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THE COMPATIBILITY OF FREE WILL AND DETERMINISM IN CRIMINOLOGY: COMMENTS ON AN ALLEGED PROBLEM

DANIEL GLASER*

Perspectives widely prevalent in modern philosophy suggest that the issue raised by Professor Schafer is not a problem, for free will and determinism are complementary rather than conflicting ways of analyzing behavior. Indeed, every person interprets the conduct of self or others through both of these two primarily linguistic frames of reference, implying free will to ascribe conscious motives but assuming determinism to explain behavior as the product of genetics or of life experiences. As one philosopher has observed, "the argument that we cannot formulate laws governing human behavior because human beings are free to choose for themselves what they will do . . . [is] . . . one on which over the centuries a literature has accumulated as dubious as it is vast."¹ The basis for such dismissal of the issue becomes evident if we examine the functions of language in accounting for human conduct, including acts called criminal.

THE SOCIAL CONSTRUCTION OF MEANING

David Hume, in his classic writings, pointed out that causal determinism is never directly observed, but is inferred by humans from their observations. We can *see* the succession of one event or condition by another, and their contiguity, he noted, but we can only *infer* a necessary connection between them to say that the antecedent phenomenon *caused* that which we call its *effect*.²

Modern philosophy stresses the role of language in what we distinguish as separate events or conditions and in ways of conceiving causal connections. This is illustrated by the diverse modes of accounting for a plant's growth: an uneducated gardener says only that it had good soil with plenty of water and sunshine; a plant physiologist specifies the chemistry of this nutrition and the functions of various components of root, stem and leaf; a biophysicist traces the

energy transformations of photosynthesis, expressing this in complex mathematical formulations. All three can be scientifically correct, since each interpretation may lead to predictions that can be tested and found valid by rigorous experiment or by systematic observation of variations in nature. Each of these explainers has learned a different language for indicating observable aspects of events and for inferring causal relationships, and each of these explanations is more practical than the others for some types of setting and concern; all may usefully coexist.

The meaning of the world is constructed socially by humans when they communicate with each other to describe and explain their experiences. Language itself is a social product, of course, and the words that people learn largely mold, and certainly limit their interpretation of events; if they were born 2000 years ago or reared today by an illiterate isolated tribe of a remote Amazonian jungle, knowledge and language would lead to descriptions and explanations of natural events quite different from those acquired in today's science courses. This conclusion about social construction and cultural limitations of knowledge also applies to explanations for human behavior, but with some special complications.

MODES OF ACCOUNTING FOR HUMAN CONDUCT

In learning verbal interpretations for our own behavior and that of others, from infancy on we acquire several alternative types of language, some similar to and some distinctly different from the terms we use to explain inanimate events. Quite early we learn that some conduct is good and some bad; we thus acquire a language of moral justification for our acts and for assessing the moral character of others by their behavior. This language, like that of physical causality, also varies somewhat with the social group in which we are reared or with which we subsequently affiliate ourselves; for example, our moral assessment of bigamy probably would be different if we were reared in polygamous tribes instead of in today's United States, but even within our own society moral justifications for behavior vary

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¹A. KAPLAN, *THE CONDUCT OF INQUIRY* 121 (1964).

²D. HUME, 1 *TREATISE ON HUMAN NATURE*, Part II (1740).

with any contrast in ethical norms from one group to the next.

The language of moral assessment in accounting for human conduct is one form of what C. Wright Mills called "vocabularies of motive."³ His phrase refers to the words used for explaining acts by what is inferred to be the purpose of the actor. For example, we may explain the fact that people work by saying they do it to earn a living, to keep from being bored, for the exercise, or because they consider idleness or dependence on others to be evil. Explanations of events that ascribe purposes or morality to the actors, however, do not fit nonhuman phenomena, such as the growth of a plant, except to those with animistic conceptions of the nonhuman world, for example, those who believe that a plant will not grow if it has been angered by its gardener. Vocabularies of motive, like causal determinism words, vary from one culture to another and from one period or group to another within cultures. Thus psychoanalytic thought inspires many people to account for behavior by ascribing unconscious motives to the actors, but large segments of our society reject such explanations, and thousands of other conceptual systems have developed over the years for ascribing causes to conduct.

In addition to moral and motivational modes of accounting for human behavior, we employ deterministic explanations comparable to those with which we interpret nonhuman events. Thus we say that a child can't read because she was never properly taught, that he disobeys because he was not adequately punished for prior disobedience, that she shivers because this muscle movement is a reflexive maintenance of body temperature, or that he has heretical ideas because he was not sent to a parochial school. Even those who ascribe free will to human conduct thus imply determinism, in diverse ways, in many of their explanations for the behavior of others, and especially in their prescriptions for changing someone else's conduct. Furthermore, just as the contrasting ways of accounting for growth of a plant can usefully coexist, each serving different functions, so explanations of human behavior as the free pursuit of moral or other motives are compatible with views of conduct as the effects of causal determination.

³Mills, *Situated Actions and Vocabularies of Motive*, 5 AM. SOCIOLOGICAL REV. 904 (1940), reprinted in *POWER, POLITICS AND PEOPLE: THE COLLECTED ESSAYS OF C. WRIGHT MILLS* (I. HOROWITZ, ed. 1963) [hereinafter cited as *COLLECTED ESSAYS*]. See also K. BURKE, *PERMANENCE AND CHANGE* (2d ed. 1954); K. BURKE, *A GRAMMAR OF MOTIVES* (1945).

Each of these perspectives contributes to a different type of social need.

PERSONAL RESPONSIBILITY AND DETERMINISM

As indicated, neither the necessary connection in causal explanations nor the ideas of good and evil in moral justifications are directly perceived; both may be inferred from observations of succession and contiguity in events, but they usually are taught to us by others and accepted by us on faith. They are all social constructions, each requiring the evolution of an appropriate language.

One can only speculate on the origins of cultural phenomena, but society's need for widely-shared causal determinism ideas as well as for conceptions of good and evil is readily inferred—they both contribute to order and predictability in human life. It seems probable that the coordinated activity of many people in different specialized roles that constitutes society as we know it, that produces our culture and whatever material standard of living and degree of security we enjoy, would be much more difficult, if not impossible, to achieve without the widespread sharing of many causal and moral concepts. A function of the law is to enhance the pervasiveness of such concepts in controlling conduct.

The idea that we have free will to choose between good and evil conduct, hence personal responsibility for our acts, is validated introspectively by our subjective experience of thought. Philosophers John Dewey and George H. Mead, and many others, have pointed out that: (1) thinking is a reaction to problems by imagining and commenting to ourselves on their alternative solutions before, or instead of, overtly acting to solve them; (2) such thinking occurs to some degree whenever habitual or reflexive behavior is blocked by circumstances or by our inhibiting the behavior after imaginatively anticipating unpleasant consequences from it. Mead stresses that the events and conditions we contemplate, as well as our verbal constructs for explaining or justifying them, acquire meaning for us only through our focusing on them and interpreting them in the covert role-taking and subjective communication with ourselves and with imagined others that comprises thought.⁴

⁴J. DEWEY, *HUMAN NATURE AND CONDUCT* (1922); G. H. MEAD, *MIND, SELF AND SOCIETY* (1934). See also P. BERGER & T. LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* (1966); H. BLUMER, *SYMBOLIC INTERACTIONISM* (1969); T. SHIBUTANI, *SOCIETY AND PERSONALITY* Chap. 6 (1961); O. WAGNER, *ALFRED SCHULTZ, ON PHENOMENOLOGY AND SOCIAL RELATIONS* (1970).

The assumption that behavior will be inhibited if unpleasant consequences are anticipated from it may rationalize a government's holding people responsible for their deeds, hence trying to deter law-violating behavior by punishing it. The effectiveness of the policies of deterrence that the concept of responsibility evokes are empirically testable, but the metaphysical issue of whether people "really are" responsible is not, since empirically it is only a question of preference in the use of language. A related pragmatic perspective underlies the legal concept of insanity; this is the assumption that people will not be deterred from law violation by being held responsible for their deeds if their mental capacities are so defective as to prevent their realistically anticipating government reactions to their conduct. Application of the insanity concept is plagued, however, by unavoidable imprecision in identifying this incapacity and specifying the degree of mental defect that warrants suspension of responsibility.⁵

In most modern societies, coordinated activity in the day-to-day operations of economic, political and other institutions seems to reflect the gratification or unpleasantness that participants expect from alternative modes of behavior. Anticipations from conduct may be affected by ideas of right and wrong, but they apparently are especially influenced by the personal approval or disapproval of close associates and by the tangible consequences that actions are thought to yield, such as material benefit, promotion, physical injury or arrest and punishment. The family, school and church strive to influence personal ideas and feelings to mold conduct, while employers dispense pay, recognition and authority to shape job performance; paradoxically, they may all at times be said to be determinants of behavior by holding people responsible for actions as though each has free will.

PREDICTABILITY AND CRIMINOLOGY

As William James pointed out: "Free-will pragmatically means *novelties in the world*, the right to expect that in its deepest elements as well as in its surface phenomena, the future may not identically repeat and imitate the past."⁶ Human conduct would be completely determined before it occurs if thought, hence anticipations of the consequences of alternative possible decisions in new situations, were fully shaped by prior learning. Behavior may involve originality and creativity, however, hence be not fully

determined, because: (1) each new situation in which thought guides conduct may pose some problems that are unique, either objectively or as experienced in the life histories of the participants; (2) thought about our behavior—before, after and sometimes during overt conduct—involves verbal interpretation of alternative possibilities in imaginary role-taking, to reenact and reinterpret our past behavior and that of others mentally, and to complete acts in fantasy; (3) these processes of imaginary role-taking can occasionally be truly creative, with more or less new construals of events and new lines of action emerging from them. This type of analysis of the simultaneous elements of determinacy and indeterminacy in human thought and conduct is blurred rather than illuminated by such labels as "soft" or "moderate" determinism; thought always has much determination by the input of learning from experience, especially through the verbal formulations in which we learn to think,⁷ but it also has, at times, some free creativity in its output.

The more complex and the more rapidly changing a society becomes, the greater is the diversity of behavior that people may consider pursuing and of verbal interpretation that they may use when considering it, hence the greater their prospects for creativity in conduct. Predictability of human behavior is somewhat limited by this possible creativity in the thought that guides it, and even more by the imprecision with which the determinants of human conduct can be identified and measured. Therefore, while prediction is imperfect in all science, it is especially restricted in the social and behavioral sciences. Nevertheless, as textbooks reveal, these disciplines have many well-validated generalizations.

Not only are the causal connections by which the determinations of conduct are said to occur always inferred rather than directly observed, but as Kuhn points out, major alterations of conceptual paradigms for inferring causal connection occur periodically in all fields of science.⁸ Difficulties in precise assessment, however, often permit several alternative causal concepts to be prevalent simultaneously in the scientific literature on any topic; this is a condition especially pervasive in the study of human conduct.

While all these impediments reduce precision and consensus in the social and behavioral sciences generally, criminology is further handicapped by the

⁷A theme illuminated in Mills, *Language, Logic and Culture*, 4 AM. SOCIOLOGICAL REV. 670 (1939), reprinted in COLLECTED ESSAYS, *supra* note 3.

⁸T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970).

⁵For a fuller discussion see D. GLASER, *HANDBOOK OF CRIMINOLOGY*, Chap. 2 (1974).

⁶W. JAMES, *PRAGMATISM*, Lecture 3 (1925).

fact that it applies these sciences (1) to study conduct declared criminal through the highly variable and imperfectly predictable actions of legislatures and courts and (2) to study the criminal justice system. Thus there are ample grounds for dissatisfaction with the state of criminological knowledge to which the problem of free will is quite extraneous. Nevertheless, there are many compendia of more or less well-validated deterministic conclusions in criminology.⁹

Perhaps the primary source of dissatisfaction with criminological knowledge is an unrealistic expectation that it should have sweeping generalizations on causes and means of correcting or preventing all crime. It is quite certain that almost any empirically testable statement about all crime will be found invalid for some offenses or offenders, since the acts legally defined as crime as well as their correlates are so diverse. Nevertheless, much order can be found in an overview of current criminological knowledge and much progress in combating crime can result from this, especially if we distinguish predatory from nonpredatory offenses and nomothetic from idiographic knowledge.

Predatory crimes are those that grow out of torts, when the victims of injury by others succeed in getting the state to punish those who have wronged them. The statutes against such offenses (e.g., assault, theft, fraud) are occasionally reformulated but hardly ever long repealed, and they are expanding at a rapid rate (e.g., in new criminal laws punishing polluters, contaminators, cheaters of consumers, and violators of civil rights). On the other hand, laws against nonpredatory conduct (e.g., prostitution, abortion, drug use, homosexuality, and formerly heresy, witchcraft and political dissent) are on the whole decreasing, though some have a cyclical resurgence, because of growing tolerance for diversity in lifestyles that do not injure others, and increasing recognition that use of the criminal justice system to prohibit adults from voluntary and private acts that satisfy their cravings (e.g., for sex, alcohol or other drugs) does little to reduce the prevalence of these acts, fosters predatory crime, tends to corrupt the criminal justice system, and thus is more costly to society than coping with these cravings primarily through the public health and education systems.¹⁰

Idiographic knowledge consists of generalizations

⁹See, e.g., D. GLASER, *HANDBOOK OF CRIMINOLOGY* (1974) and *STRATEGIC CRIMINAL JUSTICE PLANNING*, DHEW Publication No. (ADM) 75-195; T. HIRSCHI, *CAUSES OF DELINQUENCY* (1969).

¹⁰The themes of this paragraph are more fully developed in *STRATEGIC CRIMINAL JUSTICE PLANNING*, *supra* note 9.

that can be valid only for a more or less definite era and place in history, while nomothetic knowledge is comprised of statements applicable to aspects or classifications of events in all times and cultures. In either case, the validity is not absolute but probabilistic; assertions on a category of human conduct may be both empirically testable and demonstrably true for the entire category only if they are generalizations on the predominant pattern of relationships, unless they are true merely by the relationship of a set of definitions, as the statement "Man is a featherless biped." Most of our knowledge on types of crime and on the criminal justice system consists of idiographic accounts of predominant statistical trends and correlations in our society in recent decades.

The most valid, useful and cumulative criminological generalizations are deductions from abstract nomothetic laws in the behavioral and social sciences, such as: (1) behavior that has been rewarding tends to be repeated even if punished, unless alternative behavior proves more rewarding than the punished behavior; (2) social separation fosters cultural differentiation.¹¹ If research is concentrated on ways of applying such universally valid statistical laws to combating property crime by increasing the legitimate rewards accessible to offenders through employment, and by reducing the isolation of delinquents from law-abiding and gratifying adult social worlds, then two really central problems in criminology will be addressed, both theoretically and practically.

SUMMARY AND CONCLUSION

Both free will and determinism are socially derived linguistic representations of reality, free will to justify holding people morally responsible for their conduct, and determinism to explain or predict and hence to rationalize attempting to influence or control behavior. Both perspectives contribute to coordinated action in a society and both are used by all people, but in different contexts: free will in moral assessment and determinism in causal explanation. Indeed, the assumption that human actions can be shaped by rewards and punishments paradoxically implies both free will to choose that which is gratifying over that which is unpleasant in its consequences, and the determination of behavior by those who can affect its rewards and penalties.

The necessary connection in deterministic explanations as well as the free will assumption in moral

¹¹For fuller discussion of the research implications of this perspective on criminology see Glaser, *Achieving Better Questions: A Half-century's Progress in Correctional Research*, 39 *FED. PROBATION* 3 (Sept. 1975).

assessments are based on inferences rather than on direct observation, yet a sense of choosing freely among alternative possible forms of conduct is introspectively observable in the imaginary role-taking and inner conversation that occurs when we think about our behavior. That there is much determination of conduct and thought by our prior experiences is evident in the correlation of behavior with cultural contacts, yet some creativity is indicated by the view of thought and action as emergent from covert role-taking.

Despite the increasing rate of behavioral innovation in this era of rapid change and cultural mixture, much verifiable and useful generalization can be and has been achieved in the scientific study of human conduct. Such knowledge includes the description and analysis of criminal law violation and of the criminal justice system. The central problem in enhancing the utility of this criminology is not free will, but that of developing and testing nomothetic propositions derived from the validated abstract principles of the behavioral and social sciences.

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