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DEFINING THE CONCEPT OF CRIME:
A HUMANISTIC PERSPECTIVE
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ABSTRACT

This paper argues that the traditional definition of crime is too narrow and unnecessarily constrictive of criminological work. Definitions more in accord with the objectives of a humanistic criminology must be developed. The traditional debate over the definition of crime has not been grounded within the context of the more fundamental images of crime that actually guide criminological work. By clarifying these underlying images (paradigms) and displaying the value questions and domain assumptions contained within them, we are in position to develop first order and second order definitions of crime which are more suitable to the task of humanistic criminology.

The task of a humanistic criminology, in my view, is to combine a theoretical concern with the historically generated structural context within which crime and social control are produced and constructed, with a practical concern for human liberation and the realization of social justice.¹ A humanistic criminology must identify those features of historical social formations that "...produce unnecessary social constraints and to describe how human freedom is constricted, thus indicating directions for social change" (Thomas, 1982:314). The humanistic perspective in criminology must be concerned with the way in which the structuring of crime and social control affects the human rights, dignity, survival, and material well-being of all people. In order to carry out this task, a humanistic criminology must begin by confronting a very basic, and yet troublesome and

controversial issue: how to define the concept of crime. The definition of the concept of crime is important, of course, because of the types of questions it directs attention to and the order of phenomena it leads one to investigate. A definition of crime establishes the subject matter of the discipline of criminology and sets limits on what is to be considered criminological work. Therefore, a humanistic criminology can only be developed if an appropriately humanistic definition of crime is used as its initial point of departure.

This paper argues that the traditional definition of crime is too narrow and unnecessarily constrictive of criminological work. Definitions more in accord with the objectives of a humanistic criminology must replace the traditional definition.

The debate over the definition of crime usually centers on the relative advantages and disadvantages of using a "social" as opposed to a "legal" definition of crime. Most criminologists have traditionally relied on a "legal" conception of crime which defines it as behavior in violation of the criminal law and liable for sanctioning by criminal justice agencies under the political authority of the state. There have been, however, repeated attempts by leading criminologists to move beyond the narrow confines of the criminal law and thus develop more inclusive social definitions of crime.²

This debate, however, has often obscured the most important issues concerning the task of defining crime. The problem is that the debate over the definition of crime has not been grounded within the context of the more fundamental images of crime that actually guide theory and research in criminology today. Thus, the value judgments and domain assumptions which are involved in defining the concept of crime are often hidden from view.

The purpose of this paper is to contribute to the development of a humanistic criminology by clarifying these underlying images (paradigms) and displaying the value judgments and domain assumptions contained within them. Once these issues are clarified, several

definitions of crime more suitable to the task of humanistic criminology will be offered.

PARADIGMS IN CRIMINOLOGY

The reason that the debate over the definition of crime has obscured the most important issues involved in this task is because the criminologists who have been engaged in the debate have failed to take into account more abstract, more fundamental definitions of crime. The arguments over social versus legal definitions of crime must be grounded within the context of these more fundamental images of crime or paradigms. By distinguishing between the "behavioral" paradigm and the "definitional" paradigm, we can clarify the important value decisions and domain assumptions involved in defining the concept of crime.

The historian of science, Thomas Kuhn (1962) first advanced the general thesis that scientific disciplines are guided by a dominant paradigm: the entire constellation of beliefs, values and techniques shared by the members of a scientific community. According to Kuhn, a scientific paradigm serves as a guide for most theoretical and empirical work in that discipline during a period called normal science. Kuhn went on to use the concept of a paradigm to analyze the structure of scientific revolutions in the natural and physical sciences.

Although there has been considerable controversy over what Kuhn himself meant by the term (Eckberg and Hill, 1979), social scientists have frequently used the concept to analyze their own disciplines. The notion of paradigm seems to be most helpful in making sense of the structure of theoretical thought in a discipline when used at a fairly abstract level, although many sociologists who use the concept seem to equate it with a general theoretical perspective or orientation. George Ritzer's rather abstract notion of paradigm will be used in this paper. Ritzer (1975:7) defines a paradigm as follows:

A paradigm is a fundamental image of the subject matter within a science. It serves to define what should be studied, what questions should be

asked, how they should be asked, and what rules should be followed in interpreting the answers obtained. The paradigm is the broadest unit of consensus within a science and serves to differentiate one scientific community (or sub-community) from another. It subsumes, defines and interrelates the exemplars, theories, and methods, and instruments that exist within it.

As Ritzer points out, various theoretical perspectives may be grouped or subsumed under one paradigm, and of course, from these perspectives or models more rigorous and specific systems of theoretical propositions may be developed and later tested. The important point is that a paradigm provides an abstract definition of the subject matter within a discipline while theoretical models and more rigorous systems of propositions (theories) attempt to explain and predict more specific aspects of that subject matter.

Within criminology there are two major paradigms - the behavioral and the definitional. The behavioral paradigm takes as its subject matter the behavioral realities of crime. The focus of this paradigm is on criminal behavior. The phenomenon of interest is the behavior itself, whatever criteria are used to define the behavior as criminal. Criminologists working with this paradigm attempt to describe the nature, extent, and the distribution of criminal behavior and most importantly, they attempt to explain the causes of this behavior in order to predict and control it. From the rise of the positivistic school of criminology in the late 19th century to the present, most of the theory and research within criminology has been guided by the behavioral paradigm.

While the search for the causes of criminal behavior has been the dominant focus of much of the theoretical and empirical work of criminologists under the behavioral paradigm, the definitional paradigm pays little or no attention to this question. The definitional paradigm, often called the "labeling" paradigm, takes as the fundamental image of its subject matter the definitional realities of crime.

This paradigm focuses on the process whereby certain actions and persons are selected out and defined as criminal by political authorities. The definitional paradigm asserts that no behavior is inherently criminal (Becker, 1963). Criminality is not a quality which resides within the behavior or the person; rather, criminality is an ascribed social status attached to behavior and persons by various legal control agents in a process of social interaction.

Criminologists working within the definitional paradigm attempt to describe and explain the process and conditions of criminalization. In the early 1960's this perspective was developed and popularized by the "labeling theory" of deviance (Schur, 1971). Other theoretical traditions within this paradigm are the pluralistic conflict and radical or critical approaches to criminology. Whatever the specific theoretical perspective, the focus of attention is quite different from that of the behavioral paradigm. Hartjen (1978:7) points out that "these approaches shift the focus of emphasis from the violations of rules to the designation of specific behavior as rule-breaking conduct. Whereas behavioral definitions lead one to investigate rule-breaking activity, the labeling perspective leads one to study the responses of legal authorities."

Theoretical and empirical work within the definitional paradigm, thus, shifts the attention of criminology from criminal behavior to the criminalization process and the operation of the criminal justice system, where the social reality of crime is actually created. This involves the study of the processes by which laws are created and enforced. Research within the definitional paradigm, therefore, includes the study of how criminal laws are made, how legal categories are created, how these categories are applied by legal control agents (such as police, prosecutors, and judges) and finally how persons who are ascribed the legal status of convicted criminal are handled by the correctional system.

While many criminologists recognize that the discipline of criminology includes within its scope "the processes of making laws, of breaking laws, and

of reacting toward the breaking of laws" (Sutherland and Cressey, 1978:3), few have appreciated the radically different nature of these topics as subject matter for the study of crime. It is important for criminologists to make the distinction between the behavioral and definitional paradigms because, in a more fundamental way than the participants in the traditional debate, they define crime in different ways, they ask different kinds of questions and, they focus attention on different aspects of the reality of crime.

It is obvious that either paradigm could be used by criminologists to guide their work, and that both have their strengths and weaknesses. In this paper I wish to go beyond the limitations of these two approaches by outlining the key features of a humanistic perspective on crime which will incorporate aspects of each of the conventional paradigms but which will transcend both of them. This will be done by outlining a first order and a second order definition of crime within a humanistic perspective.

FIRST ORDER DEFINITION:
CRIME AS A SOCIO-LEGAL CONSTRUCTION

The definitional paradigm is organized around the assumption that crime is not a type of behavior, but a socio-legal definition or construction. Criminologists who work within this paradigm do not study the causes or etiology of harmful (criminal) behavior, but rather the process by which some types of behavior come to be socially defined as criminal while others do not. They do not study individuals who are criminal, but instead the legal process whereby some individuals come to be labeled as criminal while others do not. Criminological work within the definitional paradigm, therefore, can be characterized as the sociology of criminal law and criminal justice. To operate within this paradigm is to make a decision that it is more important or more useful to study the way in which political authorities use the state's power to criminalize, than it is to study "criminal behavior" or "criminals."

With the definitional paradigm, the only possible

definition of crime is a legal definition, although it is a very different type of legal definition from that used within the behavioral paradigm. Criminologists who work within the definitional paradigm contend that crime is a legal category which is created by the state. Criminality is a legal status ascribed by legal actors in a legal process governed by specific procedural (legal) rules. No behavior or person is inherently criminal. They become criminal only when they are defined as such by political authorities.

This conception of crime in my view, must be the first order definition used by a humanistic criminology. Before we study criminal behavior, we must understand why the behavior has been defined as such. Before we study officially defined criminals, we must understand the legal process by which they were so designated. In both of these cases we are led to focus our attention on the state and political authorities. We are led to critique the state and its use of the power to criminalize. This critical, questioning view is the hallmark of humanistic criminology. As Hartjen (1978:226-227) has noted:

The humanistic criminologist ... must be someone who questions the social world, its operations, and even one's own and the views of others regarding that world. Insofar as that which is defined as crime is a function of the actions and reflects the interests of those who control political authority, a humanistic-critical criminology is fundamentally oriented to a questioning and critique of the political state, no matter what its form.

A humanistic criminology must be one which questions and critiques the political state. It must seek to understand the historical evolution of the state and the hierarchical structuring of power in state societies. The humanistic perspective must seek to understand how the state and its legal order are both shaped by and reflect the interests of a particular socio-economic order. It must evaluate the manner in which political authorities do or do not protect individual human rights. This involves the right to be protected from criminal harms, and also

the right to be protected from legalized oppression by criminal justice agents who have been granted the responsibility of protecting our lives and our property.

A humanistic perspective on crime, therefore, must, as a first order of business, define crime as a socio-legal construction. It must direct our attention to the social process whereby some acts (but not others) and some people (but not others) become defined officially as criminal. It must direct our attention to the historical and structural context in which the state's power to criminalize is exercised. As Hartjen (1978:228) notes, "...a criminology that neglects to keep a sharp eye on those who hold the power of political office (or those who work for them) cannot call itself humanistic."

Although I have argued that a humanistic criminology must begin by defining crime as a socio-legal construction, I do not believe that behavioral questions must be excluded from the humanistic perspective. Humanistic criminologists must describe and explain those actions which cause willful social harm - whether those harmful acts are engaged in by lower class youths, middle class businessmen, corporate organizations, or ruling elites. Thus, we need a second order definition of crime that directs our attention to these harmful social behaviors.

SECOND ORDER DEFINITION: CRIME AS WILLFUL SOCIAL HARM

Criminological work within the behavioral paradigm has had one central concern: the etiology of criminal behavior. For the past one hundred years now, the majority of criminologists have been rather single-minded in their pursuit of the causes of crime. The ostensible purpose of this quest was the development of a body of scientific knowledge concerning the etiology of crime. But, this is only the means to an end; for the ultimate aim of this kind of criminological work has always been, quite openly, correctional in nature. Criminologists study the causes of crime in order to control criminals and criminal behavior.

Given their overwhelming emphasis on correctionalism, criminologists who work within the behavioral paradigm make a moral judgment that certain types of behavior are bad, wrong, harmful, or immoral and they need to be controlled or prevented. The critical question is, "who selects the behavior to be studied (and controlled) and what are the standards or criteria which are used to make the selection?" Much of the debate over the definition of crime, of course, centered on this question. Criminologists working within the behavioral paradigm have traditionally allowed the state, or political authorities to decide what types of behavior should be studied as criminal by using a legal definition of crime. According to this definition, crime is behavior which is in violation of criminal law. By choosing this definition of crime, criminologists decide to use the legal norms which are encoded in the criminal law as the standards by which behavior will be classified as criminal for purposes of scientific study. This choice, however, requires a judgment on the part of the criminologist that it is more appropriate for legal authorities to select the behavior that criminologists will study than to allow criminologists to set up their own independent criteria. This results in a loss of scientific autonomy.

Furthermore, the choice of a legal definition of crime within the behavioral paradigm has important moral and political implications. As radical criminologists have pointed out, such a definition restricts criminologists to the study of those acts which are legally defined as criminal by the state, thus excluding other types of socially harmful and morally insensitive behavior, especially those engaged in by the state and the ruling corporate elite. As Tifft and Sullivan (1980:6) note, "By assuming definitions of crime within the framework of law, by insisting on legal assumptions as sacred, criminologists comply in the concealment and distortion of the reality of social harms inflicted by persons with power." They go on to point out "that it is not the social harms punishable by law which cause the greatest misery in the world. It is the lawful harms, those unpunishable crimes justified and protected by law, the state, the ruling elites that fill the earth with misery, want,

strife, conflict, slaughter, and destruction." The Schwendingers (1977:8) make much the same point:

...criminologists in their education of other professionals and of the population at large, claim that crime refers only to acts stipulated by law and sanctioned by the state. Such information, however, tacitly delegitimizes references to those crimes not stipulated by law and not sanctioned by the state.

From their Marxian perspective, the Schwendingers point out that the state is not a neutral institution. Rather, the state is viewed as being controlled by the dominant class, the bourgeoisie. Thus, bourgeois notions of criminality will find their way into the law while those of other classes will be, for the most part, excluded. The Schwendingers (1977:9-10) note:

Doubtless, similarities exist between bourgeois and proletarian notions of criminality and justice... Nevertheless, there are many differences between these ideas which are related to the definition of crime. There are various social harms that are criminal and that vitally effect the interests of the working class and its allies, yet they are not designated as unlawful, while those social harms that effect the general interests of the bourgeois are made illegal...even though the proletarian ideas about criminality are important in the struggle for a better life, very few of these conceptions are given legal expression as long as state power remains more or less in the hands of the bourgeois.

In pursuing etiological questions solely within the categories provided by the criminal law, and helping to formulate public policies to more effectively control legally defined criminals, criminologists (consciously or not) take a political stance. By using a legal definition of crime within the behavioral paradigm, criminologists become agents of the state. As "experts" providing knowledge and information to political authorities, they become

allied to the state and serve its interests. That criminologists might serve as an arm of the political authorities worries even those who are not identified with the radical wing of the discipline. Emilio Viano (19775:XIV) asks:

By emphasizing shoplifting, breaking and entering offenses, muggings, etc., as being "the" criminal acts, are we, as criminologists, simply acting as academic or professional lackeys for politicians who want law and order campaigns and issues in order to submerge what one should call the real criminal acts like pollution, poverty, misleading advertising, worthless warranties, and corruption?

Contrary to the assertions of some radical criminologists, this alliance between criminology and the state is not the product of an explicit conspiracy, nor is it necessarily a "bad" thing. Most criminologists have willingly signed an agreeable (and profitable) contract with the political authorities. They operate as political consultants for the state because they largely agree with the state's correctional aims (although often critical of the state's means to achieve these ends). The majority of criminologists do not view themselves as "ancillary agents of political power" and they sincerely believe that their work serves the public interest. Taking for granted the neutrality of the state and leaving unexamined the legal definition of crime, these criminologists argue that they do not make value judgments. They assume that the criminal law is somehow objective and value free.

Humanistic criminologists, however, must point out that to use a legal definition of crime that is relative and arbitrary, which is shaped by powerful interests, which includes some social harms while excluding others, is to take a political stance and make moral judgments. Any designation of behavior as criminal requires a value judgment. Criminologists do not escape the necessity to make such judgments in their work by using a legal definition of criminal behavior, they simply allow others (political authorities) to make those judgments for them. And, as Galliher and McCartney (1977:10) point out:

If sociology makes no moral judgments independent of criminal statutes, it becomes sterile and inhumane--the work of moral eunuchs or legal technicians. Recognizing that cultural definitions of crime are a product only of powerful interest groups in government, the analyst of crime should not necessarily be tied to the moral judgments reflected in those statutes.

In my view, a humanistic criminology must move beyond the traditional legal definition of crime as used within the behavioral paradigm. If humanistic criminologists are truly concerned with the dignity, survival, and material well-being of all people, I believe that they must reformulate the definition of crime so that it includes all willful social harms.³ Such a definition would, of course, force criminologists to openly confront the moral and political choices involved in defining any social act as criminal.

Social definitions of crime have been proposed in the past in the discipline of criminology. These definitions usually define crime as behavior which is "anti-social", "socially harmful", or "socially injurious". If humanistic criminologists are to adopt such a definition, they must face up to the question of who decides what behavior will be classified as criminal based on what standards or criteria. Those who would advocate expanding the definitions of crime beyond the categories of criminal law must face up to the vital task of delineating a moral and scientific basis for correctly applying the category of crime to harmful social behavior (Schwendinger, 1977).

While the logic of my argument perhaps suggests that each individual criminologist should be free to classify behavior as criminal for the purpose of scientific investigation, I would hope that humanistic criminologists would be able to formulate a more general set of moral standards to be used. These standards would hopefully center around the notion of willful social harm. Crimes are those willful social acts that cause serious harm - physical, economic, or psychological - to human beings.

Now different individuals will, of course, have different ideas about what constitutes social harm. But, perhaps, humanistic criminologists can come to some consensus about what serious social harms are. The notion of basic human rights may serve as a useful starting point in this attempt. The Schwendingers (1970) were the first to propose a social definition of crime based on the notion of fundamental, historically determined, human rights. They argued (1970:145) that "all persons must be guaranteed the fundamental prerequisites for well being," which includes, food, shelter, clothing, medical services, challenging work, recreational experiences, security from predatory individuals and repressive social elites. To the Schwendingers these material requirements, basic services, and enjoyable relationships are not to be regarded as rewards or privileges but, as basic human rights whose violation constitutes crime. Recently others have followed their lead. In an introductory text, Galliher and McCartney (1977:3) state:

Unlike many social science textbooks dealing with crime, this text openly acknowledges a specific ethical orientation toward social life. Its position is that an ethical social ordering within any society, or among societies, requires that all men, women, and children have equal chances for personal freedom and physical survival. Such an ethical stance seems required to avoid an unreflective acceptance of the criminal justice system, official crime statistics, and criminal statutes as they are, and it mirrors the charter of the United Nations...the U.S. Declaration of Independence... (and) the Bill of Rights.

Tifft and Sullivan (1980:112) also advocate a social harms approach to crime based on a notion of human life rights:

One must consider social harms in a context not restricted by legal institutions. One must consider the institutions, ideas, and actors who deny food, shelter, clothing, health, life, and economic opportunity as perpetuating, generating,

and committing social harms. These are the human life rights of all individuals.

Another approach to the identification of social harms comes from Leslie Wilkins (1982). In an excellent discussion of crime statistics and their relationship to social policy, Wilkins makes a case for transforming the concept of crime. He suggests that data on "harms" could be "more useful" than data on "crimes" legally defined, as a basis for an "informed social policy." He (1982:28) argues that "focusing upon the concept of the Quality of Life and the problems of reducing 'social harms' increases the range of our thinking and makes possible some new procedures." Wilkins (1982:29) goes on to propose a new definitional base for social control data:

A "crime" might be defined as a "crime" according to its impact upon the victim, rather than in accord with a legal concept. We should become interested in the public's view of what events, persons, or organizations have prevented them from doing that which they want to do.

Wilkins is proposing a "democratic definition" of crime which allows the public, not political authorities or criminologists, to make moral judgments concerning which acts will be called criminal. He argues (1982:30):

It is not the "reality" (legal definition) of a crime which drives the person to call the police, but the impact upon the victim or observers. The first practical step is, therefore, to obtain a listing of "complaints" from the general public. The only way to define "social harms" or "grievances" is in terms which the public themselves will use.

Social definitions of crime, such as the human rights based definition proposed by the Schwendingers and others, and the democratic definition suggested by Wilkins, are much better suited to a humanistic criminology than the traditional legal definition. These humanistic definitions direct our attention to social acts and actors that cause enormous human

suffering. These behaviors are brought within the boundaries of criminology so that they may be described, explained and hopefully controlled. Many traditional forms of crime (as defined legally), would remain as the focus of criminological research from a humanistic perspective. Most importantly, however, such an approach would open up new areas for inquiry - concerning social harms perpetuated by the state, large corporations, and ruling elites - and raise fundamental questions concerning the operation of economic and political institutions in general.

In my view, therefore, a humanistic criminology must adopt, as a second order definition, a definition of crime as willful social harm. These social harms can best be determined by using some combination of basic human rights as standards, and democratic surveys of what people regard as important social harms. Such a definition of crime would not only provide a measure of scientific, moral, and political autonomy for criminologists, it would also allow the most critical value decisions to be brought out into the open and shifted from the state and political authorities to criminologists themselves or to the people. Most importantly, it would direct the attention of humanistic criminologists to the existence of social harms that need to be understood and controlled, and yet are not included within the legal boundaries of traditional criminology.

Finally, it should be pointed out that this second order definition of crime can lead us back to the first order definition. As we use the second order definition to classify certain acts as criminal for the purposes of study, we will often be moved to ask why this particular social harm has not been legally defined as crime. Thus, the two definitions being proposed here complement each other well. Each is derived, however, from a different paradigm and directs our attention to fundamentally different phenomena. Both, however, are necessary for the development of a humanistic criminology.

Notes

1. This is essentially the same task as critical (Michalowski, 1981), power-reflexive (Pfohl, 1984), or dialectical (Thomas, 1982) approaches to criminology.

2. See Kramer (1982), for a full account of the historical debate.

3. Now a great number of criminologists and legal scholars will want to interrupt at this point and protest that such a definition rides rough-shod over constitutional guarantees and due process principles. They would agree with Tappan (1947) that such definitions "invite the subjective value judgments of the individual" (P. 97) and are a "blight upon either a legal system or a system of sociology that strives to be objective" (P. 99). This objection, however, fails to appreciate the crucial difference between a scientific, theoretical definition of crime and the particular legal process by which individuals are defined as legal criminals. In the words of Abraham Blumberg (1979:17) it fails "to recognize that various institutional settings have to employ different intellectual processes for defining and ordering that segment of social reality which is their concern." As Blumberg goes on to observe:

As a lawyer defending a client in a criminal case, I would be appalled by any concept of reality other than the very strict, narrow construction of the meaning of legal norms and their application as required by common law usage, and the due process safeguards of the Constitution...On the other hand, as a criminologist I would be surveying the same landscape with an entirely different set of intellectual perspectives and purpose, and I would be amused, if not horrified, to think that I must be limited to the official statistics and definitions of crime, and the official version of what it is that the police, courts, prisons, and correctional systems are doing.(P. 17).

As Blumberg concluded:

A criminologist cannot be bound by the official and conventional definitions of lawmaking, lawbreaking, and law enforcement. It is the essence of his job that he notes and accounts for the disparity and differences between the official world and the real world as it is revealed in field research. (P. 17).

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