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THE SOCIOLOGICAL ASPECT OF CRIMINOLOGY

Marianne W. Beth¹

Social sciences have reached a point of development where their investigations into socially undesirable and prohibited behavior should be liberated from the fetters of juridical positivism.

Of course, a criminal is primarily and distinctly a person who has been found guilty by a criminal court of a definite act or omission that is outlawed by *law or statute*. But it does not follow that criminology must limit its research to such behavior or to that distinct group of people. Already the Italian scientist *Garofalo*, who coined the word "criminology" in his work *Criminologia* (first edition 1885) advised its use in the narrower juridical sense and in a broader sociological sense. This wise advice is still appropriate for our age that has come to learn that objective criminal behavior does not always result in a societal reaction of a given pattern, or that a given societal reaction allows for conclusions concerning a definite action evoking it. Criminology tends thus to become the "science of undesirable social behavior" and of societal reactions to such behavior.

This problem recently has been discussed more widely, since Sutherland directed the attention of scientists toward the fact that socially harmful and highly undesirable behavior of

certain types (white collar crime) was not dealt with by the criminal courts, but by boards, magistrates, or other authorities. Sutherland insists that such a differentiation of societal repressive reaction does not alter the fact that these acts are sociologically to be regarded as crimes, and that these patterns of behavior are to be included in the science of criminal psychology and criminology in general, although they are not part of the criminological official statistics.

Van Vechten, however, took exception to this suggestion.³ He stated that "on theoretical grounds there is certainly enough significance in social attitudes to make social sanctions as important a test of criminality as law and social damage." Further it would be difficult for the scientists to adjust their teaching or their researches to a changed definition. "As a matter of practice there is a very considerable body of research, conclusions, and theory, admittedly valid for the ordinary sort of underworld and underprivileged character, which would have to be almost hopelessly incumbered with qualifying reserves if we are to include large portions of the medical, legal, banking, and other professions in the criminal classes."

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² Edwin A. Sutherland, "White Collar Criminality," *American Sociological Review*, V. (1940) 1-12.

³ Courtland, C. Van Vechten, "The Toleration Quotient as a Device for Defining Certain Social Concepts." *The American Journal of Sociology*, XLVI (1940), July, p. 35-43.

Van Vechten's positive contribution to the explanation of the phenomenon of differential societal reaction against different types of prohibited social behavior is the introduction of the notion of Social Tolerance and of the concept of "toleration quotient," based on the social status of the person involved.

"To express the relationship between objective behavior and social status the concept of the "toleration quotient" is suggested. This would be a fraction of which the numerator would be the objective behavior and the denominator the measure of the community tolerance for the particular type of behavior on the part of members of the class to which the person concerned belongs, plus some individual factors. When the numerator exceeds the denominator formal and official action takes place; the seriousness of the action having some relation to the degree of excess. For quotients less than unity, social pressure short of official action, but still somewhat proportional to the value of the quotient, are brought to bear."

But this concept explains very few of the relevant problems. Is social toleration primarily connected with status? Does the problem, which Sutherland has started, imply that the man of high social status can get away with murder or theft, that is with that type of "objective behavior," which would be repressed by "formal and official action," if perpetrated by a member of the underprivileged classes? That may happen. But Sutherland's "white collar crime" was typically behavior of a pattern which is obviously inaccessible to the underprivileged classes. And the "toleration" applies generally to this pattern of behavior, and not to the status of the perpetrator, at least not in the first line.

In raising these questions, the investigator is nevertheless confronted with the fact that societal repression is not exclusively determined by the intensity of social harmfulness of a pattern of behavior, but that other important factors enter into the pattern of reaction. These factors are obviously manifold, and many of them are consciously or subconsciously concealed from general knowledge, because since times immemorial the ideal of impartial, that is of mechanically equal justice, has been upheld. This ideal, however, never prevailed in absolute and unqualified form, not even in theory, except during the short period of Beccaria's influence on continental European legislation. And even then, there were remarkable distinctions to be observed, just those distinctions which have excited Sutherland's attention.

One of the guiding ideas of societal reaction seems to be a moderation in employing repressive action. This moderation disappears at times. For instance, the excessive use of capital punishment during the 18th century may easily induce the opposite conclusion, namely that the social repressive apparatus always tends towards a maximum of officiousness. Still, in balanced times, the other tendency is clearly observable. The last decades have seen it at work in institutions like probation and even parole; in all the social services complementing and even replacing social repression for the underprivileged classes. Moderation tends to appear as "toleration" in its initial stages.

What looks like "toleration" may be social weakness. Caesar tells of the

Gallic nobles, who appeared before their informers with an enormous retinue, thus demonstrating that the execution of an unfavorable judgment against them would be hardly feasible. A similar situation of general social weakness or disintegration causes the toleration of gansterism, but hardly a regard for their status as members of a privileged class. The fact exists that society as an organized unit is not always mightier than some individuals or groups. Society does not tolerate these groups, but it must submit to them until it gains sufficient strength to deal with them.

There are obviously also cases, where Van Vechten's explanation holds good. There are individuals in every society who seem so important for the general welfare that society does not want to interfere with their activity, even if single acts are undesirable. Unforgettable is the damage done by social repression in the cases of Lord Byron and Oscar Wilde. But such social opportunism is bound up with personalities, not generally with status. It is based on the fundamental insight that there is hardly such a thing as objective behavior, but that the consequences of each act vary according to the circumstances.

In other cases, for instance in the case of delinquent children of well-to-do parents, social interference may seem unnecessary, on the objective side, because the social harm has been amended by the parents, and because,

subjectively, educational measures may be taken by the family.

This is a special instance of the general problem of whether society can afford in a special case to prosecute, or whether it can afford not to prosecute. This dilemma is uppermost in all legislation and still more important in the practice of the courts. Every formal and official prosecution adds to the social harm of the criminal act the social damage of the total or partial destruction of the personality of the perpetrator of this act,⁴ quite apart from the cost of his punishment to the community. If there is little probability of chronic crininosity, or of infectious propagation of this type of behavior, prosecution may be unadvisable. On the other hand, infectious crimes must be dealt with comprehensively. Whether a crime is infectious, and to what extent an objective type of behavior is dangerous, depends only to a minor extent on the objective behavior. To a greater extent it is conditioned by the "*Gestalt*" of the whole situation, of which the objective behavior is only one detail. Much European legislation makes allowances for such changes of seductive virulence by supplementing a normally lenient type of criminal statutes with provisions for extraordinary measures. That means: a general toleration may be revoked, if a given type of crime spreads or changes its importance through the change of situation.

⁴ It is theoretically assumed, such destruction would take place only in case of capital punishment. But actually it can hardly be avoided, except in unusually favorable circumstances,

when the educational aspects of punishment prevail. The law-abiding groups have always supplemented the formal repression of a crime by an ostracism, which it would be hardly desirable to eliminate totally.

Another instance of this differential social reaction is to be found in the formation of vigilance committees. Punitive repression is only a supplementation of suggestive regulative institutions, neighborhood, church, family. Whenever these institutions fail, punitive reaction increases, either officially or unofficially: as well, because in such a situation of social disequilibrium the social consideration for the individual members is at a minimum, as because the infectiousness of criminal acts for this very reason is at a maximum. In certain cases, the opinion of minor groups may differ from the opinions of society at large: Lynching of negroes is due to a disregard of the social value of a negro's life, and at the same time to an exaggerated appreciation of the danger of the spreading of negro criminality. This dissenting reaction must find expression in extrastatutory acts, because it is expressly only by certain groups, not by the society.

Failure of society to find the right medium between lack of vigilance and exaggerated rigidity is one of the most upsetting elements. Obvious "toleration" of objective criminal behavior that has been generally outlawed by society is very often the cause of revolutionary or pre-revolutionary attitudes.

Social reaction towards a given behavior is therefore always qualified by sundry factors: by the social harm done, by anticipation of its infectiousness, by a deliberation upon the cost of prosecuting and the cost of not-prosecuting, by the cost of applying punitive measures, by the cost of inter-

fering with a personality of a given social value. These deliberations find sometimes expression in law and statutes, as qualifications and exemptions. Sometimes they work subreptitiously. But they always are present. They are the cause of the failure of legislation ever to succeed in eliminating the human subjective factor in social reactions of a formal nature.

But the *true* social distinctions are based on other causes and expressed in a different manner. It is the so called "objective behavior," in which the different types of "criminality" that are characteristic of the different social groups find expression, that is different. As Hooton observed, the wish to gratify one's desires in socially prohibited and undesirable ways, may be the same with members of all classes. But except for a few very fundamental drives that allow for expression only in a given channel, the drives for self-assertion, self-aggrandisement, forbidden gratification will find a very different objective expression under different environmental opportunities. Jack-rolling is the adequate expression for the underprivileged. It would be ridiculously inadequate to gratify the white collar man's desires for quick money. The type of violent assault is different with the gangster and with the courtiers of Louis XIV. It is by no means true that society shows uniformly a higher "Toleration Quotient" for members of the privileged classes, as Van Vechten's formula assumes. Society's differential reaction pattern works both ways. But it is seldom arbitrary. The history of the repression of the duelling habit shows

that. Of common practise in feudal times, when everybody had to rely on his own pluck, duelling is prohibited by middle class moral and middle class legislation, when the State is the general common safeguard. But it remains obligatory for the body of officers and other groups, whose social function is based on personal courage. The pacifistic outlook of 1918 aims at a total repression. But the reaction of 1933 brings a total reestablishment. Certain undesirable acts, connected with trade and acquisition of wealth, were likewise handled when the acquisitive mentality seemed the source of social welfare. Political propaganda is a virtue in democracies. European legislation before 1933 agreed in certifying to the political criminal that he was not the mean brand and ought to be handled with velvet gloves, because the independence of political thinking seemed necessary for appropriate progress, and because therefore society resolved to put up even with abuses. But it is a deadly crime in totalitarian states.

Thus society adhibits Toleration, when not extermination but modification of underlying drives is desirable.

Society and society's mores and legislation find many ways of effecting discriminate behavior reaction against behavior patterns, which seem to originate in mental attitudes that society highly values at the given time. Pareto refers to the fact that society may at times feel a scarcity of certain types of élite-representatives. In a time of war, the strain on the military groups may be excessive; the demand may exceed

the supply. This being so, who would assume that society may prosecute with cruelty the warlike and violent type of man, and punish by repressive reactions their typical criminality? "Then industry and commerce develop and the supply, though remaining the same, no longer meets the demand." (The Mind and Society, §2045.) Who would expect at such times a reaction against white collar crime which might tend to diminish the supply of white collar workers?

At a later period, when the supply exceeds the demand, and when trade and commerce are no more expanding, the societal attitude must change. The trading individual is no more so important for society. Thereby his transgressions become more harmful. As the given class is subject to a harder pressure by the transition to a less favored social status, the propensity to make up for this deterioration through fast methods increases. And the result will be that society will replace lenient methods by harsh reactions.

It is up to social science to contribute to a clear understanding when such a change of attitude on the part of society is desirable. Social science must understand the underlying mechanisms of reaction; it must deal with antisocial behavior irrespective of status and irrespective of legalistic differentiations. White collar crime is only one instance of a general phenomenon. But as we are changing our evaluation of its meaning, it serves well to designate the underlying problems of criminology and criminal psychology.