

The Distortions of Mainstream Criminology in the Global North: Towards a Southern Criminological Worldview

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Germán Silva García
Bernardo Pérez Salazar



The Distortions of Mainstream Criminology in the Global North: Towards a Southern Criminological Worldview

Germán Silva García*
Bernardo Pérez Salazar**
Universidad Católica de Colombia

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Abstract

This article examines the distortions in the understanding of the concept of 'social action' in mainstream criminology in the Global North. To this end, it uses analytical and dialectical methods to discuss the concept of social action, analyzing the misgivings and implications arising from the use of notions such as 'social deviance' and 'criminality,' commonly used by criminologists in the Global North. In response to the naïve assimilation and use of these categories by authors in the Global South, this article presents instead the theoretical category of 'social divergence' and then discusses the central issue of this article: a worldview approach concerning social actions targeted by penal control systems, in line with the needs of a criminology grounded in the sociocultural contexts of the Global South.

Keywords: Criminality; social deviation; social divergence; criminological worldview.

* Vice Minister (e) of Education; Secretary General of the Ministry of National Education of Colombia; General Coordinator of the National Interinstitutional Council for Quality Assurance in Higher Education (CONACES); Dean of Law and Professor at the Universidad Católica de Colombia. Doctor (PhD) in Sociology and Master in Criminal System and Social Problems from the University of Barcelona, lawyer degree from the Universidad Externado de Colombia. Dean and lecturer of the Faculty of Law of the Universidad Católica de Colombia; this work is part of the Research Group on Conflict and Criminality. gsilva@ucatolica.edu.co. ORCID: <http://orcid.org/0000-0002-3972-823X>

** PhD in Education, Universidad Santo Tomás de Bogotá; Master's degree in Regional Development Planning, Institute of Social Studies, The Hague, The Netherlands. Social Communication degree Universidad del Valle. Lecturer and researcher, Faculty of Law, Universidad Católica de Colombia, Conflict y Criminality research group. Contact: bperezs@ucatolica.edu.co. <https://orcid.org/0000-0003-2330-646X>

Las distorsiones de la criminología convencional en el Norte global: hacia una cosmovisión criminológica del Sur global

Germán Silva García
Bernardo Pérez Salazar
Universidad Católica de Colombia

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Resumen

Este artículo examina las distorsiones en la comprensión del concepto de acción social en la criminología dominante en el Norte global. Para ello, utiliza los métodos analítico y dialéctico para discutir el concepto de acción social, analizando los recelos y las implicaciones que surgen del uso de nociones como desviación social y criminalidad, comúnmente utilizadas por los criminólogos del Norte global. En respuesta a la ingenua asimilación y uso de estas categorías por parte de autores del Sur global, este artículo presenta en cambio la categoría teórica de divergencia social y luego analiza el tema central de este artículo: un enfoque acerca de la cosmovisión sobre las acciones sociales intervenidas por los sistemas de control penal, en línea con las necesidades de una criminología basada en los contextos socioculturales del Sur global.

Palabras clave: criminalidad; desviación social; divergencia social; cosmovisión criminológica.

Introduction

Some theoretical developments of criminology in the Global North concerning how facts are defined and understood, and specifically how social actions are labeled as ‘criminal’ by penal control systems, are at the source of many conceptual blunders regarding the description and interpretation of such actions. These notional muddles seriously distort objective reality by replacing it with subjective views, based on value judgments that socially constitute a ‘reality’ commensurate with the interests and values of dominant elite groups. Not all criminology in the Global North is enmeshed with these views, but a large part of it is, advocating uniquely paradoxical discourses that, on the one hand, are epistemologically misguided and clouded but, on the other, are politically effective in enforcing a given logic of power.

Certain branches of criminology in the Global North, especially in the mid-twentieth century, represented and defined social actions that are penalized by the criminal system as inherently ‘criminal.’ Subsequently, mainstream criminology in the Global North influenced by the more conservative strands of sociology, adopted the idea of ‘social deviance’ as the cornerstone for understanding actions that should be labeled criminal. Both streams, with no major differences among them, will be referred to in this article as ‘criminal sociology’ and ‘sociology of deviance,’ respectively. Both put forward theoretical conceptualizations about the nature and attributes that could be ascribed to these actions, with important consequences concerning the delimitation of criminology’s object of study.

Criminological thought in the Global South was colonized under the mainstream parameters described above, towing with it the same misgivings that were transplanted with modest reflections about the relevance of doing so in colonial settings. Consequently, debates, arguments, and refutations among the different and opposing views that forge criminological thinking in the Global North tend to be followed by most criminologists in the Global South. Many align themselves with one or the other side of these disputes, with scarce critical sense or alternative views reflecting their own diverse vantage point.

Eugenio Raúl Zaffaroni,¹ anticipating the decolonial discourses, questioned the racist and genocidal foundations of mainstream criminology and argued for criminology that addresses relevant demands concerning social actions targeted by penal

¹ Eugenio R. Zaffaroni, *Criminología. Aproximaciones desde un margen* (Temis, 1988).

control systems in the Southern periphery. In this horizon, the development of Latin American criminology clearly needs to follow the moderately trodden path of empirical research and, at the same time, build upon solid, appropriate and innovative theoretical groundwork.

Therefore, the further development of a criminology grounded in the needs of the realities of the Global South demands a discerning theoretical review of the definition and understanding of the notion of 'social action' to reveal some serious inaccuracies and distortions in its current mainstream use and then proceed to offer an innovative worldview framework to specifically discuss social actions targeted by penal control systems. This implies adopting a novel way of representing these actions, that is, of observing and relating existing reality that will enable the endorsement of new perceptions, concepts and understandings of crime and criminal justice systems.

In this gist, an alternative grounding for a criminology of the Global South is offered, which intends to clarify the flaws and distortions that have dominated the mainstream criminological landscape described above. This fresh approach aims to glean paths towards more appropriate, congruent, and relevant perspectives as well as to develop theoretical tools that aptly aid understanding and interpreting the realities of the South, especially in Latin America. Not only are these realities different from those of the Global North due to the dissimilar components that inform them, but also because of the need to break with the sociocultural and political colonization imposed by their mainstream criminological knowledge.² The intention is not to ignore or omit the theoretical and research advancements of social sciences coming from the metropolitan centers of the North, but instead to revise their biases through democratizing and decolonizing theories and methodologies used in criminological practice and thought.³

The decolonial studies that have inspired criminology grounded in the realities of the Global South assume the need for a 'decolonial turn'.⁴ The term will be used here as an epistemological and political approach to reality that unravels beyond colonial logic, based on the premise that it is urgent and necessary to move away

² Kerry Carrington, Russell Hogg and Máximo Sozzo, Southern Criminology. *British Journal of Criminology*, no. 56 (2016): 1-20.

³ Kerry Carrington, Russell Hogg, John Scott, and Maximo Sozzo, Criminology, Southern Theory and Cognitive Justice, in *The Palgrave Handbook of Criminology and the Global South*, edited by Kerry Carrington, Russell Hogg, John Scott and Máximo Sozzo. (Palgrave Macmillan, 2018).

⁴ Nelson Maldonado-Torres, Descolonización y el giro decolonial. *Tabula Rasa*, no. 9 (2008): 61-72.

from perfunctory transplantation of concepts and theories from mainstream thought of the Global North.⁵ This opens additional cognitive paths to examine historically marginalized social groups, as well as to analyze the colonial logics of power and knowledge that prevailed in the past.⁶ This perspective opens questions about how sociocultural domination has organized and encouraged the production and reproduction of the analytical classification of different social groups.⁷ In this regard, this study will examine the worldview that structured Eurocentric thinking specifically concerning its understanding of social actions targeted by penal control systems and how this notion was translated into academic discourse to classify penal offenders as ‘criminals’ and ‘deviants.’ Consequently, this discussion calls for “the reconstruction of the objects of sociology.”⁸

The Notion of Social Action: Nature and Importance

Before discussing the concepts of criminality, social deviance, divergence, and their associated views, the concept of social action must be addressed. The notions of criminality and social deviance are commonly introduced as, supposedly, specific types of social action. Social action is a behavior that is meaningful for others.⁹ Thus, social action is a human act expressed in the physical world and therefore it is possible to confirm its empirical existence. Accordingly, social actions are objective and belong to the descriptive dimension of social life. This clearly sets social actions apart as a different category from definitions, value judgments, or opinions issued concerning these actions. The latter qualifies social actions. Yet, value judgments have no unmistakable connection to any ontological trait of the objective expression of these actions.¹⁰ Discernments are subjective and belong to

⁵ Oscar Alexis Agudelo-Giraldo, and Jorge Enrique León-Molina, “Una devaluación del mito eurocéntrico sobre la universalidad de los derechos humanos: la sospecha latinoamericana.” *Revista Científica General José María Córdova* 21, no. 44 (2023): 1005-26.

⁶ Joaze Bernardino-Costa, Decolonialidade e interseccionalidade emancipadora: a organização das trabalhadoras domésticas no Brasil. *Sociedade & Estado* 30, no. 1 (2015): 147-63; Joaze Bernardino-Costa, and Ramón Grosfoguel, Decoloniality and black perspective. *Sociedade & Estado* 31, no. 1 (2016): 15-24; Joaze Bernardino-Costa. Decolonialidade, Atlântico negro e intelectuais negros brasileiros: em busca de um diálogo horizontal. *Sociedade & Estado* 33, no. 1 (2018): 117-135.

⁷ Anibal Quijano, Colonialidad del poder y clasificación social en *El Giro Decolonial. Reflexiones para una diversidad epistémica más allá del capitalismo global* edited by Santiago Castro-Gómez y Ramón Grosfoguel (Pontificia Universidad Javeriana y Siglo del Hombre, 2007), 93-126.

⁸ Gurminder K Bhambra, The possibilities of, and for, for global sociology: a postcolonial perspective. *Postcolonial Sociology* 24, (2013): 297.

⁹ Max Weber, *Economy and Society* (Bedminster, 1968).

¹⁰ Enrique del Percio, Divergencia: inquietantes manifestaciones del amor, el sexo, el derecho y otras instituciones. *Nuevos Paradigmas de la Ciencias Sociales Latinoamericanas* 14, no. 27 (2023): 7-36.

the prescriptive dimension of the world. It is possible to agree or disagree with them, to discuss the logical structures that support them, or to discuss the arguments put forward to obtain their approval. But the content of judgment values cannot be empirically confirmed.

The main point here is that if an individual causes the death of another person, such an act is an expression of a social action that can be objectively described. Subsequently, such action can be judged as criminal or deviant, or on the contrary, as a justifiable behavior in given circumstances. The penal quality of the action or its legality, its connotation as deviant or conformist, is neither linked to any inherent attributes of the act nor any of its ontological traits. The classification as criminal or deviant of the action emerges from a decision contained in legal or social rules in the prescriptive realm.¹¹

Sociology has made the study of social actions part of its objects of investigation. Criminal legal sociology, as a subspecialty of sociology, is correspondingly interested in the study of social actions, but not all of them. The specificity that differentiates criminology as a specialty from the stem of general sociology rests on the study of the legal implications that social actions may or may not have. Regarding social actions, criminology is concerned with those that address or are targeted by the law and the penal control system. Thus, criminology involves an interdisciplinary combination of sociology as an empirical science and law as a rule-based field of knowledge. Although the former is descriptive and the latter prescriptive, as indicated earlier, these two dimensions mutually influence each other¹² though positivist philosophy may disavow this corollary.¹³

Yet, throughout history, mainstream criminology in the Global North has understood social actions following two theoretical perspectives that diverge from the epistemological premises discussed above. This misrepresentation has been carelessly transplanted by many criminologists to the Global South, causing unwelcome mayhem. A more detailed analysis of these shortcomings is presented in the following sections.

¹¹ Germán Silva-García, *Criminalità, devianza, marginalità e divergenza*, *Diritto di libertà* ed. Simonetta Balboni (Mimesis, 2023): 170 y ss.

¹² Jürgen Habermas, *La lógica de las ciencias sociales* 2nd ed. (Tecnos, 1990).

¹³ Hans Kelsen, *Pure Theory of Law*. (University of California, 1967).

Crime as Social Action

In its initial development, criminology devoted its efforts to the study of behavior that was criminally punished. In the late nineteenth and much of the twentieth century, it was assumed that behaviors and people were criminal.¹⁴ Moreover, criminology was premised on the idea the attributes that made subjects and their actions criminal, were empirically verifiable. Therefore, social actions could be objectively criminal, and the discipline was for a time devoted to the causal explanatory study of crime and criminals. Although some dissenting voices opposed this outlook, it became the dominant thinking for decades and was generally adopted in the South with no serious objections. This is the criminal sociology trend that will be addressed henceforward in this article.

Criminal sociology and other criminologies that followed its basic orientations were never able to verify that personal traits such as the size and shape of the ears, the type of bones in the skull, certain biotypes, alterations in endocrine glands, having tattoos, belonging to black or brown races, certain enzymes, certain genes, etc. invariably made criminals of people bearing these characteristics. Numerous and varied contributions have allowed modern criminology to systematically refute the credibility of these theories, which even today continue to have followers though scarce in number.¹⁵

However, these prejudices remain the origin of an ongoing process of criminalization based on stereotypes that target members of disadvantaged social groups with the aim of keeping 'social stability,' a euphemism for thwarting the social mobility of the underclass. The peripheral reality of Latin America describes how positivist criminology mediated the construction of a punitive system biased against marginal Indigenous and Black peoples, often regarded as 'born criminals.'

From the 1960s on, sociological trends such as symbolic interaction and conflict theory became important mainstays of criminological thought positing that criminal and deviant labels or statuses are not steady behavioral traits but are instead

¹⁴ Cesare Lombroso, *L'uomo delinquente en rapporto alla antropologia alla giurisprudenza ed alla psichiatria* (Fratelli Boca, 1897); Gregorio Marañón, *L'age critique* (Macon, Protat Frères. 1935); Ernst Kretschmer, *Constitución y carácter* 2da ed. (Labor, 1954); James. Q. Wilson, and Richard Herrnstein, *Crime and Human Nature* (Simon and Schuster, 1985); Richard J. Herrnstein and Charles Murray, *The Bell Curve. Intelligence and Class Structure in America Life* (Free Press, 1994); Edward O. Wilson. *Sociobiology. The New Synthesis* (Cambridge: Harvard University, 2000); Francis. Galton, *Essays in Eugenics* (University Press of Pacific, 2004).

¹⁵ Germán Silva-García, *Criminología. Construcciones sociales e innovaciones teóricas* (ILAE, 2011).

definitions,¹⁶ which in turn are the product of a criminalization process controlled by those who have the power to do so.

Social deviance and criminality are the product of social and penal control interventions that stamp attributes such as deviant or criminal on subjects or certain behaviors. So, there are no social actions that are ontologically deviant or criminal. This does not mean that 'crime' as a concept is useless, only that it is a prescriptive notion in the realm of law.

Theorists have generally accepted this criticism and yet many persist in wrongly affirming that criminality is a factual reality in the context of criminological studies.¹⁷ Since the criminal status of a behavior or a person is the outcome of a penal control intervention, it is absurd to argue that criminality and crime control can be studied as distinct, independent phenomena. This issue was quite clear for critical and phenomenological criminology.¹⁸ And yet, contemporary criminologists commonly allude to crime as if it were a fact, a phenomenon, or a social action,¹⁹ subordinating sociology to law. This highlights the fallacy that social actions are themselves criminal. If the criminal condition was an intrinsic essential quality of certain social actions, criminal acts would have the same ontological traits regardless of where and if they occur. But this is not the case. Clearly, the criminal status of a person or an event depends on criminal law, as an expression of the will of lawmakers in a given time and jurisdiction.

Deviance as Social Action

Subsequently, the influence of U.S. sociologists took criminology on a different path. Since the 1930s, but especially from the 1950s onwards, the discipline set its sights on socially deviant behaviors, among other topics of interest. James Ford²⁰

¹⁶ Howard Becker, *The Outsiders: Studies in the Sociology of Deviance* (New York: Free Press, 1963); Austin Turk, Toward Construction of a Theory of Delinquency. *Journal of Criminal Law, Criminology and Police Science* 55 (1964): 215-229; George B. Vold, *Theoretical Criminology* 4th ed. (Oxford University, 1968).

¹⁷ Antonio García-Pablos de Molina, *Manual de criminología* (Espasa Universidad, 1988); Vicente, Garrido-Genovés, Per Stangeland and Santiago Redondo, *Principios de criminología* 2da ed. (Tirant lo Blanch, 2001); Günther Kaiser, *Criminología* (Espasa Calpe, 1983); Martin Killias, *Précis de criminologie* (Staempfli, 1991).

¹⁸ Alessandro Baratta, *Criminología crítica y crítica del derecho penal* (México DF: Siglo XXI, 1986); Erich Goode, The Meaning and Validity of the Death of Deviance Claim in *The Death and Resurrection of Deviance. Current Ideas and Research* edited by Michael Dellwing, Joseph. A. Kotarba and Nathan Pino. (Palgrave Macmillan, 2014).

¹⁹ Marcos Rolim, Desistência do crime. *Sociedade & Estado* 33, no. 3 (2018): 829-847.

²⁰ James Ford, *Social Deviation* (Macmillan, 1936).

introduced the concept in sociology and Talcott Parsons²¹ coined its definition as an action that deviates from a set of central norms that deserves disapproval. The notion became widespread as the explanation of criminal conduct.²² It also permeated criminology as a premise according to which actions could be classified as deviant or conformist, and deviant behaviors were susceptible to empirical confirmation. Deviance with criminal connotations became a central object of study for criminology, though some would also focus on penal control.

Thus, the study of social deviance as a specific type of social action²³ became a basic chapter of general sociology. Criminology followed suit. Deviance, understood in the terms that have been criticized above, came to occupy a central place in mainstream criminological theory in the Global North.²⁴ This is the sociology of deviance that will be addressed to henceforth.

²¹ Talcott Parsons, *The Social System*. (Routledge & Kegan Paul, 1951).

²² Robert K. Merton, *Social Theory and Social Structure* (Free Press, 1949).

²³ Anthony Giddens, *New Rules of Sociological Method* 2nd ed. (Stanford University, 1993).

²⁴ Freda Adler, Gerhard Mueller and William Laufer, *Criminology and the Criminal Justice System*, 5th ed. (McGraw Hill, 2004); Robert Agnew, *Pressured into crime: An Overview of General Strain Theory* (Roxbury, 2006); Ronald L. Akers, *Criminological Theories*, 2nd ed. (Roxbury, 1997); Ronald L. Akers, and Gary F. Jensen, *The Empirical Status of Social Learning Theory of Crime and Deviance: The Past, Present, and Future in Taking Stock. The Status of Criminological Theory*, edited by Francis Cullen, John Paul Wright and Kristie Blevins (Transaction Publishers, 2006), 37-76; Mary Bosworth and Caroline Hoyle (eds.), *What is Criminology?* (Oxford University Press, 2011); Marshal B. Clinard and Robert F. Meier, *Sociology of Deviant Behavior*, 15th ed. (Cengage, 2014); Michael Dellwing, Joseph A. Kotarba and Nathan W. Pino, Introduction. Tales of Death and Deviance in *The Death and Resurrection of Deviance. Current Ideas and Research*, edited by Michael Dellwing, Joseph A. Kotarba, Nathan W. Pino (Palgrave Macmillan, 2014); Robert J. Franzese, *The Sociology of Deviance. Differences, Tradition, and Stigma* (Charles C. Thomas, 2015); Diana H. Fishbein, *Biobehavioral Perspectives in Criminology* (Wadsworth/Thomson Learning, 2001); Alfred B. Heilbrun, *Disordered and Deviant Behavior* (University Press of America, 2004); Travis Hirschi, and Michael R. Gottfredson, *The Generality of Deviance* (Transaction, 1994); John Humphrey, and Frank Schmalleger, *Deviant Behavior*, 2nd ed. (Jones & Bartlett Learning, 2012); Michelle Inderbitzin, Kristin A. Bates, and Randy Gainey, *Deviance and Social Control. A Sociological Perspective* (Sage, 2013); Stephen Jones, *Criminology* 6th ed. (Oxford University Press, 2017); Howard B. Kaplan and Robert J. Johnson, *Social Deviance: Testing a General Theory* (Kluwer Academic, 2001); Rolf Loeber and David Farrington (eds.), Introduction in *From Juvenile Delinquency to Adult Crime* (Oxford University, 2012); Robert F. Meier, Norms and the Study of Deviance: A Proposed Research Strategy in *Deviant Behavior* 3, no. 1 (1981): 1-25; Daniel P. Moynihan, Defining Deviance Down in *The Sociology of Deviance* 2nd ed, edited by Joseph G. Weis (Mason: Thomson, 2016); Albert Ogien. *Sociologie de la deviance* (Armand Colin. 1999); Stuart Palmer and John Humphre, *Deviant Behavior. Patterns, Sources, and Control* (Springer Science + Business Media, 2013); Cliff Roberson and Harvey Wallace, *Introduction to Criminology*. (Copperhouse, 1998); Frank Schmalleger, *Criminal Justice Today*, 5th ed. (Prentice Hall, 1999); Joseph F. Sheley (ed), *Criminology* 3rd ed. (Wadsworth, 2000); Larry Siegel, *Criminology* 7th ed. (Wadsworth, 2000); Leonard Territo, James B. Halsted, Max L. Bromley, *Crime & Justice in America* 4th ed. (West, 1995); John Tierney, *Criminology. Theory and Context* 3rd ed. (Routledge, 2013); Gennaro. F. Vito, Jeffrey R. Maahs and Ronald Holmes, *Criminology. Theory, Research, and Policy* 3rd ed. (Jones & Bartlett Learning, 2012); Leslie Wilkins, *A General Theory of Deviance: Deviance, Opportunity, and Normality in The Sociology of Deviance* 2nd ed., edited by Joseph G. Weis (Thompson, 2006); Wilson, *Sociobiology...* op. cit; John Winterdyk, *Canadian Criminology* (Prentice Hall, 2000); Richard Wortley, *Psychological Criminology*:

The long list of authors cited above confirms the notable acknowledgment of the concept of deviance and its underlying vision in mainstream contemporary criminology in the Global North. Critical criminology contested the category but offered no alternatives and, in the end, ceded to continue using it. Abolitionism called for avoiding the term ‘criminality’ but kept silent regarding the use of ‘deviance’ and endorsed terms such as ‘problematic events,’²⁵ amplifying the scope for subjectivity.

However, as the criterion that decisively determines whether a social action is deviant or conformist is a set of central norms, deviance is not significantly at odds with the concept of criminality. Both categories are normative and prescriptive and are susceptible to the ebb and flow of law and politics, so neither is compliant with empirical confirmation of any fixed properties associated with them. What can be established in this regard are the political, social and legal parameters that support the decision of prohibiting a given action using a regulatory framework. In other words, the regulatory classification of an action can be empirically verified, but not so the properties of the action itself. In this context, deviance is acknowledged as a label or status position, but there are no properties of an action that constitute its deviant nature. In short, the idea of social deviance is a subjective notion, the outcome of a decision that comes from a value judgment.

Specific Criticism of the Notion of Deviance

In criminological theory, social deviance may be a more problematic term than criminality. It is formal conceptualization that superficially attempts to reduce the understanding of social action as a behavior that conforms to or deviates from a set of central norms. In doing so, it neglects the existence of contested interests and ideologies which commonly lie at the heart of conflicting social actions. It only takes into its purview the State as the entitled holder of the defrauded rule and the deviant as the author of the banned conduct when the latter has confronted other individuals or groups arguing the rule in their favor. In this framework, a social action classified as deviant is labeled as such in a prescriptive sense, yet pretending to do so in a descriptive mode, thus distorting the event. This framing assumes that valid rules are always legitimate, though history offers plentiful evidence of

An Integrative Approach. (Taylor & Francis, 2011); Jacob T. Young, Cesar Rebellon, J. C. Barnes, and Frank M. Weerman, Unpacking the black box of peer similarity in deviance: Understanding the Mechanisms Linking Personal Behavior, Peer Behavior, and Perceptions. *Criminology* 52, (2014): 60-86.

²⁵ Louk Hulsman, Critical Criminology and the Concept of Crime. *Contemporary Crises* 10, no. 1 (1986): 63-80.

unjust, unjustified, or frankly senseless rules, and offers no account or indication of why someone acted in a deviant or conformist way, exposing its poor ability to make sense and understand social actions.

In this context, deviance installs the notion that individuals may be split into corrupt and conformist buckets and that the latter are the majority, notwithstanding that everyone, throughout life, at times infringes and at others faithfully followed rules and norms. By submitting a dichotomy that separates conformist and corrupt individuals, the notion of social deviance takes a political stance on the side of rules and conformist, which uncritically undermines its scientific validity,²⁶ and neglects axiological and normative pluralism.²⁷ So, it makes no sense and is unrealistic to believe that conformists are a majority, except for the purpose of fictitiously legitimizing a set of rules. This is untrue and is verified permanently in the event of innocent persons being convicted of crimes, or when the responsible party for a crime escapes penal prosecution. In either case, the party can be labeled as both deviant and conformist, which is a logical contradiction as two opposing statements cannot be true regarding the same substance. In a word, the notion of social deviation is a pejorative adjective, which a priori disqualifies and demeans the author of a social action as an anomalous type.²⁸

Obviously, deviance as a category is neither useless nor worthless for sociology. It embodies precisely what it represents, that is, a socially constructed representation of social actions targeted by penal control systems. Given that it is only appropriate to speak of a criminal offense or criminality once a court renders final judgment on the merits and sentences a penalty as a result of the operation of the penal control system, the term social deviance usefully refers to socially constructed representations of criminal offenses. Several critical works in phenomenology, social interactionism, and critical criminology, including contributions by Howard S. Becker,²⁹ insistently establish how definitions, value judgments, subjective interpretations, and typifications have been used to construct imaginary representations of 'social

²⁶ Morris Ghezzi, Per un pluralismo difunzionale in *Conflitti e diritto nella società transnazionale* edited by Vincenzo Ferrari, Paola Ronfani and Silvia Stabile (Franco Agnelli, 2001).

²⁷ Cirus Rinaldi, *Deviazioni. Devianza, devianze, divergenze* (Sas, 2009).

²⁸ Germán Silva-García, Angélica Vizcaino-Solano, and Bernardo Pérez-Salazar, The debate concerning deviance and divergence: A new theoretic proposal. *Oñati Socio-Legal Series* 14, no. 2 (2024); 505-529.

²⁹ Becker. *The Outsiders*...op. cit.

realities' concerned with crime. So, in the framework of penal social control systems, deviation aptly designates the social representation of criminal offenses.

In the context discussed above, the concept of social deviance is alive and well. More so in light of Colin Sumner's³⁰ proposal to replace the term deviation with the notion of censorship. Given that censorship is a form of penal control of a reproached action, it cannot be understood as an attribute of social action³¹ and therefore cannot meaningfully replace the notion of social deviance.³²

The search for a suitable option involves finding a genuinely descriptive category, which represents the objective properties of actions targeted by the penal control system and is useful for its analysis. Even though social deviance and criminality are labels imposed by the penal law, it is necessary to study social actions, avoiding the use of labels, especially when these cause significant harm.

In sociology, numerous critical assessments of the notion of deviance have been advanced without touching the heart of the matter. Most of these criticisms point to its theoretical shortcomings or to the discomfort and dissatisfaction that the term produces or highlight its propensity to be used to stigmatize,³³ without offering alternatives. Sociology and criminology require descriptive categories to study social actions that affect or may have repercussions on penal law and social control systems. To this end, the idea of social divergence is presented in the next section.

Divergence as Social Action

The category of 'social divergence' is inspired by a notion drawn from geometry, which refers to two lines that have a common starting point and extend in separate directions. The opposite of divergence is convergence, that is when the lines tend to or come together.³⁴ In the context of sociological theory, the notion of divergence can usefully represent a meeting or starting point for social interactions between people or groups that may occur face-to-face or by means of an extension of some

³⁰ Colin Sumner, *The Sociology of Deviance: An Obituary* (Open University, 1994).

³¹ Germán Silva-García, *Criminología. Teoría sociológica del delito*.

³² Marco Alberto Quiroz Vitale, Divergencia y desviación como categorías del pensamiento criminológico. *Nuevos Paradigmas de la Ciencias Sociales Latinoamericanas* 14, no. 27 (2023): 215-242.

³³ Alexander Liazos, The Poverty of the Sociology of Deviation: Nuts, Sluts, and Perverts. *Social Problems* 20, (1972): 103-120.

³⁴ Germán Silva-García, Le basi della teoria sociologica del delitto. *Sociologia del Diritto* 27, no. 2 (2000): 119-135.

sort. Each party arrives at the meeting point with their respective previous socializations, status positions with certain levels of power and prestige, role expectations, ideologies, and interests. Given their historical and social contexts and personality traits, they partake in shaping this encounter.³⁵ All the elements described above will influence how the parties will engage and act subsequently.

Parties begin their interaction acting along lines of social action, seeking to attain their respective interests and ideologies following their beliefs, values, and conceptions. Whenever interests and ideologies do not coincide, their engagement will move each party's lines of social action in separate directions. Nevertheless, these lines of social action will remain codependent and reciprocal as they diverge from each other in a dialectical relationship, as the content of each denies and contradicts the other.³⁶ Moving forward in different directions creates a field of separation between the lines that prevents convergence. This field of separation lodges the differences that arise from disagreements in interests or ideologies and becomes a stage for social conflicts to unfold.³⁷ It is important to indicate that social conflicts are the consequence of a divergent situation and not its origin.³⁸

As a general rule, social conflict will set off alarms and call for penal control intervention.³⁹ In this specific framework, a penal intervention will establish the nature of the conflict and possibly the criminal status of the line of social action of at least one of the engaged parties, while other parties involved in the divergence may be declared victims or injured. Therefore, in the theory of divergence, the study of victimization is inseparable from how social actions are penalized.⁴⁰ In this context, axiological relativism in which the notion of divergence is embedded as a descriptive category that expresses no preferences, confirms the political quality of interventions in law and penal control.⁴¹

³⁵ Silva-García. *Criminología. Teoría sociológica del delito*.

³⁶ Silva-García. *Criminología. Teoría sociológica del delito*.

³⁷ Rinaldi, *Deviazioni*.

³⁸ Germán Silva-García, De la desviación a la divergencia: introducción a la teoría sociológica del delito. *El Otro Derecho*, no. 29 (2003): 11-42.

³⁹ Silva-García, *Criminología. Teoría sociológica del delito*.

⁴⁰ Marco A. Quiroz-Vitale, La criminología di Germán Silva García y la vittimizzazione. *Società e Diritti* 2, no. 49 (2017): 153-165.

⁴¹ Pablo Elías González Monguí, "Divergencia social, selectividad e inmunidad en la aplicación del derecho penal," *Nuevos Paradigmas de la Ciencias Sociales Latinoamericanas* 14, no. 27 (2023): 37-74. Luis Felipe Dávila, "Cuando dos puntos se alejan: desviación, divergencia y órdenes sociales amalgamados," *Nuevos Paradigmas de la Ciencias Sociales Latinoamericanas* 14, no. 27 (2023): 75-102.

A central attribute that can be drawn from social divergence is diversity. Diversity emerges as an outcome of differences in the way social actions are understood, generally due to discrepancies over interests and ideologies. Diversity is the substantive support of social divergence. The diversity contained in divergence tends to be overlooked by the hegemonic globalization approach, which is inclined to homogenize an international consciousness based on the alleged and imaginary existence of a populist socially unanimous consensus that borders with some sort of totalitarianism. In the face of social divergence, penal control is expected to discern when diversity is admissible, from a pluralistic outlook, and when it must be reprimanded. Social divergence is descriptive and so is diversity, its main property.⁴²

Worldviews and Cognitive Models Concerning Penally Relevant Actions

A worldview is an approach or general view of the world, that is, of reality. It is an interpretation of the surrounding social and historical context based on available cognitive models that are shaped by perceptions, intuitions, beliefs, experiences, conceptualizations, and evaluations. Cognitive models structure our knowledge and thinking processes, influencing the way we capture and process information, understand it, and reason to answer questions that contribute to our overall interpretation of the world as a whole. Concerning criminal offenses and penal control systems, specific worldviews determine both the material understanding and the notions with which this matter is represented in different criminological frameworks.

As discussed above, mainstream criminology in the Global North belongs to a worldview informed mainly by criminal sociology and the sociology of deviance. So it is inclined to classify social actions perceived as morally negligent and socially reprehensible as politically and legally objectionable and reprimandable. In doing so, mainstream criminology in the Global North is prone to ignore the value-laden, prescriptive nature of the process of declaring a given social action as a criminal offense, despite this being an unacceptable epistemological mistake in the prevailing social science framework. This may be due to the following two reasons.

First, there is cognitive bias. Emotions reinforced by instinctive prejudices tend to contradict or eclipse reasoning processes based on evidence and logical judgments,

⁴² Camila Corvalán, "Divergencia social y encierro. El conflicto social vinculado a la privación de la libertad de los y las adolescentes," *Estudios Paraguayos* 35, no. 1 (2017): 187-202.

to the point that they impose themselves.⁴³ By this mechanism, cognitive biases confirm what is already thought, without affecting previously held values. Second, the categories of social deviance and criminality are expressions of elite power and are used to define what is right, to disqualify whatever is different and to crush opposition to their normative value and social control systems.

Thus, mainstream criminology in the Global North successfully presents a fiction, according to which the rules that declare beforehand a social action to be deviant or criminal are allegedly the product of widespread consensus that echoes the will and opinion of society as a whole. Despite that, in reality, these definitions mainly portray the views of elite groups with the power to issue and impose social control systems. Different empirical youth surveys conducted in Latin American countries, including Argentina, Colombia, Guatemala, Mexico,⁴⁴ and Paraguay,⁴⁵ have highlighted widespread ignorance or relativism among this age group concerning many of these rules, as well as skepticism about their fairness since they are viewed as merely formal, with no real application.

The notion of social divergence is inadmissible for mainstream Global North criminology as the idea of a neutral descriptive category clashes with the cognitive biases that lie in the heart of the worldview discussed above. How can both the deviant and the victim in a crime be assigned the same divergent condition, as if they were indistinguishable? How can the definition of the perpetrator, for example, a pedophile who raped children or a murderer be void of meaningful reprehension? Prejudice interferes here with reasoning. Sound scientific work demands neutral categories with descriptive capabilities and free from value judgments. According to the criminological worldview under scrutiny, the definition of the target of an alleged criminal offense must convey disapproval and highlight traits that make perpetrators of this behavior different, anomalous, and unfit for the status quo, for conformity and uniformity.

It must be stated that the challenging stance presented above does not preclude value judgments, but objects to their error-inducing use in falsifying sociological knowledge under the cover of philosophical or legal fictions. Neither does this

⁴³ Amos Tversky and Daniel Kahneman, "Extensional Versus Intuitive Reasoning: The Conjunction Fallacy in Probability Judgment," *Psychological Review* 90, no. 4 (1983): 293-315

⁴⁴ Arturo Alvarado-Mendoza, "Nociones de justicia, legalidad y legitimidad de las normas entre jóvenes de cinco países de América Latina," *Sociedade & Estado* 30, no. 1, (2015): 75-97.

⁴⁵ Corvalán. Divergencia social y encierro.

assertion have any sympathy for offenders of penal law. This posture was briefly held by some of the early followers of critical criminology,⁴⁶ which was characterized by an anti-system ‘infantilism’ that quickly dissipated with shame and no glory.

The diversity of social actions is essential for a comprehensive understanding of divergence. Diversity is a descriptive, empirically verifiable property of divergent social actions. It is also fueled by difference, dissent, and change. Its appreciation opens the door to pluralism, which is a prescriptive category that emerges from value-laden political thinking. Therefore, the degree of diversity that is permissible in the sphere of social actions is an issue that is entrusted to criminal social control systems, regardless of whether it does so in a pluralistic fashion or otherwise.

In the worldview of mainstream Northern criminology, as embodied in the sociologies of crime and deviance, whatever threatens to pierce homogeneity is perceived as unpleasant, reprehensible and, if possible, deviant, or criminal. Globalization’s drive in pursuit of cultural homogeneity has accentuated this worldview as well as its disdain for dissent. Diversity tends to be downplayed as an overrated source of enhancement and improvement. Homogeneity is a cherished representation of order, as in the ‘immunological device’ described by Byung-Chul Han, which is triggered by diverse events that call for protective responses in the face of the risks that need to be neutralized to preserve the present status quo.⁴⁷ Consequently, from the outlook of this worldview, the ideal type is a conventional conformist, as opposed to the deviant. This is a very narrow concept, which portrays actors as having no interests nor ideologies, but as static, ahistorical, obedient agents. This suggests a stern curtailment of pluralism in the way the process of criminalization is performed in the penal control system, which merits critical examination.

Historically, perceptions about criminality, its traits, and dispositions were eagerly spread during the overseas expansion of the Global North as a way to impose and preserve colonial power. It is no accident that the physical traits of the so-called savage peoples were established as the distinctive features of innate criminals,⁴⁸ as well as in racist criminal sociology.⁴⁹ At the end of the nineteenth century and the first decades of the twentieth century, Latin American elites engaged in defining

⁴⁶ Elena Larrauri, *La herencia de la criminología crítica*. 2da ed. (Siglo XXI Editores, 1992).

⁴⁷ Byung Chul Han, *La sociedad del cansancio* (Herder, 2012).

⁴⁸ Lombroso, *L'uomo delinquent*.

⁴⁹ Cinthia Cassia-Catoia, “A produção discursiva do racismo: Da escravidão à criminologia positivista,” *Dilemas: Revista de Estudos de Conflito e Controle Social* 11, no. 2 (2018): 259-78.

the scope of notions such as 'nation' and 'citizenship' and retrieved their former prejudices concerning race, age, and gender of subordinated social groups in the newly independent nations. Thus the imaginary representations of criminals that shared these traits were firmly installed in the construction of the social reality of crime.⁵⁰ Correspondingly, many criminologists in the South repeat with no critical sense the colonial logic based on the stereotype that social life in Latin America is the product of a culture of hopeless non-conformity with rules, a wrongful premise that in the eyes of mainstream sociologies of crime and deviation allegedly confirms its inferiority.⁵¹ In their view, in the field of law, we must adopt the institutions and models of the Global North.⁵²

Thus, a common sense understanding of criminals and deviants has solidified that is presently used to discriminate, in particular, certain ethnic groups, mainly blacks, indigenous, mestizos, different immigrant groups, and additionally, the poor.⁵³ The notions of deviant and criminal and their uses are at the origin of the social typification of these groups, whose social identity is associated with being prone to crime, perversity or banditry.⁵⁴ The twentieth century saw a revitalization of colonialism and its logic with the enactment and enforcement of their penal canon concerning criminality and deviance, which periodically legitimized foreign political interventions in Latin America. The case of the war on international drug trafficking is exemplary.⁵⁵

⁵⁰ Germán Silva-García, "La construcción social de la realidad. Las ficciones del discurso sobre la impunidad y sus funciones sociales," *Via Inveniendi et Iudicandi* 17, no. 1 (2022): 105-23.

⁵¹ Edwin Molano-Sierra, "Análisis poscolonial del discurso de la cultura del incumplimiento en Latinoamérica," *Dilemas*, 2 no. 2 (2019): 333-356. Germán Silva-García, "Crisis y transformaciones en el control social penal en el contexto de la cultura jurídica colombiana," *Cultura Latinoamericana* 39, no. 1 (2024): 156-92.

⁵² Germán Silva-García, and Bernardo Pérez-Salazar, "Evaluación de la investigación jurídica publicada en libros e impacto en la educación superior colombiana," *Revista de Pedagogía Universitaria y Didáctica del Derecho* 10, no. 2 (2023): 101-120. Germán Silva-García, and Angélica Vizcaino Solano, "'El baile de los que sobran'. Profesión jurídica: poder político y exclusión en Colombia," *Via Inveniendi et Iudicandi* 19, no. 1 (2024): 25-51; Germán Silva García, and Angélica Vizcaino Solano, "Profissão jurídica: poder político e exclusão social. 'A dança dos que sobraram,'" *Revista Eletrônica de Direito e Sociedade REDES* 12, no. 1 (2024): 1-23.

⁵³ Jorge Enrique Carvajal, and Oscar Javier Trujillo Osorio, "Protesta social en América Latina: análisis desde la divergencia como categoría de la criminología del Sur Global," *Nuevos Paradigmas de la Ciencias Sociales Latinoamericanas* 14, no. 27 (2023): 185-214; Jairo Vladimir Llano Franco, "Diversidad, pluralismo, divergencia y multiculturalismo: el movimiento indígena por el reconocimiento en Colombia," *Nuevos Paradigmas de la Ciencias Sociales Latinoamericanas* 14, no. 27 (2023): 243-272.

⁵⁴ Michel Misse, "Crime, sujeito e sujeição criminal: aspectos de uma contribuição analítica sobre a categoria 'bandido,'" *Lúa Nova*, no. 79 (2010): 15-38.

⁵⁵ Germán Silva-García, and Bernardo Pérez-Salazar, "International Anti-Drug Policies and Corrupt Public-Private Coalitions: Perspectives from a Criminology of the Global South," *Economía Institucional* 26, no. 51 (2024): 139-163.

It is therefore sensible to ask what measure of pluralism is admissible in political decision-making concerning criminalization and decriminalization, and how much pluralism should inform setting limits to penal control in protecting legal goods that might be better shielded using administrative, labor, or civil statutory measures. Questions in this regard are also relevant when discussing criminal populism based on media-driven political processes that demand increasingly tough prison sentences, following the well-established playbook of social constructions of crime. Likewise, it is appropriate to query about discriminatory penal selectivity, which tends to be omission-prone in the case of the powerful and severe with the weak and vulnerable, when delivering penal justice. In brief, this is about opening debates about the influence of the colonial epistemic paradigm on criminological issues such as illegal migration, drug trafficking, and terrorism, among others.

Divergence theory highlights the political, selective and often discriminatory nature of criminal control interventions; it focuses on conflicting interests and ideologies that motivate social divergence; it discloses the main parties engaged in divergent social action, as well as the role played by the state; it supports normative pluralism and recognizes the relative nature of adherence to social and legal norms; it objects to framing divergence as an abnormal or anomalous; it clearly distinguishes between the descriptive and prescriptive dimensions of social life, while discerning their relationships. In this framework, regardless of who is convicted or who is declared not guilty, the overall sum of their social actions and interactions will be defined as divergent. In short, divergence theory meshes a worldview separate from the one endorsed by the sociologies of crime and deviance that underwrite mainstream criminology in the Global North.

The parameters of social divergence discussed above represent a methodological shift that is guiding novel research into social actions of penal interest.⁵⁶ It represents

⁵⁶ Luis Felipe Dávila and Caroline Doyle, "Insider and Outsider Fieldwork challenges in Medellín, Colombia," *International Journal for Crime, Justice and Social Democracy* 9, no. 3 (2020): 87-99; José Fernando Flórez, "The effect of mass incarceration on criminality in Colombia," *International Journal for Crime, Justice and Social Democracy* 9, no. 4 (2020):15-33; Pablo Elías González-Monguí, "La negación de la calidad de ciudadano o de persona en el derecho penal de enemigo," *Opción* 35, no. 25 esp. (2019):1070-1103; Germán Silva-García, "Corrupción y derechos humanos. El Estado hacendal y la cleptocracia," *Opción* 35, no. 25 esp. (2019): 12-49; Bernardo Pérez-Salazar, "¿Qué hay de la responsabilidad del Estado colombiano después de una condena internacional? El caso de las comunidades afrodescendientes del río Cacarica," en *Responsabilidad internacional y protección ambiental: en tiempos de paz, en medio del conflicto armado y en etapas de posconflicto* (Universidad Católica de Colombia, 2018), 161- 196. Germán Silva-García, and Diana Marcela Bonilla, "La sostenibilidad en el análisis criminológico. El caso de la minería carbonífera en Boyacá," *Via Inveniendi et Iudicandi* 18, no. 2, (2023). 270-292. Germán Silva-García, and Pamela Tinoco Ordóñez, "La justicia restaurativa. Un parangón entre la justicia penal y la transicional," *Araucaria* 26, no. 57 (2024): 483-504.

a paradigm shift.⁵⁷ In its worldview, there is no place for examining criminal or deviant actions per se, as their existence is questioned. Instead, social divergence theory allows criminologists to study and understand the characteristics and dynamics by which divergent and convergent social actions influence how penal control systems operate in different contexts and conditions of pluralism, as well as to critically observe how deviance and criminality are socially constructed in these diverse settings.

Conclusions

Penal legal sociology is an interdisciplinary specialty of sociology. It is a combination of social science and normative science, which is a peculiar mix. It involves the study of penalized divergent social actions and their relationship with penal control systems. A peculiar junction developed between sociology and law can be observed regarding this dyad, which is discussed next.

Social divergence has physical expression in the natural world. It is empirically objective and is part of the descriptive dimension of life. Considered as an event, it occurs independently of any penal social control intervention. When this intervention happens, value judgment ensues and at least one of the divergent social action lines involved in the event is defined as criminal following procedures prescribed by the penal control system, a process that belongs to the prescriptive realm of social life. This is how the social meets the legal and the descriptive and prescriptive dimensions mix. It is also the occasion for diversity, a descriptive property of divergence, and pluralism, a value-laden trait of penal social control, to engage. In this context, the object of study of criminology can be circumscribed to the concurrence of social divergence and social control systems.⁵⁸

In contrast, the ‘sociologies of crime and deviance’ are the kernels of Eurocentric criminological approaches based on worldview models that legitimize sociocultural domination. These classify and subclassify individuals as conformist, normal, deviant, criminal, or otherwise. Through this distorted lens that favors the preservation of

⁵⁷ Ilaria Li Vigni, “Sociologia del diritto penale e della devianza. In *Ricordo di Morris Ghezzi*, ed. Simonetta Balboni (Mimesis, 2022), 106.

⁵⁸ Germán Silva-García, Angélica Vizcaíno-Solano y Gerardo Ruiz-Rico Ruiz, “El objeto de estudio de la criminología y su papel en las sociedades latinoamericanas,” *Utopía y Praxis Latinoamericana* 23, no. 1 extra (2018): 11-18.

existing power structures, sociocultural elite groups maintain control of the production and reproduction of divergent social actions that call for penal intervention.

In objection to this order of things, a sociology of social divergence is proposed as an alternative worldview that celebrates diversity and pluralism and that offers a criminological outlook that is more relevant to the plural expressions of social life in the Global South. From this worldview, criminological studies will focus on making sense of how the concurrence of penal control systems and objectively described socially divergent actions shape and transform diverse manifestations of social life in the Global South. In brief, in this worldview criminology is not limited to the critical understanding of criminalization processes but instead becomes a mainstay in the process of producing criminological knowledge to make sense of the concurrence and divergence of penal control systems and its contribution to the objective understanding and recognition of sociocultural diversity and divergent social action.

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