



9-1-1942

Jurisprudence and Contemporary Psychology

William R. Watkins

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

William R. Watkins, *Jurisprudence and Contemporary Psychology*, 18 Notre Dame L. Rev. 1 (1942).

Available at: <http://scholarship.law.nd.edu/ndlr/vol18/iss1/1>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

NOTRE DAME LAWYER

A Quarterly Law Review

VOL. XVIII

SEPTEMBER, 1942

NO. 1

JURISPRUDENCE AND CONTEMPORARY PSYCHOLOGY*

THE PRINCIPLE OF UTILITY

The Psychology of the Utilitarians. Jeremy Bentham (1748-1832), leading exponent of the utilitarian doctrine, visioned a coalition of jurisprudence and an experimental science of human behavior. Psychology was then an unborn science, but enough was known of the mind to enable him to point to a purpose in laws, far in advance of the legal thought of that era.¹

According to Bentham's principle of utility, all evil is pain — all pleasure is good; pain and pleasure are felt by people. That which tends to increase the sum total of man's happiness is of utility. The greatest good for the greatest

*Interest in the lectures "The Revival of Natural Law" delivered by Dean Roscoe Pound at Notre Dame in January, 1942 and reprinted in the June number of the Notre Dame Lawyer, has stimulated a number of contributions to the Lawyer dealing with the same general subject-matter. Two of the articles submitted are printed in this issue, namely: "The Relations of Natural to Positive Law" by Leroy Marceau and "Jurisprudence and Contemporary Psychology" by William Watkins. The opinions expressed in these articles are not necessarily those of the Lawyer, but they are published as a footnote to the Pound lectures and in the belief that the interesting and, in many respects, conflicting points of view presented by the articles printed herein may be compared and critically evaluated.

—Editors.

1 Bentham "Theory of Legislation," xiv (1931) New York.

number is of highest utility.² Laws must be valued according to the principle of utility.

Asceticism. The principle of utility is to be distinguished from asceticism. The ascetic eschews pleasure. He withdraws from companionship of his fellows in order to obtain applause and self-glory. Asceticism gains ascendancy by mistakenly ascribing benevolence to Deity and at the same time insinuating to Him the character of a malevolent Being who wreaks vengeance on those who seek good in pleasure.

The Principle of Sympathy and Antipathy. Acts ought not to be judged from considerations of sympathy or antipathy. Acts done from consideration of sympathy or antipathy are capricious. Such concepts as moral sense, understanding, right and wrong, eternal and immutable rules of right, laws of nature, natural rights, natural equity, the rights of man, truth, and the like, divert from the object of consideration and tend to create sympathy or antipathy. They are abstract creations of the mind, which adorn arbitrary authority and are sometimes used to rationalize a rule or system. Approval or blame as suits self-interest of the observer, without reference to the interests of all those whom the described action affects, is capricious. The sole basis of good action is the consideration whether it affords the greatest possible happiness to the greatest possible number. Capricious acts sometimes, by accident, conform to this consideration and so seem to conform to the principle of utility. Good is seldom done from a consideration of the principle of utility alone.

The principle of antipathy influences action from six motives. 1. A thing may be repugnant to the senses. 2. It may offend one's pride. 3. It may stimulate a feeling of inferiority and futility. 4. It may cause feelings of insecurity. 5. The desire to conform to the conceived popular will may cause antipathy. 6. Envy of others may offend one's self-regard.

² Deeming the word "utility" of doubtful clarity, Bentham abandoned it for "happiness," *Id.* p. 500.

Government and the Principle of Utility. Rulers seldom make evil an end, they are generally forced into it by false notions of greatness. Yet caprice — sympathy and antipathy — exercises the greatest influence upon government. Too often governments pursue morals, equality, liberty, power, justice, commerce and religion — objects good in themselves but which often lead astray. These are ends, not means. They are too often substituted for public happiness, instead of being the result of it.

“So use present pleasures as not to lessen those which are to come.” “What more can morality desire than the retrenchment of every pleasure injurious to one’s self or to others?” “. . . this is the very principle of utility.”³

“Simple pleasures” are listed as: Pleasures of sense, riches, address, friendship, good reputation, power, piety, benevolence, malevolence, knowledge, memory, imagination, hope, association, relief and deliverance. “Simple pains” as: Privation, sense, mal-address, enmity, bad repute, piety, benevolence, valevolence, memory, imagination and fear.

The object of laws is to increase pleasure and prevent pain. The value of pleasure (or pain) may be estimated by its intensity, duration, certainty, its proximity, its productiveness, its purity, and the number of persons who are likely to be affected by it, or its extent.

A Mathematical Science of Behavior is Practicable. The principle of utility once it is fully understood, affords as easy a method of judging pleasure and pain as arithmetic furnishes for doing sums.

There are different degrees of pleasure and pain according to the difference of sensibility. Differences of sensibility are such as influence the physical or moral condition of individuals. The foundation of sensibility is temperament, one’s original innate constitution. This is difficult to get at; the physiologist must do this: Other primary circumstances

³ Id. p. 17.

affecting sensibility are health, strength, corporal imperfections, degree of knowledge, strength of intellectual faculties, firmness of soul, perseverance, the bent of inclination, notions of honor of religion, sentiments of sympathy and antipathies, disorders of mind, and pecuniary circumstances which comprise man's wants, being three in number, viz., property, profit of labor and pecuniary aid; depending upon four circumstances: 1. Habits of expense; 2. The persons with whose support we are charged; 3. Unexpected wants; 4. Expectations.

In a secondary way, sensibility is affected by sex, age, rank, education, occupation, climate, race, government and religion.

While it is difficult to discern the existence and trend of the primary circumstances of sensibility, owing to their being secret dispositions, they are manifest in the secondary circumstances just enumerated. Consequently, laws need not be directed at regulating the hidden dispositions, but need only take into consideration as guides, the secondary circumstances.

Morality and laws ought to have the same aim, that is, directing the actions of men in such way as to produce the greatest possible sum of good. Morals is a constant guide; it commands each individual to do all that is to the advantage of the community, himself included, but laws ought not exercise this continual dictation over the affairs of men. Legislation is effective only as it punishes but then there is the overwhelming danger of defining an offense so loosely as to result in punishing the innocent.

The greatest possible latitude ought to be left to individuals when they can injure none but themselves by their actions. The power of the law need interfere only to prevent them from injuring one another.

Public scorn and ostracism resulting from non-conformity to customs of the community is a powerful deterrent.

Lack of Understanding of the Principle Leads to False Reasoning. False reasons often urged for or against a law are: 1. The antiquity of the law. 2. The authority of religion. 3. That it is an innovation. 4. Putting forth of arbitrary definitions. 5. Metaphors or allegories (first used to illustrate, are finally used to base the argument on). 6. Fictions. i. e., the king can do no wrong; the judges are mirrors in which the image of the king is reflected; the social contract; etc.:

“The true political tie is the immense interest which men have in maintaining a government. Without a government there can be no security, no domestic enjoyments, no property, no industry. It is in this fact that we ought to seek the basis and the reason of all governments, whatever may be their origin and their form; it is by comparing them with that object that we can reason with solidity upon their rights and their obligations, without having recourse to pretended contracts which can only serve to produce interminable disputes.” *Id.* p. 74.

7. Fancy, i. e., “the rights” of this or that, is not a reason. 8. Antipathy and sympathy are not reasons. 9. Begging the question is not a reason. (Here Bentham describes what we know now as propaganda.) This consists in making use of the proposition involved in a manner that assumes it is already proved. It is accomplished by employing sentimental or impassioned terms, ascribing positive or negative values to a matter, rather than neutral terms descriptive of the thing itself, without any imputation of good, bad or other quality.

The expression “principles of democracy” means nothing. The effects of the system as a whole should be calculated. To say that a government combining in independent departments the legislative, executive and judicial functions, comprehends all that is good of a democracy, monarchy and autocracy is meaningless. Obviously, such a combination also includes all that is bad in each. The word “independence” carries certain ideas of virtue while “dependence” denotes inferiority and submission. Complete independence or dependence rarely exists. Interdependence more clearly expresses the idea of utility.

Men ought to fulfill their engagements not because they have contracted to do so, not because the other party to the contract has the right to demand performance, not because of the morality of the obligation, but because of the principle of utility — that is, it promotes the security of the entire community for what has been agreed to be performed. Chaos would result if it were the rule that contracts were performable at the sole will of either party.

10. An imaginary law is not a reason, as the laws of nature or natural rights.

Object of Laws is to Protect Rights by Imposing Obligations. The objects of the Civil Code are two, rights and obligations. Rights are advantages and benefits, while obligations are opposite in their nature and consist in onerous duties and charges. They arise together and are inseparable.

A law creating a right always imposes a burden. So it ought not exist except for the purpose of conferring a greater value than is lost by its obligation.

It is impossible to create rights and impose obligations except at the expense of liberty, for every restriction on liberty is followed by a natural sentiment of pain. The idea that liberty consists in the right to do everything which is not injurious to others is wrong. The only object of government ought to be the greatest possible happiness of the community; its functions to guard against pains. The happiness of the individual is increased as his pains are lighter and fewer, and his pleasures greater and more numerous. It fulfills its object when it creates rights and confers them on individuals. As it cannot confer rights except it sacrifices part of the individual liberty, it approaches perfection in proportion as it requires less sacrifice and gives more.

The ends of civil law by which its objects are attained are four: Subsistence, Abundance, Equality and Security. The most important is security of which liberty is a branch. Equality must not be permitted to thwart security.

Before the idea of laws existed, needs and enjoyments had created motives for subsistence better than laws could do. So laws ought to provide for subsistence indirectly by giving security.

Law ought to be built upon the immovable basis of sensations and experience. The sensations of men are sufficiently regular to become the objects of a science and an art.

Law alone has created security. It has created a durable possession which is called property. It says to labor, "work and I will see that you enjoy the fruits of your labor." Expectation unites the present with the future, and the principle of security maintains expectations.

Property is a basis of expectation; the expectation of deriving certain advantages from a thing we possess. This expectation is a work of law. Take away law and property ceases. As regards property, security consists in receiving no check, no shock, no derangement to the expectation of enjoying this portion of the good. When this security is distributed it produces a proportionate sum of evil.

Law should precede expectation. It should be known. Laws ought to be consistent with one another and with the principle of utility, and should be literally followed.

Summary of the Principle of Utility. Such in general is the principle of utility and some of its suggested applications to the civil code. Other applications are suggested and the principles of the penal code are explored, but enough has been said for an understanding of the main features of the principle. Bentham clearly foresaw the possibilities for jurisprudence of an experimental science of human behavior which could predict what men would do in certain situations.

The principle of utility proposes a science of prediction which will define action with mathematical precision, so much desired, but definitions follow one another endlessly. They lack precision in much the same way as expressions which

are condemned as meaningless. Vague quantitative terms such as "the greatest possible" are aligned with the equally vague subjective state called "happiness." "Rights" are called meaningless only to be classed as "good" that cannot be dispensed with in the system. An obligation is deemed bad because it involves a surrender and deprivation. "Security" is called in to symbolize the "best" object of government and is distinguished from equality, subsistence and abundance, which are equally indefinite.

While recognizing that there is a difference between laws and their enforcement by authority, Bentham failed to follow the distinction through. He saw a force, like law, in custom and observed not only the tendency of the majority of people to conform to custom, but of society to make them conform. Customs are real laws and the pressure of disinterested public opinion is the authority which enforces them. He did not take advantage of this primitive justice in his principles.

However, his work created so profound an impression that many reforms he proposed which were radical when he proposed them, are commonplace parts of our institutions.

The philosophy of mind of the latter part of the eighteenth century was highly introspective. It has been superseded by experimental psychology, the psychology of personality, abnormal psychology, psychiatry and other schools of psychological thought. Lawyers, legislators, judges, and teachers of the law, however much they have learned from Bentham and his school, have neglected to keep pace with progress in the science of human behavior.

Contemporary Psychology — The Integrated Personality. Modern psychology conceives of individuals as being in an environment consisting of that part of the universe within the range of the sense of sight, hearing, taste, smell and touch. Possessed of mind and consciousness they interpret

their environment and their relations therewith. Possessed of memory of their experiences, they conceive ideas about them.

Having the ability to communicate and be communicated with, man obtains knowledge of the experiences and ideas of others. Learning, indiscriminately, from his environment, and from others, he puts these experiences together by reasoning. He often confounds his reasoning with the facts of the environment. Closely akin to ideas of his own, which obscure interpretation of the environment, is suggestion. Once he hears of an interpretation of a situation, there is a tendency to accept such interpretation without analysis. When the interpretation is in print its suggestive power is greater than when it is in script or verbal. There is great power in suggestion and a well-developed psychological school of thought, dealing with suggestion alone, has uncovered many interesting and important facts. When man passes his concepts along to others as reality they are too often confounded in a mixture of reality, ideas and suggestion.

As precepts and concepts multiply they are not lost. They are stored away in memory. In time they become an integral part of the being. Though forgotten, they contribute to the formation of future behavior patterns. In this way all experience conditions and qualifies the personality, making it what it is at any time. We respond to our environment and to the situations that confront us each moment according to our original constitution, according to the way our previous experiences have conditioned us, and according to our dominant interests at the time.

This constant interaction and interdependence of the individual and his environment commences before birth and continues, at least so far as consciousness and science are concerned, until death.

Man is not independent of his environment. He is an integral part of it, no matter what his relation to it is. He perceives only a part of the total environmental field in

which he moves. He interprets this field in the light of his own interests and the aspects of the field as perceived by him. Others viewing the field with different interests and from other aspects may render an entirely different interpretation. By some psychologists the aspect from which the environmental field is observed, is called the frame of reference. Out of such masses of observation, come the facts which we call the common experiences of mankind.

Symbols used to transmit ideas, descriptions of human behavior and even jurisprudence itself originate in this chaotically organized mental field. All man-made inventions including his institutions are products of psychic experience.

The Neutralization of Scientific Terms. Bentham realized that science had to be based on experience and employ concepts couched in neutral terms. Modern psychology has substituted "accept-reject" for his good-bad, ridding the argument of ethical and moral implications. It is even now substituting "judgment" for "value"⁴ and rating reports of evaluative judgments empirically. "Sensation" passed with the bulk of introspective physiological psychology. The sequence, sensation - perception - apperception, of William James, describing an experience which has strength enough to cross the threshold from sensation to consciousness, and thus be perceived and then interpreted — apperception — has all but disappeared.

Now we have a stimulus situation-response-and after effect (S-R-E), in which the stimulus situation is any experience situation in the total field or frame of reference in which it occurs (Sf); in which the response is modified and conditioned by the present personality (Rp), and in which account is taken of an experience in the formation of behavior patterns (E). This after effect is the area in which the prob-

⁴ "Value" is coming to be considered the report of an individual concerning his judgment of a thing or idea based upon his experience and relation to the environment.

lem of jurisprudence lies. The after effect may be a release of tension, or it may increase the psychological tension, and thus produce what are called conflicts. When mental conflicts arise, it is, as a general rule, in the absence of mental deterioration, the result of repressions, inhibitions, anxiety, fears, feelings of insecurity and the like, which block off the outward, positive flow of mental energy. The phenomenon which accompanies conflict situations is called the affect. So, the after effect (E) is to be modified when the response is thus negative as a conflicting effect (Ec). Conflicts contribute to unsocial behavior, if in truth they are not the cause of it all.

Pleasures are now wants or needs. These words leave much to be desired from the standpoint of psychological neutrality. They do, however, rid us of the ethical and moral implication of "pleasure." Other terms used to express comparable thoughts are goals, drives, instincts, desires, lacks and interests.

We feel a need for food, shelter, health, rest and the functioning of the vital organs of the body; in the social category, a need for companionship, opportunity for recognition and security. "Wants" is sometimes reserved to symbolize the desire for more than mere needs. Wants include Bentham's abundance.

Happiness is a subjective state following or accompanying satisfactory experiences. It results from conditions in the environment and the way in which the individual is adjusted to them. The psychology of adjustment occupies a broad, growing field of study today.

The Expenditures of Mental Energy. The physical and chemical properties of the mind and body are proportioned in such way that need for a frugal expenditure of mental energy is constantly combating large expenditures. The tendency is toward a state of mental equilibrium, in which the psychological tensions will be at rest, but this stage is never

reached in life. The nearest approach to equilibrium is in sound sleep when the electrical impulses of the brain are least.

Less expenditure of mental energy is needed to dispose of subjects involving indefinite ideas of time, space, quantity, or quality, than is required in working out precise mathematical formulae describing and defining the relations of things. We have come, by the frugality of our innate constitutions to find it more satisfying to accept ideas expressed in symbols which set the matter entirely at large, or bring it to a quick close in the mind, than those which call for close attention and analysis. Such expressions as good, happy, pleasure, democracy, justice, liberty, our way of life, and the like, all have telic implications, but the end to which they point is entirely within us, and is not in the reality which these symbols purport, but fail, to describe. What more can they do than generate a feeling of personal satisfaction, because of certain ideals we have accepted? ⁵

The Directions of Expenditure of Mental Energy. The psychologist Adler points out that people are born into a world containing vast uncontrollable forces. Soon the individual observes there are many things which he cannot combat alone. He begins to feel his insufficiency and with that a definite need for cooperation. This is of two kinds: Cooperation of the things in his environment, which he as an individual can control or direct, and cooperation from others of his kind. In the struggle for existence he devises organizations of both to regulate or combat forces which he individually lacks the strength to control.

Some individuals accept situations in which they find themselves with a feeling that it is futile to make an effort, they are beaten before they start, they move with the tide

⁵ May it not be that this tendency of the mind accounts for the paradox that our ideas about things generally precede our scientific knowledge of the things themselves?

of life, rudderless and without objective. Every new situation confronting them is a personal affront to their effort to withdraw from and thus escape the world about them. This is a result of the work of conflicts. Here we have Bentham's asceticism.

On the other hand, others feel they are playing a game. Life is what they make it, they enter upon the task of trying to assist in the organization of the environment, with jest and earnestness. New situations are interesting problems to be solved.

Adler says those of the former type have an inferiority complex and the latter a superiority complex. His compatriot Jung says the former are introverted and the latter extraverted. All caution that everyone is introverted and extraverted to some extent, but it is only as one is habitually adjusted in this regard that he may be regarded an introvert or extravert.

In the field of personality neutral approach is made to a related idea. Here two traits are postulated, the ascendent and the submissive (A-S reaction). The ascendent may desire to dominate because he is possessed of either a superiority or inferiority complex. Quantitative tests determine which trait, the ascendent or submissive, predominates. Experience in testing widely separated groups with the same material, shows how the individual varies from the determined mean score; other tests reveal why he varies.

Conflicts may cause either an habitual attitude of ascendancy or submission, or of introversion or extraversion. Conflicts tend to change the direction of mental forces. It seems as if the energies of the mind, flowing outwardly (extraversion) in habitual situations, so that the psychological tension system proceeds towards equilibrium, are suddenly reversed (introversion) and their entire force finds itself directed inwardly, increasing tensions. These tensions being related to

other tensions of the system, dynamically affect the response to other situations.

Some psychologists think there are great psychological differences between persons of different physical structure and significant similarities among those of the same type.

Psychological Similarities. Little, however, far too little, experimentation has been done in the psychological field of similarities between all members of a group, culture or the world. A pressing need is for an empirical and quantitative study of the similarities of people in relation to the environmental field in which a culture has developed, in order that basic similarities in people from culture to culture may be known. All people are similar, broadly speaking, in that they eat food, mate, care for their young, mourn their dead, think not of their ancestors as being personally lost to them, maintain some sort of social organization, accept those with whom they are familiar (the in-group) but tend to reject those with whom they have no acquaintance (the out-group), desire recognition and security. Furthermore, the inability of all man's ambitions and ingenuity to cope with certain forces in the environment, as storm, pestilence and death, causes him to personalize a Deity upon whom he calls for aid and thus secure release of tensions that will not otherwise be allayed.

From culture to culture there are similarities in method for obtaining release from other conflicts. Those living in severe climates, as the woods Indians of the North who support themselves at the hunt, the Eskimo who lives still farther north, and the inhabitants of tiny storm-beset islands in the southern oceans, have this in common: Locked in between starvation and death or success in hunting and fishing, and surrounded by powerful storms and desolate wastes, they generate psychological tensions to release which they have periods of license, taking for the most part the form of carnal license in which social conventions are let down.

In populous centers a great struggle to exist goes on. The pressure of the environment creates tensions which if not released result in mental deterioration and psychopathic personalities. There is a noticeable attitude of apathy among large numbers of the population and feelings of aggression toward others which are absent in less populous centers.

From conflicts brought on by fear, anxiety, feelings of insecurity, lack of recognition, death and the like, many turn to religion and when converted or when they confess, obtain satisfaction and release from conflicts.

The Psychology of Conflicts. The psychology of conflicts, dealing with maladjustments of the personality to its environment, shows that when all people in a culture have similar habits, customs and possessions, they are free from psychoneuroses. The more dissimilar the habits of the people rising to specialization and classes — the illiterate and learned, rich and poor — involving various forms of dependency and supervision, there is a proportionate increase in conflicts and disharmony. The psychology of conflicts supersedes the philosophy of sensation of Bentham's period.

In some primitive cultures there is no word for insanity or divorce. Even in our country, rural communities exist where there have been no mental cases, nervous breakdowns, divorce or crime.

When conflicts, frustrations and anxieties occur, the response is, if not aggressive, at least of an introvert nature; there is an abnormal physical and mental withdrawal from the tasks of social organization. Frustration — interference with an activity — creates feelings of aggression and this is claimed by some to be the invariable result. A modification of this theory is called for by others who believe that when the environment offers insurmountable obstacles to release of the psychological tensions created by frustration — for example, banishment or oppression of classes by despotic

rule — the aggressive mechanism becomes conditioned to the constant and repeated frustration, and is succeeded by apathetic submissiveness. In both instances, it will be observed, the common element is a blocking of the outward flow of mental energy essential to release of tensions.

Contrasted with these generalizations are experimental results proving that when people are permitted to participate in the organization of their environment, in what we call a democratic way, are permitted to carry on their work and play by the trial and error method within the limits of controls established by themselves, a large majority then exhibit creative faculties and cooperate without conflict.

On the other hand, in groups whose entire existence is standardized, ordered by others, or disproportions in class exist, or monopolistic situations, production tends to decrease, invention ceases and physical cooperation of the majority obtained only by coercion, turns to rebellion when coercion is momentarily relaxed.

All these facts seem to hold true regardless of any individual differences, from which it may be assumed that here is another similarity to be closely studied.

Compulsive obedience is only apparent obedience. The body is accepting overtly what the mind is covertly rejecting. Disorganization of the coordinated, integrated and interdependent human system is present. From these conflicts, when created by social institutions, governments weaken and revolutions grow. The people are seeking to escape frustrations. The many are seeking release of tensions generated by conflicts in their common environmental situation.

So, similarities of behavior from group to group, depicting as they do the more permanent qualities of character of the people or a general frustration, are objects of public concern. The general character of people is not subject to arbitrary change. To attempt it creates conflicts among most of the people. These conflicts create retrogressive action.

Comparison of the Principle of Utility. What becomes of the utilitarian principle — that the object of laws is to increase pleasures and prevent or alleviate pains, and the principle of the greatest possible happiness for the greatest possible number — in the light of present-day science?

It is clear that happiness is not a creation of laws; it cannot be created by laws. Rather what has been called happiness results when the responses to situations in the environment permit adjustment of the personality without conflicts. Scientific experience is revealing what situations create conflicts, frustrations and states of anxiety.

The philosophers from Aristotle to Bentham failed to observe that when individual behavior varied greatly from group behavior, the customs of the group were simply being rejected. As individual behavior was unusual they reported it as painful, unpleasant or bad.

But the mental act of rejection is the rejection of a stimulus. It occurs regardless of what the body does. The inability to be rid of a rejected thing leaves the mental tension — which in turn is a stimulus itself — and various results follow. Acts based upon rejection are often not traceable to the tension by commonly understood methods. That is a problem now being studied in the fast developing field of psychotherapy.

It seems that the word happiness must be put out. The term "greatest," twice used in the principle of utility, signified in one place a majority in number of people and in another increasing happiness. In the latter sense it, too, must be discarded preparatory to using experimental methods.

The Object of Laws. It would seem to follow that the prevention of conflicts among the greatest number, involves the creation of institutions designed by general rules and authority to guide persons who possess a tendency to depart from customary group behavior. These rules should prevent

acts which would create conflicts in most people if all were put in a situation where they had to respond thereto. We seek in a crude way to approximate this scientific result by creating an ideal "average man," who of course, has no real existence.

Individual differences, due to conditions in the environment and in the innate constitution of each person, are so great and variable that what seems pleasant for one would seem painful to another. A government could not be devised to regulate them all. Most of these innumerable individual differences may be left to the gentle discipline of custom and family life.

But, similarities of behavior can, from experience, be objectively classified. Acts causing conflicts in the most can be scientifically determined by procedures known today. Thus a firm approach to a scientific solution of the prime objective of government — much firmer than that of the utilitarian school — is easily foreseen.

The object of law then is to provide means for protection of the environment from situations which create conflicts in the greatest number. Or to say the same thing, its object is to provide aid in preventing individuals or groups from creating such conflict situations.

A definition, as such, is inadvisable, but it is convenient as punctuation and so it is used as a period here, to mark the end of one phase of the explanation and the beginning of another.

In its total aspects law is a product of the human mind. In parts: It expresses a response to real or assumed situations in the environment. It in turn creates a situation in the environment to which responses are made. These responses may or may not be as anticipated. It expresses idealistic relations between personalities or things in the environment in terms of actual or potential conflicts. It may create conflicts in the greatest number or it may not do so.

In so far as it conforms to the customs and mores of the greatest number of people it may, in a general way, be expected not to create conflicts. When it departs therefrom the problem of conflicts, in a constitutional sense, arises and may be solved experimentally.

Authority must be set apart from law. Law is the stimulus which men may be expected to respond to in various ways. Authority is the physical coercive force which operates to deter or punish. The frustrating effect of authority as such is an object of distinct study and concern.

Rights and obligations are fictions belonging not to the field of law but to the field of authority. They have to do with the judicial process of determining relations, of resolving individual conflict situations, and symbolize an intermediate stage in the process: The stage at which the relations are resolved. The facts of the situation have been arrived at and a rule of law applied with a pronounced result, and it is judged that one has a right and another owes an obligation. Rights and obligations are not psychic experiences.

Law is implemented; the acts it prescribes are set in motion or stopped by the declaration and action of authority. But law itself ought to unfold the definition of relations between individuals and their environment in furtherance of a general freedom from conflicts — which is justice. Only exceptional individuals need come in contact with authority. The many usually conform to the rule, even though it is rejected by their minds, because of the tendency to conform which is an aspect of the need for security. Whether they can habituate themselves to perform depends upon the conflict forming tendencies of the rule itself and upon the acts of authority.

The Mathematics of Science. Bentham desired a mathematical science of law. Rousseau believed this was possible. Pareto attempted in 1914 to produce such a science for society as a whole.

Mathematics is a means used to express relations between particular subjects. A minute is such simply because men have found by experience it is useful to express temporal relations quantitatively. They observed that the stars, sun, earth, day and night had temporal relations that were susceptible of division into parts, and they symbolized these divisions in a roughly relative way by giving them different names and then applied the divisions to relations between themselves and other things. Things being located in different places relative one to the other, symbols were devised to express these differences and are applied to many other relations. Units have also been invented and applied to relations of size and quality.

All calculations from unit to unit may be entirely exact, still they may fail to define the precise quality or relations because of a failure to correctly judge the elements involved in the subject. Experience alone can remedy such errors. So, mathematical calculations must never be confounded with the things they symbolize.

A foot in length is a foot only because it is a unit arbitrarily applied to express spatial relations. So it is entirely proper in a science of jurisprudence to devise neutral units and arbitrarily apply them to symbolize the (1) similarities in human behavior, (2) situations which create conflicts in most people, and (3) effect of laws and authority, present and prospective, in creating or releasing such conflicts.

The correlations to be expressed by such symbols are problems of pure mathematics. Experimental use of the symbols will give us progressively more reliable (1) approximations of the similarities in people, (2) the conflict situations in the environment, and (3) will enable us to predict experimentally what results will follow from the application or removal of controls.

Already a large body of sociological and psychological learning is available for just these purposes. It needs to be grasped, mastered and applied by jurisprudence.

This cannot be more than a hasty imperfect sketch. The field of psychology is too vast to be condensed within small compass. Some of the terms used will seem strange to the field of jurisprudence. Most of them are tools in everyday use by psychologists throughout the world. Our generation of lawyers may not accept them. But, without a beginning they will remain obscure to the next. If a psychological jurisprudence is rejected, let it be by those who first master the science and present a better, not by those who are afraid of the reality which has always been, but which is only now coming into consciousness.

William R. Watkins.