State [which President Nixon reportedly watched during the rally]. Another delusion: we have been informed and we have no reason to doubt that it is true, that if we do not behave in Viet Nam [sic] militarily as we do, that Chinese junkies will sail into San Francisco Bay and take the place over. (419-20)

Later in the trial, one of the defendants, Father Nicholas Riddell, was allowed to elaborate as a lay expert on the "delusions" of his co-defendants. Over prosecution objections that Riddell's extensive counseling experience did not constitute a sufficient basis for such testimony, the priest evaluated the erratic behavior of his co-defendants as "crazy." He claimed their mode of dress, social service to the poor, and hopes for eliminating poverty and racism and for ending the Vietnam war were proof of their deluded minds (cf. Transcript:1820-32; 2451-76; 2488-91). The thinking of the defendants, as it was manifested during a "sensitivity session" held the night before the draft file burning, confirmed this diagnosis. He observed that he and his co-defendants expressed deviant and seemingly insane ideas and behavior; for instance, their belief that the United States government was racist and stifled dissent. The priest also noted the shabby manner of dress and hair style that the defendants sported. Moreover, he noted the "crazy" action of one of the defendants who, at the risk of being burned, made extraordinary efforts to push all the draft files into the fire that they had built during the action (cf. Transcript:1820-30). Continuing his testimony as a lay witness, Riddell summarized the distorted beliefs of his co-defendant, Linda Quint, stating that she (and presumably all the defendants) believed:

that in America there is a small power group of wealthy people who are exploiting the poor people in this country whether they be black, brown or poor whites, and what is going on in this country . . . is extended into foreign countries; and she believes that soon all free speech is going to be wiped out. . . . That it is coming down to the point now where soon in America for a person to speak his beliefs in anything that is divergent at all from the administration will be something where people will either be killed, imprisoned or enslaved. (Transcript:1820-24; cf. also 3093-5)

The third tactic employed by the defense was to draw out the aggressive implications of the logic of cultural insanity. To consider the case of the defendants is to consider the case of oneself. Usually,

the jury, judge, and public are third-party observers judging the legal status of the defendants. But as framed by the defense attorney at the beginning and end of the trial, this act of determining the status of one trial actor simultaneously elicits a determination of one's own status. The opening statement of the defense attorney to the jury best exemplifies this logic: "If at the end of the evidence you should find that their beliefs are not delusions and that they contradict your beliefs and mine as sane people, then I shall suggest that the contradiction implies that our beliefs, and hence we are insane, and that [it] would be scarcely fitting for insane persons such as ourselves to find sane people guilty" (Transcript:422-3; cf. also 3702-4; 3818-26).

The implications of this strategy—that a guilty verdict is in fact an admission that it is sane to maintain that the United States is a racist, imperialist power—were not lost on the judge, prosecution, or public. For example, the juridical entanglements leading up to and including the prosecution's successful effort in having the four defendants examined by a psychiatrist and certified sane led to the article by the Chicago columnist, Mike Royko, sarcastically headlined: "Four Who Burned Draft Board Records Just As Sane As the Rest of Us." The columnist spells out the symbolic victory for the defense no matter which verdict ensues from the trial. Royko invites his readers to consider the effect the headline

might have on the morale of, say, the normal, hard working officials who are in charge of developing new nerve gases when they read that draft record burners are considered just as sane as they are.

Think of how the President might feel when he hears that his own Justice Department lawyers are saying that that kind of people are sane, just when he is deeply involved in getting us out of Vietnam, by sending us into Cambodia to seek out and destroy the enemy's hidden rice bags. Surely they will never convince Vice President Agnew, the nation's conscience and healer, that people who burn draft card records are as sane as he is. (*Chicago Daily News*, May 26, 1970)

This cultural insanity plea caught the prosecution by surprise. Because it was couched within a recognized legal tradition, it forced the prosecution to take it seriously. Besides the tactics to define the four defendants as psychologically sane and to bar non-medical testimony (see above), the major prosecution effort was devoted to arguing that disagreements even on the fundamentals of politics and law may occur without either party being medically insane. This, of course, was the key issue. The defense position was if the jury finds the

defendants insane it cannot judge them guilty; if it judges them not insane it must admit their political actions as sane and itself therefore insane and unable to judge the criminality of the defendants. To break this logic the prosecution strove to reaffirm the category of "criminally sane" as part of the trial discourse. The first step was taken by the assistant prosecutor who pressed the notion that many critics of American policy who espouse anti-establishment views do not resort to ploys of cultural relativity when they are resisted. In his cross-examination of Linda Quint, one of the defendants pleading cultural insanity, the following exchange ensued:

- Q: Are you aware, Miss Quint, that distinguished leaders of the black community themselves believe that any what we might call troubles in the black community are the result of people demanding their rights and not the result of the Communist plot?
- A: I have never heard that statement by any black leader, so I can't comment on that directly.
- Q: Have you ever heard university leaders such as, recently, Mr. Kingman Brewster of Yale, state that the universities have not met the needs of the students? (Transcript:2132-3)

Similarly, it is common that fundamental policy disagreements occur among socially legitimate persons who are unquestionably sane:

- Q: Have you ever heard any leaders of this country, social, political and religious, express the same views [as the defendant Durkin who is pleading insanity]?
- A: I have heard them talk about law and order but nothing about welfare.
- Q: Do you recall a two-hour speech on television by the President of the United States regarding the entire revamping of the welfare system some three months ago? Yes or no.
- A: I don't have a tube. (Transcript:2135-6)

During his cross examination of Nicholas Riddell, U.S. Attorney Hoffman consummated this line of questioning aimed at establishing that the defendants were both sane and guilty. If those who share views of the defendants are sane, then simply holding such views is not a sufficient condition of insanity. Hoffman initiated the following exchange, asking Riddell whether he had ever "heard or read" that President Nixon and various Senators had expressed concern about social issues:

- A: I have heard but I have not believed.
- Q: Have you ever heard Senator McGovern say that he was concerned with the war in Vietnam?
- A: I have heard but I have not believed.
- Q: And have you ever heard Senator Percy say that he was both concerned with the war in Vietnam and also with the state of welfare departments in this country?
- A: I kept waiting for him to prove it, but I heard it. . . .
- Q: Would you say Senator Percy is mentally ill if he states that he is upset with the welfare payments. . . .?
- A: I would say a statement like this coming from a man like Senator Percy would be typical of all politicians in our country who state a sense of concern, but they do nothing about it, and I would state that not as insanity but as hypocrisy. . . . I would say he is a sane hypocrite. (Laughter)
- Q: When Senator McGovern says that he, too, is concerned with war in Vietnam, would you say that he is sane or insane?
- A: I read some of Senator McGovern's writings, and he is a man who speaks with a forked tongue, really, because he is talking about being with the oppressed people and, yet, he is part of the oppression in the country, and it is really either/or. . . .
- Q: Would you say he is sane or insane?
- A: A sane hypocrite.
- Q: Sane.
- A: Hypocrite.
- Q: Sane? (Transcript:1906-12 ff.)

Even though Riddell stressed that the Senators and the President were hypocrites he did concede the existence of the category of "sane hypocrite" and, by extension, "sane and guilty" for political actors. This admission was the opening sought by the prosecution who then asserted the criminal guilt of those pleading cultural insanity and proceeded to prosecute them in the same way it treated the seven members proposing the motivation defense.

Discussion

As expected even by the defense, all the defendants (except the four who failed to appear for the trial and one committed by the Court to a mental institution) were found guilty on all four counts and sentenced to two five-year prison terms which for some of the defendants would run concurrently, and for others, consecutively.

Despite this outcome, the analysis of the trial indicates that on the

whole the defendants achieved their goal of transforming the trial hearing into an arena in which their political views could be aired. To accomplish this, the defense maneuvered to derail the proceedings from a cut-and-dried debate over matters of fact. Through the motivation and cultural insanity defenses, the courtroom, as well as society through the media, became forums for carrying on the political struggle in which the defendants had been participating even before their action of May 1969. As such, political trials may be viewed as one example of the transformation of a terrain of contest into a contested terrain.

In relation to the study of political trials, the motivation and cultural insanity defenses are two particularly explicit strategies for playing out the deviance formation process within the courtroom. Since, as Moran (1981:126) points out, "Anglo-American law does not recognize the possibility that an act may be *legally wrong* but *morally right*," it proceeds "*as if* there were absolute definitions of crime, justice, and morality" [emphasis in original]. Hence, criminal law misses the "essential political character" of all law, failing to recognize the potential for stark divergence between morality embodied in the legal code of the state and morality embodied in the culture of society. When this divergence occurs and becomes expressed in ethically based violations of criminal law, the courts not only insist on trying the case on its narrow legal merits, but also generally prohibit the introduction of moral arguments to mitigate the strict application of the law. Faced with this dilemma, those desiring to circumvent such strict application must turn to a variety of legal subterfuges (cf. Moran, 1981:139) to insert in a consequential manner moral considerations into the trial discourse.

The most commonly used tactic is the motivation defense aimed at jury nullification (see Moran, 1981:135-141 for a review of courtroom struggles during the 1970s over the use of this strategy). Although previous research has analyzed some of the broader political dimensions of the motivation defense, it has not detailed the two-stage logic by which such a defense transforms the terrain of contest of a criminal proceeding into a contested terrain challenging the legitimacy of the established dispensation. The analysis of the Chicago 15 demonstrates that a key element in this logic is the appeal to third parties for a judgment concerning which of the contending parties merits support for its socio-political interpretation. Recalling that third parties include the public as well as the judge and jury, it is possible that the third party verdicts may be contradictory. For instance, the trial may

secure popular support while resulting in a verdict of guilty. In any case, as the trial of the Chicago 15 indicates, a fundamental requirement of any third party strategy is to obtain a hearing for its views and to link the presentation of its case to some realistic strategy for obtaining a favorable outcome. The attention of the press and the anti-war movement to the trial ensured a hearing before the public. But the nexus between the presentation of moral concern and acquittal was made by the informal appeal to jury nullification.

In contrast to the motivation defense, the cultural insanity approach did not rely on the perceptions of third parties in order to assert its challenge to the government. Instead, by framing its case in terms of a insanity plea, it eliminated the role of third party adjudicators and defined the contest as between those who agreed with their political perception and those who opposed it. It is incidental that given the liberal American philosophical and legal tradition it proved relatively easy for the prosecution to get the trial back on track by arguing that even radical political disagreements coexist within a political order and that acting against the law to assert one's beliefs makes one neither insane nor justified, but criminally guilty. What matters is that the cultural insanity defense was a systematic effort to uncover and employ in the courtroom the very political processes undergirding the social construction of reality in society at large.

During the past twenty-five years, research on deviance has come to recognize the political character of the social construction of deviance. This recognition has been based on two concomitant developments. The first is what Horowitz and Liebowitz (1968) document as the dramatic increase of political "marginals" following a path of law violation or "deviance" in pursuit of their political goals. The second is a reformulation of the theoretical framework for deviance research from a consensus model studying the etiology and labeling of deviance within a given normative structure to a value-conflict model examining the transactions of power shaping that normative structure (Turk, 1966; Schervish, 1973; Spector and Kitsuse, 1977). In this view, the fundamental research question becomes the processes by which norms and deviance are constructed. How certain individuals and groups come to fill positions defined as deviant is a second and derivative question. Though much has been written explicating and defending this paradigm shift, little research has focused on the various social processes by which the social construction of deviance actually occurs. The major implication of this study for the general theory of deviance construction is that at least two processes may be

distinguished by which actors explicitly engage in struggles to define the normative order and, accordingly, deviance. Although it would be unlikely to find either logic carried out in as structured a way as in the courtroom, the patterns may serve as theoretical models for explaining the more obscure political mechanisms of everyday life.

The motivation defense, for example, suggests political processes for determining and maintaining deviance akin to an electoral process. Two parties contend before adjudicating third parties for a favorable evaluation. That such a process may also characterize contests for rewards within a given dispensation of power should not obscure the fact that the two-step logic evidenced in the motivation defense also structures revolutionary contests. First, parties must win a forum for presenting their positions. Such efforts are not merely incidental; they mark the inauguration of a political struggle. The denial of such an opening constitutes a fundamental aspect of the meaning of hegemony. The second, and often simultaneous, thrust is to obtain a sympathetic response from a sufficiently broad or powerful third party to establish a social order. In achieving this end, other specific matters must be attended to, such as the content of one's ideology, tactics for communicating to third parties, and strategies for realistically forging the link between one's challenge and a favorable outcome.

In contrast to this two-stage logic for recasting the social world is the unitary logic embodied in the cultural insanity defense. If the analogue for the first strategy is an electoral model, the analogue for the second is that of dual power. In the electoral model, the logic dictates that third parties be nurtured and appealed to. In the dual power model, the logic is to eliminate third parties and reliance on their detached judgments. The challenging party frames the conflict so as to force those originally outside the conflict to align themselves with one of the contending parties. Again, the specific tactics employed in pursuing this goal vary greatly; the common element is a frontal attack that from the beginning exposes the fundamental political nature of the conflict. Although aspects of the fundamental challenge to the political order may be covert in the electoral model, this is less likely in the dual power strategy. Consequently, as with the cultural insanity defense, the resistance to the initial challenge may be more immediate and formidable.

As research on deviance refines its theoretical appreciation of how conflict within the terrain of contest implies a contested terrain, an important contribution remains to be made concerning the specific processes by which this transposition takes place. Political trials, as

one explicit manifestation of the broader political dimensions of deviance determination, may serve as the basis for discerning the more universal social patterns which also structure macro-political processes.

Reference Notes

1. Clearly, not every trial with a political dimension confronts the fundamental foundations of law and the social order. On the contrary, a trial may be termed political if it concerns the relative distribution of power. According to Kirchheimer (1961:49) a political trial occurs when "the judicial machinery and its trial mechanics are set into motion . . . to exert influence on the distribution of political power." Becker (1971) distinguishes four meanings of political trials, none of which specifies the judicial contest as a struggle over the system of social control rather than over its application. Kirchheimer (1961:46) notes three types of political trials: (1) the trial involving a common crime committed for political purposes and conducted in view of the political benefits which might accrue from successful prosecution; (2) the classic political trial where a regime attempts to incriminate its foe's public behavior in order to evict the foe from the political terrain; and (3) the derivative political trial where the weapons of defamation, perjury, and contempt are manipulated in an effort to bring disrepute upon a political foe.
2. Van Dyke (1970:26) claims that jury nullification becomes particularly important when: (1) the prosecutor is overzealous for some personal reasons; (2) the trial judge is biased because of some personal idiosyncrasy; (3) "the government may be the victim of the crime in a way that makes it impossible for the prosecutor not to prosecute or for the judge to dismiss the matter." This final circumstance, where civil disobedience is a form of conscientious political dissent, is most likely to precipitate over-identification by the judge or prosecution with the government's political stance. At such times it is especially imperative that the jury not create new laws or establish "people's crimes," but mitigate existing laws in order to "safeguard against an oppressive or even a merely overly aggressive government" (Van Dyke, 1970:19).
3. A contemporary formulation of the principle of jury nullification is the jury instruction read by judges in Maryland:
Members of the jury, this is a criminal case and under the Constitution and the laws of the State of Maryland in a criminal case the jury are the judges of the law as well as the facts in the case. So that whatever I tell you about the law, while it is intended to be helpful to you in reaching a just and proper verdict in the case, it is not binding upon you as members of the jury and you may accept the law as you apprehend it. (Van Dyke, 1970:20)
4. Compare, for instance, the California jury instruction for criminal cases:
The function of the jury is to try the issues of fact that are presented by the allegations in the information filed in this court and the defendant's plea of "not guilty." . . . You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me [the judge]. The law forbids you to be governed by mere sentiment, sympathy, passion, public opinion, or public feeling. (Van Dyke, 1970:17-18)
5. The judge had already been harshly reversed and reprimanded on his pretrial attempt to prohibit the defendants from speaking or writing about the trial in any public way while the trial was in session (United States Court of Appeals; May 1,

- 1970). Thus, the defense could use the conflict tactics of threat of reversal to win the right to allow the defendants to testify to their motivation.
6. These neutralization techniques are denial of injury, denial of the victim, appeal to higher loyalties, and the condemnation of the condemners. As Sykes and Matza point out, it is not the moral validity or metaphysical truth underlining the techniques that interest the sociologist. Rather it is the tactical success or realism of the techniques in "deflecting blame attached to violation of social norms" (1957:667).
 7. Except in those cases covered by the "strict liability," "public welfare," or "felony-murder-misdemeanor-manslaughter" doctrines (where the results of an action, independent of intent, determine criminal responsibility) and in some cases where degrees of criminality modify the severity of the charges and the judicial and administrative decisions concerning the duration of punishment, considerations of motivation prove irrelevant (cf. Sutherland and Cressey, 1970:13-15).
 8. It should be noted that American law distinguishes also between criminal and non-criminal intent. Persons who consciously perform an act that breaks the law but are unaware that they have done so are viewed by the law as having intent but not criminal intent (cf. Sykes, 1967:26-27).
 9. "In so far as the delinquent can define himself as lacking responsibility for his deviant actions, the disapproval of self or others is sharply reduced in effectiveness as a restraining influence" (Sykes and Matza, 1957:667). Accordingly, the defendants purposefully sought the label of cultural insanity in order to avoid the label of criminally guilty. Although a verdict of "innocent" would have been preferred, it was clear that such an outcome would have been out of the question. As Sobel and Ingalls (1968:331) point out, individuals who realize they will be labeled despite their resistance often seek to be labeled according to the category with a lesser degree of stigma. Thus they find that a psychiatric patient will seek to be labeled a medical patient because that role allows more passivity, dependency, and submission. Likewise both Schur (1965:178-179) and Duster (1970:244) comment that despite its inadequacy the medical label of "ill" rather than the legal label of "criminal" would provide society and the drug addict the opportunity to begin to overcome the devastating secondary consequences—for society and the individual—that now result from the treatment of addicts as criminals (cf. Gusfield, 1967:178-88).
 10. The judge and jury both might become so irked by what could be considered an effort to make a travesty of the courtroom that they could become belligerent. It would be less likely, given the political climate, that the plea of insanity could be taken seriously and the defendants committed to institutions for extended periods of time.
 11. Thus besides guaranteeing a courtroom hearing for the defendants' testimony and providing the opportunity to avoid the label of "criminally guilty" the insanity plea enabled the defendants to aggressively counterlabel the government, prosecution, and the jury—the condemnation of the condemners. Although the insanity plea was to an appreciable extent a well-chosen legal construct to enable them to voice their grievances, the defense was serious in pressing this tactic to its logical conclusion.
 12. In fact at the end of the trial, the judge recommended to the Illinois Bar that the defense attorney proposing this defense be censured.

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