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PROSPECTS FOR THEORIES OF CRIMINAL BEHAVIOR

AUSTIN T. TURK

Dr. Turk is Assistant Professor of Sociology in Indiana University. He received the Ph.D. degree in 1962 from the University of Wisconsin, where he was a Predoctoral Research Fellow of the National Institute of Mental Health. Dr. Turk served as Acting Instructor in Sociology in the University of Wisconsin in 1961-1962. He received the B.A. degree in 1956 from the University of Georgia and the M.A. degree in 1959 from the University of Kentucky.

Is it possible to develop scientific explanations of "criminal behavior"? What promise exists for the search for "criminal types"? Is crime a class of behavior? Can theories of "crime" and of "criminal behavior" be integrated? Considering these and related questions, in the following article Dr. Turk calls for recognition of the distinction between the problems of crime "amelioration," in which the effort is to control and reform behavior the criminality of which is assumed, and the scientific problems of criminology, in which the effort should be to explain the labelling of behavior as criminal.—EDITOR.

This paper is addressed to the conceptualization of criminology as a scientific instead of an "applied" discipline—which implies that the field is thought of here as the study of crime per se without any necessary concern with controlling or changing behavior defined as "criminal" at some time in some jurisdiction. The objectives are (1) to indicate the evidence against the assumption that crime is a behavior class, a subcategory of deviant behavior; (2) to reject the view that it is mandatory, or even possible, for criminologists to produce theories of *criminal*, as distinct from *noncriminal*, behavior, i.e., theories explaining why and how specific individuals "deviated" in a legal sense and why and how other specific individuals did not so "deviate"; and (3) to suggest that success both in "scientific" and in "ameliorative" work presupposes that those interested in crime from either perspective will be more careful with the distinction between (a) assuming the criminality of some behavior and seeking to control or change it, and (b) trying to explain why the behavior is labelled "criminal" in the first place. The writer submits that criminology has not been focused upon the problems of explaining the *criminality*, the labelling, but has in fact been almost exclusively focused upon explaining behavior as such, in spite of Sutherland's statement of the criminological problem: "to explain the criminality of behavior, not the behavior as such."¹

¹ SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY* 4 (4th ed. 1947). Sutherland himself did not fully accept the implication of his statement by breaking away from a preoccupation with the behavior of offenders. The furthest advance in his thought appears to have been that "it is improper to view criminal behavior as a

IS "CRIME" BEHAVIOR?

The history of criminology is largely that of the search for criminal types—biological, psychological, or sociological. Students of crime have been preoccupied with the search for and explanation of distinguishing characteristics of "criminality," almost universally assuming that the implied task is to develop scientific explanations of the behavior of persons who deviate from "legal norms." The quest has not been very successful. Research has demonstrated the inadequacies of theories stressing biological determinants and appears to be doing the same for theories proposing fundamental, etiologically significant differences between criminals and non-criminals in regard to dimensions of personality. The study of the criminal as a social type and of his behavior as an analytically distinct system tends to dissolve into the study of variations in the life styles and opportunity structures of people located at different points in a given social structure.² Rather than developing theories of criminal behavior, the cumulative impact of efforts to specify and ex-

closed system, and participation in criminal behavior is not to be regarded as something that is determined exclusively by association with criminal patterns." COHEN, LINDESMITH & SCHUESSLER, *THE SUTHERLAND PAPERS* 36 (1956).

² Instead of theories explaining the *criminality* of some juvenile and adult behavior, the work of Cohen, Miller, Cloward and Ohlin, and other students of subcultural differentiation and opportunity structures promises explanations of behavior patterns and differences per se, explanations of tremendous potential value for the purposes of crime prevention and control. However, the "criminological problem" is scarcely touched.

plain differences between "criminal" and "non-criminal" cultural and behavior patterns is to force serious consideration of the possibility that there may be *no* significant³ differences between the overwhelming majority of legally identified criminals and the *relevant* general population, i.e., that population whose concerns and expectations impinge directly and routinely upon the individuals so identified. If in truth we are dealing not with individual departures from the norms of *their* groups but with subcultures wherein persons develop in ways more or less likely to get them into trouble with the Law, then we must inquire into the "criminality" of certain subcultures. At this point there are two alternatives: (1) to accept the laws in effect at a given time and place, and therefore *assume* the criminality of some subcultures; or (2) to question the laws, asking why there is some degree of association between subcultural variations and variations in crime rates. Historically, the great bulk of criminological thought and research has developed within the confines of the first alternative and is not, consequently, directly relevant to the problems of explaining *criminality*. It is, of course, very true that contributions to the theoretical and methodological progress of the behavior sciences have been by-products of efforts by criminologists who were actually studying behavior rather than criminality. Moreover, much useful descriptive and "applied" knowledge has come from efforts to locate offenders in social space and to explore connections between human experiences and criminality as defined in particular locales. The pragmatic value of research aimed at learning how to prevent or suppress certain kinds of behavior is incontestable; if one accepts the values reflected in particular laws, then he will seek knowledge that enables him to insure most effectively the survival and continued dominance of those values. On the other hand,

³That is, significant from the standpoint of a psychologically and sociologically adequate criterion differentiating criminal from non-criminal attributes irrespective of the discriminatory enactment, interpretation, and enforcement of statutes. The "irrespective of" recognizes differences between scientific and legal classification as noted by legal scholars such as Jerome Hall and Karl Llewellyn. HALL, *STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY* 146 (1958), distinguishes between theoretical knowledge concerned with causes and practical knowledge concerned with ends. LLEWELLYN, *JURISPRUDENCE: REALISM IN THEORY AND PRACTICE* 87 (1962), says the difference lies in the nature and handling of disputes, with the aim of scientific literature being "not debate, but co-operative thinking."

from a more detached standpoint, the problem is to explain why some values *are* dominant while others are not. Criminological research has typically been carried out as if the values problem were no problem at all; the working assumption has been that *crime* and *not-crime* are classes of behavior instead of simply labels associated with the process by which individuals come to occupy the ascribed (not necessarily having anything to do with *actual* behavior) statuses of *criminal* and *non-criminal*. Efforts to determine the basic differences between crime and not-crime viewed as behavior and between criminals and non-criminals viewed as different kinds of people have contributed to eight kinds of evidence tending to destroy the very premise upon which such efforts have been based: that basic differences exist.

In each instance the evidence has been summarized as an empirical generalization. Opinions vary in regard to the relative importance of the several propositions and to the quality of the evidence represented by each. Taken in combination, however, the propositions do at least constitute a strong case against the assumption that the study of *crime* is synonymous with the study of a class or classes of *behavior*.

1. *There is apparently no pattern of human behavior which has not been at least tolerated in some normative structure.* The anthropology of law,⁴ historical and comparative analysis of legal documents,⁵ research into subcultural differentiation,⁶ and studies of the extent of "deviant" forms of behavior in general populations⁷ have undermined the assumption that there are universally applicable distinctions between, right and wrong.⁸ If

⁴HOEBEL, *THE LAW OF PRIMITIVE MAN* (1954).

⁵HALL, *THEFT, LAW AND SOCIETY* (2d ed. 1952), and *GENERAL PRINCIPLES OF CRIMINAL LAW* (2d ed. 1960); RUSCHE & KIRCHHEIMER, *PUNISHMENT AND SOCIAL STRUCTURE* (1939).

⁶WHYTE, *STREET CORNER SOCIETY* (enlarged ed. 1955); BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCY* (1963); Miller, *Lower Class Culture as a Generating Milieu of Gang Delinquency*, 14 J. SOCIAL ISSUES 5 (1958); Cohen & Short, *Research in Delinquent Subcultures*, *id.* at 20; CLOWARD & OHLIN, *DELINQUENCY AND OPPORTUNITY* (1960).

⁷PORTERFIELD, *YOUTH IN TROUBLE* (1946); Wallerstein & Wyle, *Our Law-Abiding Law Breakers*, 25 NAT'L PROBATION 107 (1947); SUTHERLAND, *WHITE COLLAR CRIME* (1949); CLINARD, *THE BLACK MARKET* (1952); KINSEY *et al.*, *SEXUAL BEHAVIOR IN THE HUMAN MALE* (1948), and *SEXUAL BEHAVIOR IN THE HUMAN FEMALE* (1953); Nye & Short, *Scaling Delinquent Behavior*, 22 AM. SOC. REV. 326 (1957).

⁸This is not to say that social structures and cultures may not eventually be rated in terms of their viability, or that general value-assumptions derived from con-

there is no behavior pattern which is universally defined as criminal, then research on the etiology of "criminal" behavior is inevitably culture-specific and time-bound, since the phenomenon under study will change from culture to culture and from time to time within essentially the same culture.

2. *The behavioral elements comprising an illegal act are not specific to criminal as distinguished from other human behavior.* Activities of the human organism—such as manipulation of material objects, display of violence, introduction of "illicit" substances into the body, indulgence in "perverted" sexual practices, frequenting of "off-limits" places, and "fraudulent" or "subversive" manipulation of symbols (e.g., numbers, words, gestures, facial expressions)—do not automatically sort themselves into the criminal and the non-criminal. The sorting is a matter of cultural definition and of the inclination and power to apply definitions in specific instances.

"[Since] the muscular processes in criminal behavior are not unique, their study contributes nothing to the understanding of criminal behavior. Similarly the needs, values, goals, etc. in criminal behavior are not unique, and explanations cannot be made in terms of them."⁹

3. *There is selective and differential perception of every element (individuals, testimony, actions, sources and targets of actions, sequences of events, location and use of material objects, etc.) of a situation involving a criminal act.* Korn and McCorkle consider the assumption that the facts in each criminal case can be established as "probably the most important and the least demonstrable in all of the law."¹⁰ The difficulties involved in efforts to arrive at "the truth" as perceived by even the most honest of witnesses are compounded by the necessary reliance upon their recall of their perceptions.¹¹ Additional and largely unintended screening of the raw material of human affairs occurs as the police, prosecutors, defense counsel,

judges, psychiatrists, and others attempt to sift and order the materials.¹² If even within a culture there is variation in the perceptions of those involved in determining the applicability of sanctions in specific cases, then the same behavior will sometimes be defined as crime and on other occasions be defined as not-crime, and different behavior will sometimes be labelled as identical behavior.

4. *An individual's range of behavior includes many more acceptable than illegal actions, objectives, and relations.*¹³ The entirely vicious and treacherous individual who poses a continual and indiscriminate threat would be intolerable in any human group. Individuals who cannot or do not approximate the norms of their regular associates are eliminated in some manner—confinement, banishment, extermination.¹⁴ If virtually all individuals identified as criminals within a jurisdiction are indistinguishable most of the time in most respects from non-criminals, then the expectation that there is some fundamental difference between these two categories is, to say the least, questionable.

5. *Criminal acts attributed to the same individual vary in terms both of the actual or imputed behavior on separate occasions and of the frequencies of particular acts.* Life histories,¹⁵ analyses of arrest and other police contact records,¹⁶ and studies of

¹² FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE (1950); Arens & Meadow, *Psycholinguistics and the Confession Dilemma*, 56 COLUM. L. REV. 38 (1956); Robinson, *Bias, Probability, and Trial by Jury*, 15 AM. SOC. REV. 73 (1950); Strodtbeck, James & Hawkins, *Social Status in Jury Deliberations*, 22 *id.* at 713 (1957); GREEN, JUDICIAL ATTITUDES IN SENTENCING (1961); Nagel, *Judicial Backgrounds and Criminal Cases*, 53 J. CRIM. L., C. & P.S. 333 (1962); Ferracuti, Perez & Wolfgang, *A Study of Police Errors in Crime Classification*, *id.* at 113.

¹³ In the theoretical limiting case where illegality exceeds legality, madness rather than criminality would most likely be inferred by fellows, legal authorities, and behavior scientists.

¹⁴ E.g., HOEBEL, *op. cit. supra* note 4, at 90-91.

¹⁵ SHAW, THE JACK ROLLER (1930), THE NATURAL HISTORY OF A DELINQUENT CAREER (1931), and BROTHERS IN CRIME (1938).

¹⁶ Current emphasis upon descriptive types of offenders and upon relatively stable records in terms of broad categories such as personal versus property offenses reflects the rehabilitative interest in changing behavior rather than the theoretical interest in learning how the adjective "criminal" comes to be applied to the individual and aspects of his behavior in the first place. Mayhew and Moreau are still very much with us. (Lindesmith & Dunham, *Some Principles of Criminal Typology*, 19 SOCIAL FORCES 307 (1941).) E.g., Gibbons & Garrity, *Definition and Analysis of Certain Criminal Types*, 53 J. CRIM. L., C. & P.S. 27 (1962); Schrag, A

ceptions of prerequisites for viable patterns of living may not achieve a high degree of consensus. LEVY, THE STRUCTURE OF SOCIETY 111-97 (1952); Northrop, *Cultural Values*, and Bidney, *The Concept of Value in Modern Anthropology*, in ANTHROPOLOGY TODAY 668-81, 682-99 (Kroeber ed. 1953).

⁹ COHEN, LINDESMITH & SCHUESSLER, *op. cit. supra* note 1, at 38.

¹⁰ KORN & MCCORKLE, CRIMINOLOGY AND PENOLOGY 88 (1959).

¹¹ Davidson, *Appraisal of Witnesses*, 110 AM. J. PSYCHIATRY 481 (1954); Weinstein, *The Law's Attempt To Obtain Useful Testimony*, 13 J. SOCIAL ISSUES 6 (1957).

recidivism¹⁷ indicate that variability rather than specialization is characteristic of known offenders. The highly specialized psychotic whose timing, locale, victim, and mode of attack are almost invariable is an extreme rarity. Similarly, the code-conscious "professional" who is strictly limited to a field of criminal activity in which he exercises his skills with great discrimination is probably more a creation of journalism, romanticism, and commercialism than an empirically demonstrable social type. If the records of most individuals who have at times been assigned the status of criminal show that the acts attributed to them varied, then one may doubt that there is a detectable pattern in the officially and punitively recognized behavior of most sometime criminals. If there is no "career line" in the records of most of these persons, then there is little reason to expect theories of behavior to account for records of crime. Such records may or may not be valid indicators of the actual behavior patterns of particular individuals; to the extent that there is correspondence, it is in spite of rather than because of the processes by which crime records are produced.

6. *Most criminal acts do not become known and recorded.* Studies of self-reported offenses,¹⁸ of offenses known to public and private organizations but not to the police,¹⁹ of white collar crime,²⁰ and of variables related to differential crime reporting²¹ make suspect any sample of presumptive non-

criminals randomly drawn from the non-institutionalized or "no record" population. Indeed, Savitz's conclusion about the "non-delinquent majority" in socially disorganized urban areas may be generalized, it seems, to at least the American population as a whole: "Give them time. Most of them *will* be delinquent before it's all over."²² If most criminally liable behavior is not recorded as crime, if the relationship between criminally liable behavior and recorded crime is not constant, and if most of the population within a jurisdiction do engage in such behavior more or less frequently, then conclusions about *basic* differences between the criminal and the non-criminal body, mind, personality, or subculture are highly suspect. When statistically significant differences are found in research comparing carefully selected recidivists and "no detectable record" controls, conclusions may be drawn about the attributes of persons who tend to become involved in the ascription process resulting in criminal status, i.e., we have clues toward an understanding of the *achievement* aspects—which may or may not be of overriding significance—of the status ascription process. In other words, we will know something about persons who get into trouble, but we cannot assume either (a) that their attributes alone explain their getting into trouble or (b) that the relative weight of personal attributes of offenders versus characteristics of the legal processing itself is constant.

7. *Not all persons known to have violated laws providing for penalties imposed by political authority²³ are subjected to punitive legal recognition.* At every stage in the law enforcement process decisions are made regarding what aspects of situations involving criminal acts will be emphasized. Whether or not one likes the fact, discretion is inevitable and to some extent necessary in the allocation of law enforcement resources.²⁴ If not

Preliminary Criminal Typology, 4 PAC. SOC. REV. 11 (1961); Peterson, Pittman & O'Neal, *Stabilities in Deviance: A Study of Assaultive and Non-Assaultive Offenders*, 53 J. CRIM. L., C. & P.S. 44 (1962); Hayner, *Characteristics of Five Offender Types*, 26 AM. SOC. REV. 96 (1961).

¹⁷ S. & E. GLUECK, *LATER CRIMINAL CAREERS* (1937); England, *A Study of Postprobation Recidivism Among Five Hundred Federal Offenders*, 19 Fed. Prob. 10 (Sept. 1955); Frum, *Adult Criminal Offense Trends Following Juvenile Delinquency*, 49 J. CRIM. L., C. & P.S. 29 (1958); Jacks, *Why Are Parolees Returned to Prison as Parole Violators?* 19 AM. J. CORRECTION 22 (1957).

¹⁸ PORTERFIELD, *op. cit. supra* note 7; Wallerstein & Wyle, *supra* note 7; Nye & Short, *supra* note 7.

¹⁹ Schwartz, *A Community Experiment in the Measurement of Juvenile Delinquency*, NAT'L PROBATION AND PAROLE ASS'N YEARBOOK 3 (1945).

²⁰ SUTHERLAND, *WHITE COLLAR CRIME* (1949); CLINARD *op. cit. supra* note 7; FULLER, *THE GENTLEMEN CONSPIRATORS* (1962); R. F. KENNEDY, *THE ENEMY WITHIN* (1960)—a report of white collar as well as of conventional offenses connected with the career of Hoffa.

²¹ Van Vechten, *Differential Criminal Case Mortality in Selected Jurisdictions*, 7 AM. SOC. REV. 833 (1942); Beattie, *Criminal Statistics in the United States—1960*, 51 J. CRIM. L., C. & P.S. 49 (1960).

²² Savitz, *Delinquency and Migration*, in *THE SOCIOLOGY OF CRIME AND DELINQUENCY* 199–205 (Wolf-gang, Savitz & Johnston eds. 1962).

²³ To restrict the concept to explicit political statuses and roles as found in contemporary large-scope societies is a matter of convenience at times, as noted by LLEWELLYN, *op. cit. supra* note 3, at 31, but prohibits fundamental research on comparative legal processes. See HOEBEL, *op. cit. supra* note 4, at 50.

²⁴ Newman, *Pleading Guilty for Considerations: A Study of Bargain Justice*, 46 J. CRIM. L., C. & P.S. 780 (1956); Goldstein, *Police Discretion Not To Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543 (1960); LaFave, *The Police and Non-Enforcement of the Law*, 1962 WIS. L. REV. 104, 179.

everyone who is *known* to have engaged in criminally liable behavior is actually identified as a criminal, then the more appropriate question for criminology *qua* criminology seems to be not "Why did the criminal engage in certain behavior?" but rather "Why is one person who engages in certain behavior given the status of criminal while another who engages in the same behavior is not?"

8. *For most offense categories the rates are relatively high for lower class, minority group, young, male, transient, urban populations.* Allowing for the differential social participation of males and of females and for a fairly widespread cultural bias tending to favor females with respect to legal processing, the common attribute of the remaining populations seems to be their vulnerability when confronted by political authority. Only the most sanguine can continue to assume that legal processes exist apart from the conflicts intrinsic to social relations.²⁵ If records of crime reveal with great consistency that higher crime rates are associated with relatively subordinate position within political structures, then the assumption that behavior variations among different categories of people are entirely, or almost always, responsible for differences in crime rates is open to question. Instead of assuming the criminality of some of the characteristic behavior patterns of persons in certain social categories and proceeding to investigate the sources of the behavior patterns in order presumably to explain their criminality—a neat circle—one may investigate (a) the tendency of laws to penalize behavior characteristic of the less powerful but not of the more powerful, and (b) the possibility that the more powerful can use the legal process to ascribe the status of criminal to members of the less powerful categories of a population *irrespective of actual behavior*.

WHAT HOPE FOR INTEGRATING THEORIES OF "CRIME" AND OF "CRIMINAL BEHAVIOR?"

A number of criminologists have attempted to resolve the conceptual difficulties generated by the dominant ameliorative, "offender" orientation of the field. Statements by Sutherland, Sellin, Tappan, Vold, Jeffery, and Korn and McCorkle are especially provocative. All of these writers

have tried to provide a defensible scientific conception of criminology without giving up hope for theories of criminal behavior, and all have made signal contributions to criminological theory in the course of failing to accomplish their objective.

Sutherland and his colleagues and students have done criminology the great service of insisting and demonstrating that "criminal behavior is human behavior,"²⁶ but at the same time initiated a line of research that has now led to the conclusion that "human behavior is human behavior" regardless of the adjective *criminal*. The flaw in Sutherland's thinking does not lie in his assertion that scientific explanation of offensive behavior will be a specific application of a general theory of behavior, but in his assumption that the task is "to differentiate criminal from non-criminal behavior."²⁷ This differentiation is accomplished in the legal process, not by scientific classification. The real task for those concerned with behavior assumed to be offensive has been spelled out by Sellin, who has recognized the incompatibility between the languages and ends of law and of behavior science.²⁸ As he says, "etiological conduct research is not greatly interested in the legal label."²⁹ But even after rejecting Znaniecki's proposal to make *crime* synonymous with deviant behavior and reserving the term for "offenses made punishable by the criminal law,"³⁰ he proceeds to equate "crime" with "behavior" and "crime causation" with "conduct research."³¹ It appears that at this point Sellin did not keep in mind the distinction, which he earlier recognized, between the procedures and aims of legal classification and of scientific behavior classification.

As the behavior scientists have rightly struggled to avoid letting legislators and other non-scientists define their basic terms of inquiry, so have the legal scholars, notably Paul Tappan, never relented in their just refusal to allow the behavior scientists to play fast and loose with the legal process as they sought a workable definition of criminal behavior.

"Our definitions of crime cannot be rooted in epithets, in minority value judgments or prejudice, or in loose abstractions."³²

²⁶ SUTHERLAND & CRESSEY, *PRINCIPLES OF CRIMINOLOGY* 75 (5th ed. 1955).

²⁷ *Ibid.*

²⁸ SELLIN, *CULTURE CONFLICT AND CRIME* 24 (1938).

²⁹ *Id.* at 44.

³⁰ *Id.* at 32.

³¹ *Id.* at 44-45.

³² TAPPAN, *CRIME, JUSTICE AND CORRECTION* 10 (1960).

²⁵ VOLD, *THEORETICAL CRIMINOLOGY* 203-19 (1958); KIRCHHEIMER, *POLITICAL JUSTICE* (1961); Jeffery, *Criminal Justice and Social Change*, in DAVIS, FOSTER, JEFFERY & DAVIS, *SOCIETY AND THE LAW* 264-310 (1962).

"In the developed society . . . criminal law and its correctional instruments become the ultimate regulators, though their effectiveness, like that of the mores, is circumscribed by public opinion and by the community reaction to constituted authority and to those who offend."³³

Nonetheless, it is still the offender's behavior which is of central concern to Tappan;³⁴ to him the most fundamental problem for criminologists is "that of determining the specific connotations of the criminal universe."³⁵ Tappan's questions are "Who is the criminal, how large a social problem is he, and how can we best manipulate and control him?" Effective legal control mechanisms do require understanding of the etiology of human behavior, but to define criminal behavior as "in fact what the state through its legislature and courts says it is"³⁶ is not only to impose non-scientific definitions on the basic terms of behavior research but also to reify the state without getting at the distinctively criminological problem: to explain the *criminality*.

Vold's interpretation of the behaviorist-versus-legalist dilemma is that there is "always a dual problem of explanation—that of accounting for the behavior, *as behavior*, and equally important, accounting *for the definitions* by which specific behavior comes to be considered as crime or non-crime."³⁷ The dual problem does not exist, however, unless the investigator continues to assume that he must not only seek to explain criminality, the definitions, but offensive behavior as well *and using the same basic concepts of crime and criminal*. Vold, perhaps more than any other single criminologist, has stressed the importance of the study of crime "as an aspect of the collision of and struggle for dominance among the groups and organizations of power in the community."³⁸ Yet, he hesitates to abandon the search for theories that will "serve to explain many kinds of impulsive, irrational acts *of a criminal nature* that are quite unrelated to any battle between different interest groups in organized society."³⁹

Jeffery has reasserted the need for a sociology of criminal law that seeks to determine the conditions under which behavior is defined as criminal and to delineate the relationships between legal

and other norms.⁴⁰ He emphasizes that "criminality exists not in the behavior but in the social system that controls and regulates the behavior"⁴¹ and that "if you want to know something about crime you need to study social systems, not criminals."⁴² In reference to socialization-acculturation theories of criminal behavior, specifically Sutherland's *differential association*, Jeffery has pointed out the inability of such theories to explain the origins of crime rates, correctly noting that they actually "explain how a person comes into contact with criminality if and when criminality is a part of his cultural system."⁴³ Unfortunately, Jeffery also has fallen into the trap of assuming that one must try to integrate the reformist and the scientific conceptions of criminology. It turns out that "the class 'criminal' is a class of objects included within a larger class 'social isolates' ", that "criminality is one of several ways in which a person can adjust to social impersonalization."⁴⁴ If one assumes that "law-violators" are necessarily a subcategory of "norm-violators"⁴⁵ whose "criminal behavior is an attempt to establish interpersonal relationships that have not been established in a socially acceptable way,"⁴⁶ then he is assuming that *legally* classified individuals are a subclass of a *scientifically* determined class of deviants—which is a restatement of Tappan's "legalistic behaviorism." While Jeffery has called for and contributed to work on basic criminological problems, he has vitiated his contribution by an empirically dubious attempted integration of "a legal theory of crime" with a psychologicistic theory of "criminal" behavior.

Korn and McCorkle have come close to reconciling science and reformism in criminological theory.⁴⁷ Recognizing the critical significance of the legal process, they define a criminal as an individual "adjudged to be punishable by the authorities"⁴⁸ and crime as "an act or omission ascribed to a person when he is punished by the authorities."⁴⁹

⁴⁰ Jeffery, *The Structure of American Criminological Thinking*, 46 J. CRIM. L., C. & P.S. 658 (1956); *Crime, Law and Social Structure*, 47 *id.* at 423.

⁴¹ Jeffery, *The Structure of American Criminological Thinking*, *supra* note 40, at 669.

⁴² *Id.* at 671.

⁴³ Jeffery, *An Integrated Theory of Crime and Criminal Behavior* 49 J. CRIM. L., C. & P.S. 533, 537-38 (1959).

⁴⁴ *Id.* at 539.

⁴⁵ *Id.* at 552.

⁴⁶ *Id.* at 539.

⁴⁷ KORN & MCCORKLE, *op. cit.* *supra* note 10, at 303-53.

⁴⁸ *Id.* at 45.

⁴⁹ *Id.* at 46.

³³ *Id.* at 178.

³⁴ *Id.* at 10.

³⁵ *Id.* at 3.

³⁶ *Id.* at 7.

³⁷ VOLD, *op. cit.* *supra* note 25, at vi.

³⁸ *Id.* at 13.

³⁹ *Id.* at 219. *My italics.*

They emphasize the point that the criminality of any act and the criminal status of any actor are determined through socio-legal procedures and "can only be conjectured about in advance."⁵⁰ Difficulties appear, however, when they try to integrate the socio-legal view of criminality with a social psychological theory of behavior. The main contribution of these writers is to indicate how role theory can be applied to understanding and changing the behavior of those who do commit criminal acts. Behavior, including criminal acts, tends to become patterned through a process in which the individual learns and is committed to behavior expected of him by others, both those who approve and those who disapprove.⁵¹ Exploratory behavior that amounts to no more than a "tentative trying-on of roles"⁵² tends to be taken very seriously if it results in personal or property damage or loss. The reactions of authorities and the public may help to reinforce the learning of disapproved patterns and to close off legitimate alternatives.⁵³ In this way, "criminal roles" are acquired. But to explain the acquisition of roles is, once more, not to explain the criminality of the behavior. In fact, the concept *role* itself may tend to exaggerate the degree to which most acts ascribed to offenders express systematic participation in networks of law-abiding and law-breaking relationships.⁵⁴ In any event, it seems highly probable that for those concerned with rehabilitation there inevitably *will* be "almost as many separate accounts as there are individual crimes or criminals."⁵⁵

CONCLUSIONS

In considering implications of the foregoing for criminology, the writer is very much aware of two problems: (1) that he may appear to be indulging in a sweeping iconoclasm that denies the worth of "applied" interests in crime control, and (2) that he may be accused of attempting to dictate what is and what is not properly to be called criminology.

To those who view criminology as primarily an eclectic and applied discipline, it may seem that the writer feels that research into the social and psychological characteristics of offenders should

cease. Such an interpretation would be in error, since the conception of criminology as a scientific discipline with its own analytically distinct problems by no means precludes an interest in changing behavior *on the basis of certain value assumptions*.⁵⁶ The point of the argument is that the differences between the reformist and the analytical interests, and the research problems of each, are fundamental and should be made explicit. It has been, is, and will continue to be misleading and confusing for social psychologists, legal scholars, corrections personnel, and others to assume or seem to assume that they can produce and use theories of *criminal* behavior. It is reluctance on the part of criminologists and non-criminologists alike to abandon the fruitless and unnecessary effort to reconcile reformism with the "scientific" view of criminology that perpetuates the confusion that is purportedly the science of crime.⁵⁷ Clarity, at least, will be gained if (a) those who assume *criminality* and support certain values and (b) those who study the ways in which values determine the application of the adjective *criminal* will unabashedly state precisely which category applies, and when, to them and their work.

As for the notion that this writer is interested in dictating the proper use of the word "criminology," it is not consensus on semantics but the *explicit* and *consistent* realization of the difference between two kinds of interests, both of which *happen* to be associated with the word "crime," that is the objective. If the primary aim of "criminological" research per se is not to develop theories of criminal behavior—if, indeed, any attempt to do so is doomed to failure—it follows that the traditional image of criminology as the scientific discipline that seeks to do just that is not an image which can be accepted by those who are interested in the distinctive problems of explaining *criminality*.⁵⁸ Similarly, those scientists

⁵⁶ The foray of Jerome Michael and Mortimer Adler is 30 years in the past; not sweeping iconoclasm but a sharpening of conceptual and methodological tools is needed today. MICHAEL & ADLER, *CRIME, LAW AND SOCIAL SCIENCE* (1933).

⁵⁷ One eminent scholar recently concluded an excursion through Europe and the United States by declaring that "in the present state of knowledge, the very attempt to elucidate the causes of crime would be better put aside." RADZINOWICZ, *IN SEARCH OF CRIMINOLOGY* 175 (1961).

⁵⁸ There appear to be four kinds of distinctively "criminological" problems. To deal with any of them requires an understanding of the pervasiveness of social conflict in human affairs and implies an effort to relate the general phenomena of conflict to some major aspect

⁵⁰ *Id.* at 47.

⁵¹ *Id.* at 334-49.

⁵² *Id.* at 349.

⁵³ *Ibid.*

⁵⁴ Korn and McCorkle are aware of the problem of varying degrees of "intensive" and "extensive" commitment. *Id.* at 341-43.

⁵⁵ *Id.* at 325.

and non-scientists who accept the assumptions of a particular socio-legal structure and wish to apply their skills and experience to the problems of (1) reducing the incentives and opportunities for persons to engage in disapproved activities and (2) apprehending offenders and changing their behavior in desired directions are encouraged to make their values more explicit and to be more aware of differences between the roles of the reformer and of the scientist concerned with explaining "legal norms" without necessarily con-

cerning himself with explaining the behavior of those who are defined as having violated some specific "legal norms" in some particular time and jurisdiction. The roles are equally important⁵⁹ and may to some extent be performed by the same individual, but he must remain aware of the activities and terminologies appropriate to each if he is to perform either effectively. Failure to keep the roles distinct has resulted in a conceptual morass that has both stunted the growth of a science of *crime* as such and hindered the effective application of sociological, psychological, and biological knowledge to problems of control and reform.

of the legal process that defines right and wrong and determines the criminal or non-criminal status of the actors within a given jurisdiction. The sets of problems are (1) to determine the conditions under which the very concept of law, of the rule of law, appears, varies, and declines; (2) to explain the enactment and wording of statutory law, i.e., the legislative aspect of the legal process; (3) to explain variations in interpretations of statutes; and (4) to specify relations among statutory law (involving the notion of "legislative intent"), court or "case" law, policeman's law, and "folk law" as these determine *de facto* criminality—which implies study of relations between (a) the actual behavior of persons and (b) the legal process, to determine the contributions of each class of variables to the probabilities of identification as criminal.

⁵⁹ The gross imbalance between the personnel and other resources directly and indirectly allocated to reformism and the resources available for research on the problems noted in footnote 58 must be reduced if theories explaining *criminality* are to be produced. Increasing interest in studies of various aspects of the legal process and in non-Western legal structures and concepts of law is a favorable sign, but practical efforts to revise curricula and the traditional "criminology" textbook and to channel research funds into projects of more significance for the study of *crime* but less relevance for the prevention and change of certain *behavior* have scarcely begun.