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Some Basic Problems in Criminology

By JEROME HALL

THE enormous literature on methodology which has appeared in the last decade has, despite criticism and admonitions from certain quarters,¹ resulted in a much clearer appreciation of the limitations of contemporary social science. Thus, for example, there is now considerable understanding of the huge proportions and significance of linguistic difficulties. If, as Sapir and others tell us, language is the vehicle of thought, then the difficulties are by no means purely philological; much more, they require an infinitely more thoroughgoing analysis than has heretofore been attempted. This means that for an indefinite period to come, the language problem and all that it involves will be a chief concern of social scientists.

There are other valuable lessons to be learned from this literature, for these discussions have been pushed sufficiently far to permit a more sophisticated reading and evaluation of sociological writing than was previously possible. We are able to see many interrelationships among the problems investigated. And we are beginning to understand how much of social "science" is really social policy more or less disguised; in short, how much of sociological writing consists of expressions of approbation or displeasure. And in the rare instances where a high degree of objectivity exists, we are in a better position to understand and evaluate the particular job by our greater appreciation of the various fundamental approaches to and interpretations of social science. In short,

¹ Ellwood, C. A., "Scientific Method in Sociology" (1931), 10 *Social Forces* 15-21.

our frames of reference have been constructed for us.

All of the above applies to criminology more forcibly than to most social disciplines. For purposes of simplifying this discussion and keeping it within the set boundary, we shall present very briefly three principal approaches which for convenience may be termed the "rigorous scientific," the "scientific method," and the "unique data" interpretations, respectively. The knowledge found in criminology may be subsumed under different categories described in the various interpretations set forth. From such a demonstration of the relationship of criminology to these three interpretations of social science, and of the relationship of these interpretations to each other, it is hoped that something will be added to our understanding of some of the major problems presented by the contemporary literature of criminology.

THE RIGOROUS SCIENTIFIC POSITION

Very happily for our present undertaking, we may set forth the "rigorous scientific" position by reference to the recent publication of the most thoroughgoing critique on criminology and criminal law and its administration that has yet appeared.² This analysis of the field is the product both of a logician and philosopher and of a law teacher who has had many years of practice at the bar. After a comprehensive survey of the field, they arrive at the following conclusions:

² Michael, J., and M. J. Adler, *Crime, Law and Social Science*, Harcourt, Brace and Company, 1933.

- I. There is no scientific knowledge in the field of criminology.
 - A. We have no knowledge of the causes of criminal behavior or of the effects of different modes and varieties of treatment upon actual or potential offenders, or of the efficacy of programs and measures of prevention.
 1. In the absence of such knowledge we are and will continue to be impotent to control criminal behavior.
 - B. The knowledge which has resulted from criminological research is knowledge descriptive of the characteristics of criminals and of their environments.
 - C. This descriptive knowledge has little utility in the solution of the practical problem of controlling criminal behavior, either through programs of prevention or through the official treatment of offenders.
 1. It can be employed only in trial and error attempts to control criminal behavior, and therefore has little practical value.
 2. Such attempts cannot now be made the basis of experimental programs and, therefore, have little theoretical significance.
- II. Empirical scientific research in criminology cannot be undertaken at the present time.
 - A. The subject matter of criminology is criminal behavior, and criminology is, therefore, a dependent science.
 - B. Criminology depends in large part upon the subject matter of psychology and sociology, and these subject matters have not yet been developed as empirical sciences.
 - C. Since no theory or analysis has been developed in the fields of psychology and sociology, scientific research is not yet possible in these fields.
 - D. The possibility of scientific research in psychology and sociology depends upon radical changes in the methodology of investigation in

these fields, and this, in turn, depends upon the correction of the misconception or inadequate conception of empirical science and scientific method which is now prevalent in these fields and which we have characterized as raw empiricism.³

Without attempting a systematic summarization of this book, which is impossible within the limits of this paper, we shall very briefly present the general thesis maintained, which led to the above conclusions, namely:

Problems are either theoretical or practical. Practical problems concern affairs, procedure, or action; they involve the fixing of an end which it is desired to achieve, and the determination of means to accomplish it. On the other hand, theoretical problems are questions as to knowledge—never as to decisions. When we answer theoretical problems our conclusions are either true, false, or probable; whereas the answers to a practical problem are wise

³ *Ibid.*, pp. 390-391; and in connection with the last statement above, note: ". . . the scientific method . . . is hardly more than the native method of solving problems, a little clarified from prejudice and a little cultivated by training. A detective with his murder mystery, a chemist seeking the structure of a new compound, use little of the formal and logical modes of reasoning. Through a series of intuitions, surmises, fancies they stumble upon the right explanation, and have a knack of seizing it when it once comes within reach. I have no patience with attempts to identify science with measurement which is but one of its tools, or with any definition of the scientist which would exclude a Darwin, a Pasteur or a Kekule." Gilbert Lewis, *The Anatomy of Science*, p. 6.

Cf. also, "The principle of the scientific method, in fact, is only a refinement, by analysis and controls, of the universal process of learning by experience. This is usually called common sense. The scientific addition to common sense is merely a more penetrating analysis of the complex factors involved, even in seemingly simple events, and the necessity of numerous repetitions and controls before conclusions are established." A. J. Carlson, "Science and the Supernatural" (1931), 73 *Science*, 218.

or unwise, intelligent or unintelligent, just or unjust. There are two ways of determining whether means are adapted to ends: common sense and the method of empirical science. Common sense is frequently adequate and in the degree that the practical problem is simple; with increased complexity, common sense becomes more and more inadequate.

After stating the problems which arise from crime, the criminal law and its administration, the authors of the survey proceed to their most basic inquiry, namely, "the conditions of a science of criminology."⁴ "Criminology consists of information about the activities and nature of criminals, their environments, and the ways in which they are officially and unofficially treated by social agents and agencies."⁵ The central problem in criminology is that of the causes of crime; accordingly the significance of criminological knowledge depends upon the ability of this knowledge to solve the etiological problem. A cause is discovered by finding "the precise nature of the relation of dependence which obtains between a given item on the one hand and one or more items on the other hand."⁶ Interdependent items are called variables, and the inquiry involves the nature of their covariation.

SCIENCE DEFINED

The authors then define science: it consists of propositions which must have (1) generality, (2) determinate validity, (3) a formal character as a relation of variables, and (4) compendancy. If the validity of all the propositions rests upon the validity of a small number of propositions, that is, if we have a systematically ordered set of propositions, we have a rational science

as distinct from an empirical science. Say Professors Michael and Adler: "The body of knowledge called criminology does not contain a single scientific proposition."⁷ They inform us as to what must be done: First, the research must be directed by a problematic proposition;⁸ second, the data must be both reliable and accurate; third, the data of observation must be developed by processes of inference.

As will be noted by reference to the above summarization, the approach taken consists of setting up a very rigorous definition of "science" and classifying the knowledge in the field of criminology with reference to that definition. That the adherents of this position are perfectly aware of their procedure is definitely shown by their statement that "we are using empirical science in a sense which includes physics and excludes anatomy."⁹ If this terminology is borne in mind, their classification of criminology as "common sense" knowledge becomes perfectly understandable. They intend no depreciation of the knowledge in criminology in itself, but only in comparison with science as defined. In fact, the authors of the work referred to are really upon common ground with many students of criminology in recognizing the value for certain purposes and within certain limits, of the best research in criminology.¹⁰

⁷ *Ibid.*, p. 58.

⁸ Cf. Professor E. W. Patterson: "... one must have some vaguely felt aim or need at the outset, but that one need not have a sharply formulated proposition to test. One must be willing to be led by the facts, one must realize that knowledge is a process of interaction between sense-data and the assumptions of prior experience. Incipient generalizations become irrelevant because they are supplanted by discriminations suggested by the data turned up in investigation." "Can Law Be Scientific?" (1930) 25 *Ill. L. Rev.* 145.

⁹ Michael and Adler, *op. cit.*, Preface, p. xxi.

¹⁰ *Ibid.*, pp. 331-2.

⁴ Michael and Adler, *op. cit.*, Ch. V.

⁵ *Ibid.*, p. 46.

⁶ *Ibid.*, pp. 49-50.

SCIENTIFIC METHOD

The second position, which was inspired largely by Pearson and in which major emphasis is placed upon method, is that taken by the younger group of sociologists. Many of these students of the social disciplines, in sharp contrast with the older scholars, were recruited from physics, biology, and other sciences (note that we use the word less rigorously than above). In any event, they studied the natural sciences and attempted to take over as much of the methodology as could be employed on the particular social data studied. The demarcation of narrow areas for intensive empirical research has thus distinguished contemporary social science from the comprehensive systems associated with the work of scholars like Spencer and Ward.

As has been stated, the major emphasis of this group has been upon method. Their examination of the natural sciences leads them to conclude that although techniques vary and are admittedly more highly developed in the exact sciences, nevertheless the method employed (meaning thereby at its minimum the "logic of measurement"¹¹) is common. Thus, Dr. George Lundberg writes:

But when a general criterion or definition of science is attempted it is found that such definition tends to be in terms of *method* rather than of subject-matter. All that the term science as applied to a particular field comes to mean is a field which has been studied according to certain principles, i. e., according to *scientific method*.¹²

Until it is carefully defined, the word "method," like the word "science," means all things to all men; and until attention is centered upon precisely the same phenomena, it is futile to assert that a particular method is or

is not scientific. Thus, Professors Michael and Adler state that scientific methods are not employed at present in social research.¹³ To understand their position, reference must be had to their definition of the two terms "science" (which has been stated above) and "method."¹⁴

Exactly the same observations with regard to the necessity for definition must be made with reference to the content of the social sciences. Although the younger sociologists freely admit that they have not discovered anywhere near the number of scientific generalizations which are found in the exact sciences, they nevertheless assert that scientific laws are simply descriptions of general types of behavior under certain specified conditions, and that the sociologists have already discovered a number of such laws.¹⁵

¹³ They select psychometrics and mathematical economics as the only scientific divisions of the social disciplines. Both of these fields, it is submitted, in so far as they are exact, are branches of mathematics, numbers being more or less arbitrarily assigned to data, and in this aspect are not social sciences at all. In the latter field, mathematical formulæ could be readily fitted to the concept of the "economic man" of classical economists, which involves quite a different matter from dealing with human beings. Current institutional economics as a reaction from classical economics is significant from this point of view.

¹⁴ That they apparently insist upon techniques as an essential part of "scientific method" may be gathered from the following: "The generalizations of empirical science, like those of common sense, rest upon experience and are derived from it by prudence and intelligence; they differ in that in their derivation intelligence is directed methodically and is aided by special techniques, and in that taken together they constitute an analysis of some limited portion of experience which is the subject matter of a particular science." *Op. cit.*, Preface, p. xxii.

Cf. G. Lewis and A. J. Carlson quoted in note 3, *supra*.

¹⁵ Thus Dr. Lundberg writes: "What is a scientific law, but a brief description of how phenomena behave under given conditions? This is not only possible but has been practiced in a more or

¹¹ G. A. Lundberg, in an unpublished paper.

¹² *Idem*, *Social Research*, p. 2.

Classification of knowledge—

If attention is now directed to some of the best research in criminology, as, for example, parole prediction and ecological studies of juvenile delinquency, several results follow. If our purpose is to classify this type of knowledge, the particular criteria selected will in part determine the distribution made. If the criteria be narrowed to methods, and methods be limited to the "logic of measurement," then these studies are "scientific." (We are referring here only to the classifications employed in the two positions discussed above.) If the criteria are propositions characterized by a relation of variables, compendancy, and so forth, and if methods include the techniques of physics, then the studies referred to cannot be "scientific" but must be "common sense" or some other category which is more apt.

less systematic way from the very beginning of society. All that social science aims to do is to change this practice from a rule-of-thumb procedure to an objective and more exact practice."

"The uniformities in physical data which form the basis of all physical science are also observable in social data. As we have noted, scientific laws specify certain simple and frequently artificial conditions under which phenomena behave in a certain way. Under these conditions, the behavior can be predicted with a high degree of accuracy. Likewise we can predict, with a high degree of accuracy, how many people in a given city will be born, will die, commit suicide, or get married during the coming year, *provided*, the significant conditions obtaining during the past years on which our observations are based remain the same." *Social Research*, pp. 12, 15.

And Dr. Read Bain, another adherent of the position presented, writes: "But sociology and other social sciences are rapidly building up a vast body of sound scientific knowledge which by reason of its quantic nature and criticism of common sense, or both, sounds as strange to the man on the street as endocrinology, radioactivity, or theories of immune sera." "The Concept of Complexity in Sociology: II" (1930), 3 *Social Forces* 373.

Clearly, if the term "common sense" is used as in ordinary speech, objections can be raised to the subsumption of the knowledge acquired through the methods employed to construct the prediction tables, under this category. However, it is obvious that the adherents of the position first described do not use the term in its ordinary connotation. They mean merely that it is not "scientific" (as rigorously defined by them). And they add, "we have not meant to say that such knowledge is the common possession of all men or that those men who possess it, have it to the same degree."¹⁶

A suggested solution—

The opposition between the two positions thus far presented is in large part resolved by taxonomic analysis. A possible solution which suggests itself is the adoption of a third category intermediate between "science," rigorously defined, and "common sense" as ordinarily understood. The use of the latter term cannot fail to connote knowledge which is common, despite the warning given in this connection. There accordingly is need, for certain important purposes, to have a third category which will include such researches as those mentioned; which will include psychiatry and medicine and other knowledge arrived at by the use of orderly, systematic procedures, and the application of which requires a trained, experienced judgment.

So far as we know, it is a debatable question whether the use of objective techniques calls for a different kind of thinking from common sense methods, or indeed, whether these differ from the mental processes employed in rigorous scientific analysis or observation. The question of the validity of categories invented to represent alleged differences in method cannot be

¹⁶ Michael and Adler, *op. cit.*, p. 331.

settled absolutely; and the only clue that can be suggested is that all classifications are constructed to meet particular needs (and for some, we want to emphasize the results of our thinking rather than our process). It depends, in short, very largely upon the purpose in hand.

Under the circumstances and within the above limitations, all that can be stated is that it is possible to detect differentiae which are significant for a great many purposes. And it seems to the writer (which may be purely a personal predilection) that there is a broad basis for differentiating social science both from common sense and from empirical science as defined; from the latter because it is not exact, and from the former because it is not common but confined to persons who have had specialized experience in a particular field which qualifies them for an efficient behavior which cannot be expected of laymen however intelligent they may be.

To this distinctive content of the social disciplines must be added another difference (from common sense) which they possess, namely, an orderly method which operates through the agency of various more or less elaborate techniques, a method which is carefully designed to eliminate bias, to make possible the detection of all relevant data, to make use of all verifiable data, and to record the results so that they may be checked by other investigators. Of course there remains, among others, the difficulty that unanimity is not quite so readily determined as in the physical sciences; nor is it so widespread, which is to be expected.

We know no way of determining the question regarding an adequate terminology except by reference to utility.¹⁷

¹⁷ Cf. "It is entirely arbitrary whether a given word shall be used to indicate a similarity

The desiderata of definiteness of denotation, comprehensiveness, and absence of affective associations suggest themselves. Many of the principles applied by the philologists who are concerning themselves with the construction of an international language have some application. And the fact that a particular usage is customary may have greater disadvantages than benefits.

Finally, the experience of the older sciences may be utilized. The terminology adopted by Professors Michael and Adler has this distinct advantage: science, rigorously defined, becomes relatively definite. Other types of knowledge may be very valuable, but will not be subsumed under the rubric "science." In addition to the definiteness thus attained in one direction at least, there is also the advantage of having direct attention called to the relatively smaller degree of validity of other types of knowledge, with the very salutary effect of fostering a skeptical, critical attitude and of dispelling the smugness that frequently results when terms and definitions are expanded to allow everyone from the professional prize fighter to the experimental physicist to rest under the coveted ægis of Science.

"UNIQUE DATA" INTERPRETATION

Even if it is impossible to secure considerable agreement on present

or a difference. Thus, we employ the phrase 'empirical science' in a restricted meaning which differentiates physics from criminology; we might have used it in a less restricted meaning in order to indicate the similarity of physics and criminology as bodies of knowledge somehow based upon experience. The analysis would not be changed by this arbitrary change in usage, because physics and criminology are clearly differentiable as bodies of knowledge, and hence some other word could be used arbitrarily to express this differentiation. Verbal usage may be arbitrary, but analysis is not." Michael and Adler, *op. cit.*, Preface, p. xix.

controversial questions among adherents of the first two positions discussed, it is certain that the differences between them are relatively minor when contrasted with those of the third position which we present. We refer to those scholars who hold that social data are unique¹⁸ and that the methods of natural science and certainly rigorous scientific techniques are very inadequate in the study and understanding of social phenomena. Thus, Professor MacIver, one of the leading exponents of this view, writes:

The trouble is that the social sciences suffer from certain embarrassments from which the "natural sciences" are more or less free. They have to deal with phenomena which involve a kind of causation unknown in the purely physical world, since they are "motivated," in fact brought into being, by that elusive and complex, but undeniable, reality, the mentality of man. Not a single object which the social sciences study would exist at all were it not for the creative imagination of social beings. Consequently the social sciences have to deal with variable and indeterminate concepts such as capital and labor, family and nation, state and sovereignty, crime and unemployment, folkways, institutions, social attitudes, and other intangibles. The social scientist has no "natural" classifications to guide him such as those with which nature is expected to accommodate the geologist or the entomologist. Under these circumstances every authority is free to define his concepts in his own way and treat them in his own way.¹⁹

¹⁸ Note the position of Professors Michael and Adler that it is possible to have an empirical science of criminology; and that social phenomena are no more complex, intangible, elusive, etc., than physical phenomena. *Op. cit.*, pp. 72-74.

¹⁹ MacIver, R. M., "Is Sociology a Natural Science?" (1931) 25 *Publ. of the Sociol. Soc. of Am.* 26-27.

"If there is to be any 'objective' social science it will have to run in terms of the kind of objectivity which social ends and procedures of action actually possess, which is strikingly different from that belonging to physical phenomena. The notion of 'uniformity of sequence' is anti-

The question of causation²⁰ is merely another phase of the question of knowledge. Control and prediction depend in part upon our knowledge of causes. Can we control criminal behavior by common sense knowledge? This question raises not only all the difficulties that we have previously considered,

thetical to that of 'control' by the behaving material itself. There is, no doubt, considerable uniformity of sequence in social phenomena, but it runs in terms of meanings and values rather than physically described events. It is known by communication, *Einführung*, 'sympathetic introspection' (Cooley). This notoriously fails to yield accurate results uniform for different observers." Frank H. Knight, "The Newer Economics and The Control of Economic Activity," (1932) 40. *Jour. of Pol. Economy*, 440.

"If we keep in mind both the historic and the teleologic aspect of social life, we see an interaction and a mutual dependence between what is and what should be, between the actual historic cause and the ideal of what is desired. The subject matter of social science thus differs from the subject matter of natural science not only in introducing the prospective or teleological point of view, which describes movements in terms of their goals, but in the more specific element of tradition which sometimes takes the form of conscious teaching and learning. We may say that the distinctive subject matter of the social sciences is cultural in the sense defined by Tylor, to wit 'the complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society'." . . .

"For an adequate account of the distinctive subject matter of the social sciences, we must take note of the element of tradition, of the ways whereby social conformity is brought about." M. R. Cohen, "The Social Sciences and The Natural Sciences," in Ogburn and Goldenwieser, *Social Sciences and Their Interrelations*, pp. 450, 468. Professor Cohen's position is elaborated in his recently published *Reason and Nature*.

²⁰ Cf. Bertrand Russell's chapter "On the Notion of Cause" in *Mysticism and Logic*: "All philosophers, of every school, imagine that causation is one of the fundamental axioms or postulates of science, yet oddly enough, in advanced sciences such as gravitational astronomy, the word 'cause' never occurs. . . . To me it seems that philosophy ought not to assume such legislative functions, and that the reason why physics has ceased to look for causes is that, in fact, there are no such things." P. 180.

but also the new one of "control." Certainly "control" in human society is not significantly limited to the direct, immediate behavior to which we refer when we speak of driving an automobile or throwing a ball. More than that, while men control physical objects in this simple, direct manner, it is clear that they do not control natural phenomena in the same sense at all. They do make certain adjustments to them, and they can predict some of them. We can fairly well predict the number of deaths which will occur in the United States during the next ten years, but we can do little about controlling their occurrence. If we know that unemployment, poverty, and subnormality increase criminal behavior, we cannot as a result of that knowledge lessen that behavior.

Common sense and control—

Control has been defined loosely, where it has not been entirely assumed without any attempt at definition, and it is impossible within the limits of this paper to discuss the question in any detail.²¹ If we ask does common sense knowledge permit us to "control" in

²¹ Cf. "If men are free they are not subject to 'control' other than their own, and, if there is no freedom, we are all alike under the absolute 'control' of physical causality, and all talk of social control is nonsense. Literal 'control' means that some are 'free' to 'control' others, meaning, again, that they have power to do so. We confront the old question, or questions, of the rôle of the individual in history; how much and how fast can one man change the course of events, and what is the likelihood that any change he does produce is for the better? Even afterward, we cannot tell with any precision. In the mutual struggle of millions of individuals the effect produced by any one on all the rest must very exceptionally be appreciable, and its character depends on the good will and good foresight of the far future of those who do achieve some power. Historical students agree that most 'leaders' are largely followers, or accidental symbols of movements." Frank H. Knight, "The Newer Economics and The Control of Economic Activity," (1932) 40 *Jour. of Pol. Economy* 458.

any sense, we may merely note diverse answers which cannot now be understood. The authors of the survey referred to insist that etiological knowledge is scientific (as rigorously defined) and that only such knowledge can assist in controlling criminal behavior. At the opposite extreme, Dr. Frank Knight, who takes an extremely critical, skeptical position,²² states that:

Common sense does predict and control, and can be trained to predict and control better; but that does not prove that science can predict and control better than common sense. And it seems very doubtful whether in the majority of social problems the application of logical methods and canons will give as good results as the informal, intuitive process of judgment which, when refined and developed, becomes art. Art is not science, and only within narrow limits can it be reduced to science (in which case of course it ceases to be art). It seems to us that science is a special technique developed for and applicable to the control of physical nature, but that the ideal so constantly preached and reiterated, of carrying its procedure over into the field of the social phenomena rests on a serious misapprehension.²³

As is to be expected, the adherents of the "unique data" interpretation hold that social causation is different from physical causation.²⁴ Without

²² See Dr. Knight's discussion, *op. cit. supra*, pp. 458-468.

²³ Knight, Frank H., "The Limitations of Scientific Method in Economics," in *The Trend of Economics*, edited by R. G. Tugwell (1924), p. 254.

²⁴ "But these quantitative indices are merely evidences of an interaction which they do not explain; they are not the dynamic factors of which we are in quest. If we appreciate at all the nature of social causation we shall never expect to find that this factor A, presumptively measured by this quantitative indication *a*, contributes 20 per cent, and so forth. Much ingenuity, and still more energy have been lavished on the attempt to reach results which the very nature of the subject matter precludes. Social phenomena are not, like certain physical phenomena, isolable components of a situation. Social phenomena

dwelling upon this angle of the problem, it is obvious that we have also a linguistic problem here which has only recently been recognized with reference to the idea of control. Significantly enough, the recognition of the linguistic problem at this point has developed with and from analysis of this concept.

BEHAVIORISM

Underlying the third position described above is the suggestion that the social disciplines are more closely related to art than they are to science.²⁵ Without attempting to decide this issue, we may note the significance of this view with reference to behaviorism. The literature of psychology during the past decade has been devoted so abundantly to a consideration of behavioristic approaches that lengthy summarization is unnecessary. Furthermore, in view of the recent revolutionary changes regarding many fundamental theories in physics on the one hand, and of the newer meanings that have been assigned to "behaviorism" on the other (by L. L. Bernard, A. P. Weiss, R. Bain, *et al*), it is impossible to arrive at any but the most tentative conclusions. Opponents of

behaviorism frequently direct their attack with reference to a very narrow definition of the term (made possible by the existence of many varieties), and assume also the continued existence of a mechanics which has all but disappeared from contemporary physics. Many of the ablest advocates of behavioristic approaches and interpretations deny that their position calls for the reduction of social phenomena to the *simplest* physical phenomena. Along with these various developments which have accompanied analysis and research, we find, accordingly, concomitant changes in definition and terminology.

RELIANCE UPON INTUITIVE PROCESSES

Whether it is merely a temporary difficulty arising from a limited use of objective methods, or a permanent limitation which results from essential differences of social data, it seems clear that in the solution of problems which are dealt with in the administration of the law, we are compelled to utilize intuitive processes. Intention, planning, and motivation (though they may be merely general terms which represent a large number of acts) are necessary concepts. Nor does it seem possible at present to make a sufficiently detailed analysis of behavior to enable us to dispense with these concepts. Without asserting that a highly developed behaviorism may not offer a more satisfactory explanation of the phenomena associated with motivation, sentiments, emotions, and so forth than is now derived by the use of the intuitive processes alone, it is necessary, at least in the administration of the law, to rely chiefly upon insight and imagination. Accordingly, if attention be centered upon present techniques and upon explanations of behavior hitherto adduced by objective methods, it seems clear that it is neces-

are aspects of a total non-mechanical consciously upheld system of relationships. . . . Behind every social relationship lie social attitudes and interests, which are not separable forces but type-phases of dynamic personality." R. M. MacIver, *Society, Its Structure and Changes* (1931) p. 520.

²⁵ Cf. Gilbert Lewis, *The Anatomy of Science*: "The method of the chemist . . . [and] his data are far less exact [than the physicist's]. . . . Some are rough measurements, but the greater part are not even metrical in character. They are based upon the observations of thousands of different substances and from these observations come rough generalizations like the law of Mendeléeff." P. 169.

"So, as the organic chemist acquires proficiency in this art, for indeed it is almost an art, he acquires an intimate acquaintance with his material." P. 174.

sary not only to employ physical and biological explanations to the fullest extent, but also to supplement these by explanations on a purely social level.

Nor do we need to adopt the view that social data are essentially different from any other data. The question, in any event, is How can social phenomena be best understood? If we confine ourselves to present problems and to available explanations, certain conclusions are unavoidable. Thus, in criminology, the method of Dostoevsky, for example, is more valuable in understanding some types of criminal behavior than any scientific techniques that have been developed thus far. Yet it is very frequently assumed (by simply ignoring it) that we must take imagination or insight as given, that we need not study, train, or cultivate it, and moreover, by placing entire emphasis upon objective methods, that these latter are paramount.

The best work in the social sciences is a combination of orderly method and trained imagination; and while we do not find this anywhere deliberately denied, and indeed the reverse is true, nevertheless we believe it may fairly be stated that a serious limitation of contemporary criminology is the failure to train and utilize the processes of insight and imagination.²⁶

This observation is entirely consistent with further empirical investigation in the social sciences, with experimentation of every sort. It

²⁶ Case studies are only a small beginning; the most detailed life histories, which have for the most part been best developed hitherto by the psychoanalysts, should be compiled without necessarily adopting the psychoanalytic ideology. Interpretations made by intuitive processes can be supplemented by further observation. And a communication (objectification) of their intuitive processes by judges, juries, etc. would be valuable. Novelists and biographers who make no attempt to ape psychologists provide valuable material.

merely suggests that for an indefinite future, we must not expect compendent propositions whose validity may be determined in part by reference to scale, galvanometer, or test tube; but rather, we must continue indefinitely to use our most subtle imaginations not only in detecting small relationships in the vast mass of data that we collect, but, moreover, in interpreting, evaluating, and using these small truths together with the whole body of our experience in understanding the social life about us, including criminal behavior. And of equal importance is the recognition of the fact that the methods employed in the social sciences provide, at the minimum, a large body of relatively detailed, reliable information upon which insight, imagination, and judgment can operate more effectively.

DEGREE OF PRECISION REQUIRED

Finally, it may be said that while researches in the social sciences, including criminology, do not result in propositions which are as exact as those found in physics, it is necessary to note that such precision is not required in the administration of the criminal law. Precision itself is purely relative, and the need for any particular degree of precision is determined by the purpose in hand. This certainly is true in law. Thus the adoption of a wise policy by a legislature would not necessarily be in the least affected by the most precise data imaginable.

Professor Herman Oliphant illustrates the point very neatly as follows: A recent study of the labor injunction in New York shows that in about 60 per cent of the cases, the temporary injunction was the only relief sought and granted. If the legislature should consider regulation of this type of remedy, it would not make the least difference whether the temporary in-

junction was the only relief granted in 60 per cent of the cases or in 60 per cent plus or minus a fraction. As Professor Oliphant says:

How exact a particular observation or measurement in any science needs to be depends upon the academic or applied use to which it is to be put. The degree of exactitude needed varies with the subject, with the problem of that subject and with the aspect of the problem with which one is called upon to deal. . . .

The example cited illustrates a further fact which students of the law in particular should keep in mind when they despair of scientific methods of study. It is that the discriminating capacity of the social agency available for effectuating changes indicated by their studies (e. g., the legislature) will constitute the upper limit of exactitude which the methods they employ in their study need, for many practical purposes, to be capable of producing.²⁷

NEED FOR STANDARD TERMINOLOGY

We have tried, by placing in juxtaposition three leading interpretations of social science and results that follow from them, to demonstrate the utter futility of attempting to understand sociological literature without a deliberate, thorough attempt to understand the terminology employed; that after allowances are made for differences in terminology, conflicts disappear in large measure; and that the necessity to make such an analysis and to allow for differences in terminology is peculiarly necessary in the social sciences. All of these observations apply equally to attempts to evaluate criminological research.

We should be rare optimists, however, if we imagined that the conflicting positions indicated in the above discussion could be removed by a conference on the adoption of a standard terminology. We have emphasized

the necessity to make the attempt for any one who wishes merely (!) to understand. It would be appalling not to believe that a great deal of the confusion in contemporary criminology would disappear, and we have indicated some of the steps necessary to accomplish this. Yet the writer, for one, remains skeptical about the appearance of a set of symbols which will eliminate misunderstanding. For one comes away from these discussions with the conviction that whether the data are unique or not, we will for an indefinite future be handicapped by our inability to identify social data with sufficient particularity.²⁸

Reference to any of the data dealt with in the various social disciplines supports this opinion. The existence of physical objects which can be universally and *sufficiently* identified and discussed, which can literally be pointed to anywhere and everywhere, facilitates research in the natural sciences. What social data exist which everybody everywhere will identify uniformly? It may be granted that the processes of perception are one and the same, but this does not alter the results nor eliminate existing difficulties.

Moreover, one of the most difficult things imaginable in dealing with social phenomena is to find words which do

²⁸ "The great Poincaré once remarked that while physicists had a subject matter, sociologists were engaged almost entirely in considering their methods . . . there is still in this remark a just rebuke . . . to those romantic souls who cherish the persistent illusion that by some new trick of method the social sciences can readily be put on a par with the physical sciences in regard to definiteness and universal demonstrability. The maximum logical accuracy can be attained only by recognizing the exact degree of probability that our subject matter will allow." M. R. Cohen, "The Social Sciences and The Natural Sciences," in Ogburn and Goldenweiser, *Social Sciences and Their Interrelations*, p. 454; included also in Cohen's *Reason and Nature*.

²⁷ Oliphant, H., "Facts, Opinions, and Value-Judgments" (1932), 10 *Tex. L. Rev.*, p. 130.

not connote to some extent either approval or disapproval. A perfectly enormous number of words used in social science more or less subtly imply emotional affects of this sort.

DIFFICULTY OF ATTAINING OBJECTIVITY

Another tremendous difficulty which besets the student of social phenomena is the practical impossibility of achieving a high degree of objectivity. Recognition of the existence and the importance of both this and the linguistic problem in contemporary social research is entirely consistent with all three of the positions discussed, and indeed is the most instructive lesson that must be derived from them.

Significantly enough, theses that the study of social data is indistinguishable from that of physical data in any essential characteristic have not satisfactorily disposed of the striking fact that the observer is unavoidably involved in the whole set-up in a manner unlike that found in connection with the exact sciences. It is to be borne in mind that social phenomena do not allow of simple, direct recording on physical objects (machines, devices, litmus, and so forth) as do physical phenomena. There is always the intervention of the observer who must serve as both "conductor" and recorder of what he has sensed.

Some of the psychoanalysts, indeed, have suggested that social scientists should subject themselves to examination in order to discover any complexes which might influence them. This, however, is only a small part of the difficulty. For every "normal" person is a combination of instincts, drives, sentiments, and prejudices of every sort and description. He may be unconscious of these preferences; he may think he has them under control; but he cannot escape the common

humanity he shares. Some degree of desire for amelioration in human society seems unescapable, and inseparable from the study of social phenomena.

Research in the physical sciences, however, can be carried on with relative indifference regarding results one way or another. At the same time it is generally believed that magic preceded science, and that the high degree of objectivity which is now found in the physical sciences is in large measure made possible by the existence of a very large number of abstractions which have been created during a long period of time.

But we are concerned here with the present status of the social disciplines rather than with future possibilities. And to that end, it is necessary to recognize that men studying human beings are not in the same position as men studying rock formations. The "social data" are studying the observer at the same time that he is studying them; while he is trying to control them, they are controlling him or trying to.

Criminology, of all social disciplines, suffers very considerably from this limitation upon our resources. Men who attack person and property are met by many human responses which consist of various sorts of behavior, but certainly not by the impersonal, dispassionate, even indifferent attitude that is associated with objectivity in the physical sciences.

BIASED VIEWPOINTS

The particular type of functioning of an individual over a period of years undoubtedly affects not only what he observes but how he interprets. Professionalism among lawyers has its counterpart in every vocation. The prosecutor is invariably "hard boiled" to the academician, who in turn is an

impractical "reformer" to the experienced administrator. No doubt the prosecutor considers himself a realist, just as the academic person is convinced that he is an impartial observer.

As a matter of fact, all the influences of no one knows how many years back, operate on both. The prosecutor with his particular bent has become immediately and more sharply conditioned by being thrown into a fight as champion of the group and of an unfortunate victim. That the academic person is similarly conditioned, though by other influences no less potent, is only another way of saying that he is human and that he has lived in a group of human beings.

It inevitably follows that a great part of what passes as criminology consists of apology or condemnation, of "explanation" which is really approbation, of expressions of beliefs or convictions in severity or leniency; in short, of advocacy of one sort or another. The invention of techniques is a valiant effort to diminish this inevitable human bias and prejudice.

Admitting that social phenomena can be studied to advantage by natural science methods, can it be said that to date they have done more than barely scratch the surface? To further immediate utilization of existing knowledge it is necessary, first, to recognize the existence of bias and prejudice; second, to make such allowances as we can from a detailed knowledge of the observer (no life histories can ever be complete enough to enable us to allow accurately and fully for all bias, even if we know how to interpret all the details); and third, to recognize and account for our own bias as far as possible.

DEFINITION OF CRIME

Symptomatic of the status of criminology in the hierarchy of the sciences

is the fact that no satisfactory definition of crime exists. There is more than a linguistic difficulty involved in the inability of criminologists to agree upon a definition of their subject matter. Definition is essential to discourse; in addition to this minimum logical requirement, it is necessary to bound the areas within which criminologists are to work, for the purpose of actually working there.

At this particular time a number of leading criminologists have adopted the legal definition of crime, i. e., the violation of a penal law. Now this definition is adequate for the individual whose concern is whether or not he will be punished because he violated a law. There is point and meaning in the formal definition of crime for this purpose. But the criminologist who adopts the formal definition makes his principal purpose the study of behavior which is in violation of penal laws; and so far as conduct is concerned, no one has pointed out any common characteristic of criminal behavior so defined. On the contrary, lawyers have for many years differentiated criminal laws as felonies and misdemeanors, and on the Continent, as crimes, misdemeanors, and violations of mere police orders.

Yet the formal definition of crime makes no distinctions; and if the criminologists were really influenced by this definition in the selection of areas of research, they would be just as interested in traffic violations as in murder, robbery, or rape. Moreover, a person may be guilty of violating some laws (manslaughter) though he does not act at all; and of violating other laws (narcotic) by being in possession of drugs though he is entirely innocent of the fact. About 75 per cent of the criminal cases tried in the Federal courts are the result of laws passed during the last twenty-five years.

The repeal of the Volstead law will mean an enormous quantitative limitation of the field. What can be done with reference to studying types of criminals, i. e., of persons who violate penal laws, or regarding the causes of such violations, under these circumstances?

As a matter of fact, criminologists are really influenced by the older sociological definition of crime and by other considerations. However, they have thus far been unable to analyze their problems and their interests sufficiently to define their field; or else criminology is composed of several fields which overlap and intersect at so many points that it is impossible to detect any common characteristics. In either event, this is a serious limitation.

USE OF OTHER SOCIAL SCIENCES IN LAW

There remain a number of additional special difficulties which confront students of the criminal law.²⁹

²⁹ "... a science of law cannot be built on experimentation. Like geology its rational branch must rest on testing by observation." H. Oliphant, "A Return to Stare Decisis" (1927), 14 *A. B. A. Jour.* 76.

The doctors have to a degree introduced experimentation into medicine. Thus Dr. F. S. Lee writes: "The modern physician does not rely on a philosophical system . . . he alters the conditions and thus he obtains an alteration of the phenomena and a new standpoint from which to view them. He may apply to the disease past experience, it is true, but it is past experience that has been put to the test of modern experiment. Moreover by the aid of further experiment he pushes out into the unknown, sees disease from unusual standpoints, and devises new and hitherto unsuspected methods of dealing with it." *Scientific Features of Modern Medicine* (1911).

It may be questioned whether experimentation must be forever barred from law. In Sweden, legislation is adopted for a limited period after study by a board of experts. During the ensuing period the operation of the statute is studied. Again, in the treatment of offenders there would

We pass over the dominance of traditional techniques, the necessity to follow precedent, and the reverence for authority, all of which make the adoption of a scientific attitude all but impossible. Related in varying degrees to all of these is the very important consideration that problems in the administration of law almost always depend upon social policy rather than upon social science. A serious difficulty which students of the law encounter when they look to the social sciences for assistance in their own discipline has been pointed out by Professor K. N. Llewellyn as follows:

In short, then, as to the data already available from the social sciences, one can say this: all of their material is suggestive for us; little of it is more. They have not gathered their data for our purposes, and most of what we want to know we shall have to find out for ourselves. Not only are hypotheses likely to be limited to the data on which they rest, but data also are selected, recorded and classified for the purpose in hand; and data selected, recorded and classified for one purpose are exceedingly likely to be blind or misleading when approached for another purpose. The social scientist has repeatedly left out of consideration precisely the portions of the situation which for us are most relevant or puzzling.³⁰

While systematic correlation of law and other social science is still for the most part confined to devout exhortation, knowledge from other fields has always seeped into the law.³¹ In the

seem to be room for experimentation. It would undoubtedly be limited and would require an attitude on the part of officials which cannot at present be expected; but the problem certainly seems worthy of consideration.

³⁰ "The Conditions for and the Aims and Methods of Legal Research" (1930), 6 *The Am. Law School Rev.* 677.

³¹ It is a long stretch from the days when only those who were as "mad as a wild beast" escaped liability to, the recognition by courts in their actual practices, of borderline cases of abnormality which are not as yet expressly provided for in

present century only, has the attempt been made by a few legal scholars to become thoroughly familiar with at least one social discipline in addition to their own. This has been directed by a deeply felt necessity, for, as Professor Llewellyn has stated, the legal scholar cannot bodily take over very much of the work of the social scientists in its present form.

NEED FOR LAWYER-CRIMINOLOGISTS

This is unfortunate, and its significance for criminal law cannot be exaggerated. Indeed, in a sense, the whole cause of the inadequacy of criminology for the criminal law (in addition to the limitations of criminology in itself) may be epitomized as follows: The criminologists are not lawyers, and the lawyers are not criminologists. More specifically, we do not have technologists who are equipped to apply criminology to the administration of the law. In contrast with a number of European

countries, we have taken hardly any deliberate steps to develop the necessary technology. In Italy and Germany, for example, the teachers of criminal law are very frequently competent criminologists who direct institutes and carry on research.³²

It should be reasonably clear at this time that a criminology constructed in ignorance of legal problems is all but impotent to improve the administration of criminal law. The most striking example of the failure to understand legal purposes and problems and of consequent ineffectuality is provided by criminal psychiatry, which is generally selected as the high mark of accomplishment in the field. Passing over the dogmatism that arises from

³² "Outside of the English-speaking world these things have been understood for a long time. The nineteenth century jurists and law teachers of continental Europe carried scientific study and development of the criminal law a long way. On the Continent, every land has conspicuous leaders in the scientific treatment of criminal law. In every land strong teachers and creative writers and investigators may be found, in criminal law no less than in public law and private law. Indeed, in the universities of continental Europe specialists in criminal law have known or have learned how to work with specialists in all the sciences that bear on criminal investigation and penal legislation and administration. We, on the other hand, have all but left the field to enthusiasts and cranks and charlatans." R. Pound, "What Can Law Schools Do For Criminal Justice?" (1927) 12 *Iowa L. Rev.* 112.

An example is given by Dr. R. Grassberger, who writes: "In the spring of 1923 the Austrian Department of Education . . . founded the . . . Institute. Incorporated as part of the university Law School. . . . The work of the Institute is divided into three branches . . . I. Instruction to law students in the criminological sciences. . . . The purpose of instruction at the Institute is to supplement the legal training afforded the student through the chief lecture courses by a varied knowledge which will serve him later in his capacity as judge, prosecuting attorney, defense attorney or public official." "The University Institute of the Criminologic Sciences and Criminalistics in Vienna" (1932), 23 *Jour. of Cr. Law and Criminol.* 395-6.

most criminal codes. (The Briggs Law in Massachusetts is still the outstanding exception.) Contributions of chemistry, bacteriology, and ballistics have been utilized by the courts very generally. The juvenile court is perhaps the outstanding example of an administration of the criminal law which has been influenced considerably by social science. It follows from the position taken in this paper that efficient utilization of the data and research in the social sciences is inevitably dependent upon personnel. The recent ecological studies of Park, Shaw, and Sutherland objectify conclusions of experience previously held and, moreover, provide a technique for a more discriminate utilization of the knowledge. Other important studies which command attention are those on parole prediction, especially by Burgess, Glueck, and Vold. It seems reasonable to expect that with the aid of psychiatry these tables may shortly be utilized not only by parole boards but also by judges in helping to decide doubtful cases of application for probation, and even farther back than that, by prosecutors in helping them to decide whether to proceed or to *nolle prosequi* in doubtful cases. Here would seem to be a unique opportunity for experimentation.

neglect to appreciate the significance of the existence of a dozen conflicting schools of psychology, and of the effect that this must have upon administrative officials, there has been a failure to consider sufficiently the distinctive ends of the law and the philosophy through which these ends have been conceived.

Only by making this attempt is it possible to understand, for example, why individualization is given only a limited application as a result of the legal assumption of free-willing and therefore responsible individuals, while psychiatry proceeds upon other hypotheses, the result being that it is constructed upon an entirely different level. Recognition of this would permit greater utilization of psychiatry in

the administration of the law. And we may conclude, in general, that the usefulness of criminology in law must inevitably depend upon the appearance of lawyer-criminologists;³³ that is, of experts who have been trained in both fields and are able to understand the problems that arise in the administration of the criminal law and know how to utilize criminology in the solution of them.

³³ "What is needed is that some scholar, or better, some group of scholars, think ahead of the subject, uncover its problems before they arise in the courts, perceive the relation of its problems to the history of the criminal law and to the ends of the criminal law to-day, study the adaptation of our legal materials to those problems, and thus give direction to doctrinal development and adjudication, and legislation." R. Pound, "What Can Law Schools Do For Criminal Justice?" (1927), 12 *Iowa L. Rev.* 110.

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