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THE VALUE OF SOCIOLOGY TO LAW *

Robert C. Angell †

THERE has been a good deal said about a sociological approach to law and, as time goes by, more and more attempts are being made to turn words into action. There is a definite trend toward the use of the sociologist, his research methods, his findings, or his body of principles by those concerned with the law. It may not be amiss, therefore, for a sociologist to inquire what the possibilities of this trend really are. Though, in certain respects, he may be less well equipped for this task than the student of law, he at least has the advantage of seeing clearly the shortcomings of contemporary sociology and is not as likely as optimistic outsiders to exaggerate its value to law.

*To Professor John P. Dawson of the Michigan Law School I owe a debt, which I gratefully acknowledge, for his repeated discussion with me of many points in this paper.

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The author has compiled, at the editor's request, the following list of suggested readings on Sociology and Criminology:

GENERAL SOCIOLOGY

HISTORY OF SOCIAL THOUGHT. 2d ed. By *Emory S. Bogardus*. Los Angeles: J. R. Miller. 1928. Pp. 668. \$4. ~ The student and general reader will gain from this inclusive work the whole field of social thought, from ancient times to the present.

INTRODUCTION TO THE SCIENCE OF SOCIOLOGY. 2d ed. By *Robert E. Park* and *Ernest W. Burgess*. Chicago: University of Chicago Press. 1924. Pp. xxiii, 1040. \$4.50. ~ One of the best known and soundest general texts.

INTRODUCTION TO THE STUDY OF SOCIETY. By *Frank H. Hankins*. New York: The Macmillan Co. 1928. Pp. xiii, 760. \$4. ~ A text written from the standpoint of social evolution.

SOCIAL ORGANIZATION. By *Charles H. Cooley*. New York: Scribners. 1908. Pp. xvii, 436. \$2. ~ A penetrating analysis of the structure and trends of modern society.

READINGS IN SOCIOLOGY. By *Jerome Davis* and *Harry E. Barnes*. Boston: D. C. Heath. 1927. Pp. xviii, 1065. \$6.

READINGS IN SOCIOLOGY. By *Wilson D. Wallis* and *Malcolm Willey*. New York: Crofts. 1930. Pp. xxiv, 639, xxvi. \$4.50. ~ Both of these books are valuable sources.

SOCIAL CONTROL

SOCIAL CONTROL. By *Edward A. Ross*. New York: The Macmillan Co. 1919. Pp. xii, 463. \$2.25. ~ A stimulating exposition of the processes and problems involved.

PRESENT STATUS OF SOCIOLOGY

It is difficult to characterize in brief compass the status of a whole scientific discipline because general statements about the situation are likely to prove meaningless to those not in touch with the actual scientific work which such statements attempt to summarize. However, perhaps we may point out that, roughly speaking, sociology has had two main periods. In the first, discerning scholars formulated large generalizations or hypotheses regarding social relationships on the basis of their own experience and observation, supplemented by history, anthropology, and other enlightened comment upon human life. Many of

MEANS OF SOCIAL CONTROL. By *Frederick E. Lumley*. New York: The Century Co. 1925. Pp. xiii, 415. \$3.75. ~ The author discusses the manifold means of control, especially those utilizing symbols.

FOLKWAYS. By *William Graham Sumner*. Boston: Ginn & Co. 1907. Pp. vii, 692. \$4.20. ~ A remarkable study which draws illustrations from all forms of primitive life, racial customs, spiritual demonstrations and superstitions.

THE SCIENCE OF SOCIETY. By *William G. Sumner* and *Albert G. Keller*. New Haven: Yale University Press. 1927. Vol. I. Pp. xxiii, 734. \$4. ~ This first volume of the four-volume work contains fascinating material on the early development of control devices.

THE MODERN STATE. By *R. M. MacIver*. Oxford: Clarendon Press. 1926. Pp. xii, 504. \$7. College Edition, \$4.50. ~ The problems of political science treated in a broad, sociological manner.

CRIMINOLOGY

THE GANG. By *Frederick M. Thrasher*. Chicago: University of Chicago Press. 1927. Pp. xxi, 571. \$3. ~ A study which describes where and under what conditions the gang flourishes, who are its members, what their activities as a gang are, and what efforts have been made to attack the problem.

CRIME AND CUSTOM IN SAVAGE SOCIETY. By *Bronislaw Malinowski*. New York: Harcourt, Brace & Co. 1926. Pp. xii, 132. \$2. ~ Conclusions as to the nature of primitive law, drawn from an analysis of the social life of a Melanesian community. A brilliant, concise, and non-technical book.

DELINQUENTS AND CRIMINALS. By *William Healy* and *A. F. Bronner*. New York: The Macmillan Co. 1926. Pp. viii, 317. \$3.50. ~ Research on case studies of juvenile repeated offenders, made to determine the effectiveness of the juvenile court and correctional work, and the relations between the delinquents' conditions of life and their offense.

CRIMINOLOGY. By *Edwin H. Sutherland*. Philadelphia: J. B. Lippincott Co. 1924. Pp. 643. \$3.50. ~ A textbook which deals with causes of crime, the courts, methods of punishment, prisons, and paroles, emphasizing the criminal as a human being rather than a concept.

500 CRIMINAL CAREERS. By *S. S. Glueck* and *Eleanor Glueck*. New York: Alfred A. Knopf. 1930. Pp. xxvii, 365, xvi. \$5. ~ An extensive study of the effect of a reformatory on its inmates, which relates in detail the subsequent careers of prisoners and suggests changes in the reformatory system. A genuine contribution.

CRIMINAL JUSTICE IN AMERICA. By *Roscoe Pound*. New York: Henry Holt & Co. 1930. Pp. xiv, 226. \$2. ~ Dean Pound attempts to explain the difficulties under which criminal law labors in our day and age.

these hypotheses have since proven inaccurate, but others of them have well withstood the test of more searching analysis. Such, for instance, are Cooley's general notion of the tentative character of all social growth, his theory of the enormous and fundamental influence of intimate, face-to-face groups like the family, and his hypothesis of the institutional character of pecuniary valuation. The second period has been marked by a swing of the pendulum toward more systematic induction. Although a necessary antidote to uncritical "armchair" speculation, this movement has undoubtedly restricted unduly the play of scientific imagination, so that we have had great accumulations of ill-assorted and undigested facts with little theory to illumine them. Case histories have been gathered in great numbers, social surveys of various kinds have been made, and statistical studies of all sorts have been carried on. All these methods give us important information about social facts but they do not give us generalizations or laws of social relation and function unless further work is done in the way of setting up hypotheses and testing them. This procedure has been approximated in some instances but, unfortunately, only in a relatively few.

Sociology, then, presents the spectacle of a considerable number of seemingly valid generalizations, rather sweeping and rather vague, on the one hand, and great masses of descriptive data on the other, with little achieved in the way of detailed and specific theory which can be used for prediction and control. There remains to be mentioned the research techniques which sociologists, along with other social scientists, are gradually evolving. Without making any claims of startling success in this field, it is certainly true that sociologists are exhibiting considerable ingenuity in devising research methods and that steady progress may be expected.

THE SOCIOLOGIST'S APPROACH TO LAW

Despite its undeveloped character, however, sociology may be expected to have considerable influence on law. Before discussing its possibilities in this respect, it will perhaps be well to appreciate the point of view with which a sociologist naturally approaches the law. He is accustomed to studying the mutual adaptations of various social entities — personalities, groups, institutions, etc. He thinks of each of these entities as evolving under the influence of all the others with which it is in contact, and he regards it as his job to disclose these relationships, to understand their significance, and, where possible, to measure them. To him, therefore, the law naturally appears as one functional system or institution working in interaction with hundreds of others in our

complex life. What goes on within the legal order appears as a series of adaptations to a great variety of conditions; and conversely, the other organized social wholes are adjusting in one way or another to the legal order. These mutual influences are all part of the vast system of interstimulation and response which constitutes the social process.

SOCIOLOGY IN LEGAL EDUCATION

First, then, what is the potential worth of contemporary sociology to the teaching and learning of the law? The answer, in general terms, is rather obvious. Sociology, together with economics and political science, should give the law student a greater comprehension of the *milieu* in which the law operates. It should enable him to realize the interdependence of law and other social institutions, such as the family and the church, and to understand what are the contemporary trends in such institutions to which the law is adapting. It should enable him to appreciate law's necessarily evolutionary character. And, finally, it should enable him to see that the law is only one means of social control and that education, public sentiment, and other means may be equally effective and less painful. Already something is being done in these directions. Many law students have taken sociology as undergraduates, though it must be acknowledged that little attention is usually paid to law as a factor in social life except in criminology courses. For the most part the students must, on their own initiative, make the application of general sociological principles to legal phenomena and bring to bear any pertinent factual information acquired. This is a stimulating and fruitful intellectual procedure, but it is not an easy one, so that the chances are that it is commonly done very imperfectly. If sociology is really to illuminate the work of most law students, the task of bringing the two together should not be left wholly to individual insight and initiative. Four ways of helping the student in this matter have been, or are being tried: (1) Courses in the sociology of law such as the course now being given in the sociology department at Michigan. (2) Orientation courses of a broad, sociological character in the law schools as at Yale and Columbia. (3) The reorganization of the law school curriculum into courses integrated on the basis of social institutions rather than abstract legal principles. This method of introducing sociological theory has been much discussed, under the designation "functional approach," and, in a limited degree, has been attempted at Columbia.¹ (4) The teaching of the conventional law courses by

¹ See SUMMARY OF STUDIES IN LEGAL EDUCATION, by the Faculty of Law of Columbia University (1928); and JACOBS AND ANGELL, A RESEARCH IN FAMILY LAW (1930).

men sufficiently acquainted with the social sciences to use their generalizations and findings of fact wherever pertinent. This is probably being realized more and more everywhere as younger men, more familiar with the social sciences than their elders, become members of law faculties. It is this method which will probably be most widely adopted since it represents no serious wrench from past procedure; whether it will be sufficient for the purpose without supplementation by other methods, time alone can tell.

The acquaintance with sociological principles and findings which will make for a broader understanding during law school days is of course intended to serve the individual to advantage in later life, be he practitioner, judge, legislator, administrative official, or teacher. In these days when rapid social changes require rapid readjustment of the law, those vitally concerned with the law need far more, in order to be effective, than a common-sense knowledge of what is going on in the wider sphere of social relationships. Further, they may perhaps become accustomed to drawing upon contemporary sociological research where there are pertinent findings bearing upon particular legal problems. Ever since the famous Brandeis brief in *Muller v. Oregon* there has been a greater realization of the possible importance of sociological evidence in constitutional cases where the ultimate appeal must after all be to social and economic facts. Another sphere where findings of this character are surely coming into greater use is in the hearings on and framing of statutes by legislatures. Interested parties are seeing to it that any results of social research which tend to substantiate their viewpoints are brought to the attention of the legislators.

SOCIOLOGICAL RESEARCH IN THE LEGAL FIELD

In spite of what has just been said, however, there are relatively few sociological findings which bear directly upon specific problems with which these law men are concerned. The sociologist has more to offer at present in the way of research method than of pertinent collected data. If the full value of sociology is to be had, many new investigations will have to be undertaken, investigations framed with precisely the object of throwing light upon legal questions. I am not concerned here with the auspices under which these research projects will be undertaken. Very likely legislatures, administrative bureaus, and even appellate courts will come to employ research staffs; certainly law schools and other research institutions will carry forward the work, once promising studies begin to be made. And I believe such studies can be made even with the present research techniques of sociology.

Functional Studies of Legal Machinery

The sort of research in the legal field which would most readily tap the sociologist's distinctive resources would be the study of the actual operation of various parts of the legal machinery. By the gathering of statistics, planned observation, interviews, and personal documents secured for the purpose, the working of procedural agencies might be thoroughly analyzed. Almost all sort of units can be investigated in this way — legislative committees, courts, judges, prosecutors, or administrative officers. Beginnings have been made in this direction but most of the studies have not gone beyond the stage of gathering statistics regarding the obvious facts, such as the number of different types of cases, the percentage of acquittals, the frequency with which certain procedural situations recur, etc.² These statistical studies are of undoubted value in showing trends and are of great practical value for administrative purposes, but they throw little light on fundamental causal relationships. We find out that certain things are happening but we are not brought to understand why. Other studies have attempted to supplement the statistical evidence by more intimate information and interpretation,³ but much more could and should be done in this direction. Practicing lawyers know a great deal regarding such matters and, if their help could be enlisted, would prove invaluable in getting at the relationships which make our procedural agencies behave as they do. Judge Hutcheson has given us a slight indication of what might be accomplished if judges could be brought to write personal documents concerning their official activities.⁴ There seems to be no legitimate way to obtain information upon how juries actually deal with the mat-

² See Wayne L. Morse, "A Survey of the Grand Jury," 10 OR. L. REV. 101-160 (1930); William M. Wherry, "A Study of the Organization of Litigation and of the Jury Trial in the Supreme Court of New York County," 8 N. Y. U. L. Q. REV. 396-427 (1930); Hessel E. Yntema and George H. Jaffin, "Preliminary Analysis of Concurrent Jurisdiction," 79 U. PA. L. REV. 869-919 (1930); George Everson, "The Human Element in Justice," 10 J. OF CRIM. AND CRIMINOL. 90-99 (1919); and many studies of criminal justice.

³ Ruth Bloodgood, "The Federal Courts and the Delinquent Child," United States Children's Bureau Publication No. 103 (1922); Katherine Lenroot and Emma O. Lundberg, "Juvenile Courts at Work," United States Children's Bureau Publication No. 141 (1925); Bernard Flexner, Reuben Oppenheimer, and Katherine Lenroot, "Child, Family and Court," United States Children's Bureau Publication No. 193 (1929); and several of the reports of the Wickersham Commission on Law Enforcement. See also Leon Tulin, "The Role of Penalties in Criminal Law," 37 YALE L. J. 1048-1069 (1927).

⁴ Hutcheson, "The Judgment Intuitive: The Function of the 'Hunch' in Judicial Decision," 14 CORN. L. Q. 274-288 (1928).

ters before them, though this would be an illuminating study. In the field of criminal justice, however, there are many officials and agencies which could well be subjected to intensive, systematic investigation. When a number of such studies of the same sort have been secured they could be analyzed to discover differences due to local customs, to personality traits of officials involved, to pressures from particular groups, and so on.

Difficulties in Research Focused Upon Legal Rules

However, we not only wish to know how our procedural devices function and why, but we are extremely interested in knowing the sources of the legal rules which are supposedly being applied, and their effects in life at large. The minute we begin planning research in this field we are plunged in a quagmire of difficulties. First, it is not always easy to fix upon the rule. Decisions of appellate courts are directed toward particular disputes and yet are universally assumed to govern future decisions. The traditional occupation of the lawyer has been to draw out legal norms from the particulars of decided cases, and the job is often a ticklish one. Experts often disagree as to what is the local rule upon an apparently simple question. The second obstacle is the fact that the rule, even when clearly formulated, may not be adhered to in the actual administration of the law. When practice diverges from the abstract rule in this sense, we no longer have one definite social influence whose causes and effects may be investigated. For example, if the legal grounds of divorce in a particular jurisdiction are not identical with the grounds on which divorces are actually given in practice, the sociologist will need to consider the influence of both the rule and the actual practice. The third difficulty revolves about the long-standing and nation-wide acceptance of many of our legal rules. Although this might seem to be an advantage because it makes it easier to fix upon the rule, it is a drawback because social research must have variation to work with. Since sociologists can not artificially vary conditions as the physical scientist can, we must observe instances where life itself is, as it were, experimenting. The variation may occur in time within a single jurisdiction or may occur as between two contemporary jurisdictions. As long as there are differences in rule associated with other social differences, there is some hope that research can achieve something; but not otherwise. Imagine trying to discover the conditions of American life which have led to the acceptance of the requirement of consideration in contract law, or imagine trying to trace out the social effects of such a rule. The only possible way to make any headway would be

either to compare our situation with that obtaining in European jurisdictions having a different rule or to go back for the necessary contrast to a time in English law when the rule did not obtain. As a matter of fact this is usually what legal scholars who are interested in the significance of some well-established rule have done. Some valuable studies have been made in this way,⁵ and doubtless much more could be done through new investigations. Such research would be particularly significant to the lawyer because it would promote his own special aims of understanding and interpreting legal rules. But work of this kind must remain highly speculative, so that the sociologist, who wishes to get at the forces behind legal doctrine and the effect of the legal mechanism upon organized society by more empirical methods, will have to devote his attention to rules not so uniform. The limitations of his own techniques are what bind him.

Studies of Social Causes of Legal Rules

With these difficulties in mind we may now turn to the first type of research which might be undertaken, the study of the general social forces back of particular rules. The above discussion has indicated that we must find diverging situations which may be compared. This requirement is fulfilled when the law of a particular jurisdiction is changed or when two jurisdictions have different rules on the same point. In the first instance the change in the law may be a reflection of changes in the conditions of life in that jurisdiction. In the long run, and taking legal changes in the mass, this must be so, for social forces are bound to affect the law ultimately, though any particular change may be due to some temporary circumstance such as the personality of a judge or the accidents of litigation or, in the case of legislation, a whole complex of personal and political factors. It would be worth while to determine in any event whether or not the legal change was a response to a changing set of fundamental social conditions. This method would probably prove especially fruitful in the case of statutes. By careful study at the time of a new statute's consideration by the legislature we could probably obtain a fairly accurate picture of what needs, felt and voiced by what groups, were bringing about the legal change. With common law rules the matter would be more difficult, but even

⁵ Three examples from the work of the Columbia Law School are Goebel's treatment of the English corporation (CASES AND MATERIALS ON THE DEVELOPMENT OF LEGAL INSTITUTIONS 539-653), JACOBS, DOMESTIC RELATIONS (1932), and the economic background built up in LLEWELLYN, CASES AND MATERIALS ON THE LAW OF SALES (1930).

here appellate courts are recognizing in their decisions more frankly than ever before the factors of social expediency which lie back of changes. Constitutional interpretation likewise lends itself to investigation of this character.⁶ It is probable that studies of this kind, based on legal changes in one jurisdiction, would be more successful than comparison of two jurisdictions having diverging rules. There are so many possible influences making for divergence between two jurisdictions that the problem of running down the significant ones in any particular instance would be tremendous. Broad generalizations such as those made by anthropologists and legal historians are possible, but there is some doubt whether more refined analysis would yield much. Professor Underhill Moore has produced a very interesting and very elaborate investigation testing the hypothesis that divergent banking decisions are due to differences in the banking practices in the several jurisdictions.⁷ The amount of labor spent upon the study appears to have been enormous and it is undoubtedly worth the effort expended to have a type investigation of this kind made. Yet even if the hypothesis were proved perfectly valid the result would simply aid in predicting future decisions in various jurisdictions. One might still wonder why the differences in banking practice.

Research Comparing Law With Custom

This leads to the general question of the value of research which attempts to compare law with custom. No doubt such investigations can be made. I have even participated in the making of one.⁸ But the difficulty is, when we secure our results, to decide what they mean. We may find out that the law either does or does not tend to parallel custom in the jurisdiction in question. But surely this does not take us far.⁹ We can not assume that the law should always follow custom, for, on the one hand, there are in some quarters bad customs which public opinion would not wish incorporated in the law, and, on the other, many of the friction situations which reach the courts for settlement are

⁶ See Robert E. Cushman, "The Social and Economic Interpretation of the Fourteenth Amendment," 20 MICH. L. REV. 737-764 (1921); and Walter Nelles, "A Strike and its Legal Consequences," 40 YALE L. J. 507-554 (1930).

⁷ Underhill Moore and Gilbert Sussman, "Legal and Institutional Methods Applied to the Debiting of Direct Discounts," 40 YALE L. J. 381-400, 555-575, 752-778, 928-953, 1055-1073, 1219-1272 (1930).

⁸ JACOBS AND ANGELL, A RESEARCH IN FAMILY LAW, part IV (1930).

⁹ Pound makes the same point in "The Call for a Realist Jurisprudence," 44 HARV. L. REV. 697 at 708-709 (1930); also Dickinson in "The Law Behind Law," 29 COL. L. REV. 113 at 125-141 (1929).

precisely the ones in which the customary adjustments have failed to work. There is the further difficulty that usually in modern life we find no one custom generally accepted, but several quite different practices or, if a recent invention has just come in to create the situation, no settled practice at all.

An approach to law and custom which recognizes more explicitly their interactive character would perhaps prove more fruitful. Such an approach would of necessity use the historical method. One might take some small segment of life in a field such as commercial contracts, and trace the continuous action and reaction between the institutional ways and the law. In the field mentioned we know that courts have taken judicial notice of the customs of a particular trade on many occasions, and frequently refer to custom in the interpretation of ambiguous transactions. Certainly the reverse process also takes place. The law, influenced as it is by the interests of those outside the immediate transaction, modifies from time to time the institutional ways.

*Research Upon the Divergence Between Rules
and Their Administration*

So far in our discussion of the social influences producing particular rules we have said nothing concerning the administration of these rules by officials, commissions, lower courts, etc. Where the administration is practically identical with the rules themselves, as, for instance, with intestate succession to property, no further problem arises. Where, however, the administration diverges markedly from the verbal formula, there arises the additional question as to why the divergence occurs. Both the divergence and the reason for it are proper matters for research. An interesting attempt in this direction has recently been made with reference to divorce rules in Wisconsin.¹⁰ Here again, the comparative procedure is highly desirable. If the situation changes in one jurisdiction from a rigid and unvarying administration to one which diverges either consistently or intermittently from the verbal rule, we would perhaps be able to trace the causes of the shift; or if there are two jurisdictions, in one of which administration is practically identical with the rule while in the other it is not, the comparison of the two sets of relevant factors might prove illuminating.

¹⁰ N. P. Feinsinger and Kimball Young, "Recrimination and Related Doctrines in the Wisconsin Law of Divorce as Administered in Dane County," 6 WIS. L. REV. 195-216 (1930).

Studying the Social Effects of Legal Rules

Let us turn now from the social influences producing the rules to the social effects produced by the rules. The former is of special interest to the practicing lawyer who might thereby be able to make a better prediction as to what new rules will shortly emerge, and to the scholar who wishes to understand how social processes work. The latter is of interest to almost everyone, for we all wish to know what our laws are doing to us. However, we are desiring something which will tax our present methods of social research to the utmost. Law is but one small segment in the whole realm of life. It is difficult enough to determine what forces converging from the surrounding life account for the changes and contrasts in legal rules; it is much harder to determine what are the effects of the ripples set up by law on the vast sea of human relationships. So many other centers of influence are sending forth larger waves that the effect of law is largely obscured.

There is, however, one small group of people whose conduct is definitely influenced by particular rules—the officials charged with administering them. Several studies have already been made from this angle.¹¹ Investigations of this kind are closely allied to the procedural studies previously discussed, the only difference being that, instead of subjecting all the official behavior of those concerned to scrutiny, only those activities which have to do with a particular law are observed and analyzed. This is one of the simplest types of research to carry through and sometimes, as with child labor laws, it reveals much of the wider social influence of the particular rules.

But when we attempt to go beyond the effect of the law upon those charged with administering it and inquire what its effects are upon the community at large, we are faced with a far more difficult task. The easiest situation to deal with is where there is a one-to-one correspondence between the verbal rule and its administration. Here once more it would be necessary to use a comparative technique. In general, it appears that a study in one jurisdiction before and after the coming into force of a new rule would be more fruitful than the comparison of the

¹¹ Edith Abbott and Sophonisba Breckenridge, "The Administration of the Aid to Mothers Law in Illinois," United States Children's Bureau Publication No. 82 (1921); "Administration of Child Labor Laws," United States Children's Bureau Publications No's 12 (1915), 17 (1930), 41 (1919), 78 (1921), 85 (1921), 133 (1924); "The Promotion of the Welfare and Hygiene of Maternity and Infancy," United States Children's Bureau Publications No's 137 (1924), 146 (1925), 156 (1926), 178 (1927); and several of the reports of the Wickersham Commission on Law Enforcement.

effects of two different rules in two jurisdictions. There would probably be a greater similarity of other forces at work at successive periods in the same jurisdiction than in two jurisdictions at the same time, so that the effects of the law would be thrown into sharper relief. We shall probably, therefore, wish to undertake careful studies of how persons and institutions behave prior to the creation of a new rule as compared with their behavior subsequent thereto. A very able investigation employing this technique has been carried out by the Children's Bureau.¹² The more important the legal rule is in the causation of behavior the more likely it is that the other method of comparison — that of two jurisdictions at the same time — will prove fruitful. For instance, housing laws, through a rigid system of inspection and enforcement, have very definite effects upon the construction of new buildings. Thus the influence of different laws might be rather easily ascertained. Again, the rules for the distribution among heirs of intestate estates are of such importance to the subsequent lives of the heirs that case histories which followed their careers might reveal differing effects of different rules.

Unfortunately in many, if not most, instances there is not the one-to-one correspondence between the verbal rule and its administration that has been assumed above. This leads to further complications and further difficulties. Take, for instance, a municipal ordinance setting twenty miles an hour as a maximum speed for motor vehicles. In the first place there is perhaps an understanding among police officials that arrests will not be made for driving at a speed of less than 25 miles an hour. This is known to some drivers but not to all. Therefore some believe that there is one real limit, some another; and many perhaps do not know what either of these limits is. Added to this confusion, we have reason to believe that some people consistently observe the limit which they recognize, that some disregard it only in emergencies, and that still others obey it only when they suspect the approach of an officer. Under these conditions what can sociological research accomplish in the direction of determining the effects of the ordinance? Evidently the task is not one to be undertaken lightly. One could, conceivably through interviews and close observation, get some light upon the frequency of all the causal sequences enumerated above. But then one would have, not the influence of the verbal rule nor of the rule-as-

¹² "The Welfare of Infants of Illegitimate Birth in Baltimore as Affected by a Maryland Law of 1916 Governing the Separation from their Mothers of Children Under 6 Months Old," United States Children's Bureau Publication No. 144 (1925).

administered, but the influence of the two jumbled together. Whether this would be of much value even if it could be accurately ascertained is doubtful.

Studies of How Knowledge of Law is Diffused

A wholly different subject for investigation would be the channels by which people learn what the law is. In transactions which are commonly engineered and shaped from the start by lawyers, such as the formation of corporations, legal technical knowledge is brought to bear directly. In other transactions the legal skills of the lawyer are appropriated at second hand, through the use of forms, stereotyped contracts, etc. In other fields of law, where conduct is not so commonly guided by foresight and plan, future courses of action may be shaped by particular experiences, such as the previously unappreciated liability of oneself or a neighbor for negligence. In still other fields, of which family law is the most obvious example, legal doctrine may be almost unknown to interested parties and, even if known, of little influence on conduct. In the case of legislation which aims at imposing a course of conduct on persons more or less unwilling (factory acts, desertion and non-support legislation), and in most of the criminal law, it would be extremely useful to know the agencies by which knowledge of the law is diffused. Among the agencies which we might expect to find important here are the newspaper accounts of legislative action and judicial decision, trade association activities and journals, neighborhood gossip and non-official contact with officials. There can be no doubt that new and more effective agencies for this purpose could be devised at many points, once research has revealed the inadequacies of present channels.

Perhaps the starting point for such a study should be an attempt to discover how much or little people actually know about the formulated law in different fields. Existing techniques of interview and questionnaire would be adequate for the purpose. The results would probably demonstrate that non-legal types of adjustment prevail throughout most of the social field to which private law relates. The resulting picture would probably be a surprise to most lawyers,¹³ though not to many sociologists. We should undoubtedly find large groups of persons pursuing their daily affairs in an orderly way almost oblivious to legal rules which are theoretically supposed to affect their acts.¹⁴

¹³ Though Llewellyn shows himself in *THE BRAMBLE BUSH* to be fully aware of the conclusions here suggested.

¹⁴ A type of research which is a little farther afield but which nevertheless might have some significance for law is the investigation of why certain persons become entangled in the legal web. Such are the numerous studies of the causes of juvenile de-

Such, then, is a sketch of some of the potential values of contemporary sociology to law. The outlook may be discouraging to the lawyer, if not to the sociologist. I make this qualification because sociologists have long been familiar with the factors which preclude any rapid and sure advance toward precise knowledge in their field. Like the lawyers they must deal with social data which are extremely variable and infinitely complex; unlike the lawyers they are not accustomed to results that are in any considerable degree predictable or that can be framed in logically symmetrical terms. Perhaps the prime lesson which the sociologist, with his mass of conflicting and variable data, can teach the lawyer and legislator is to proceed with care in framing and acting on hypotheses in social matters.

linquency and adult criminality. Another of the same kind in the civil field is that attempted at Yale dealing with the backgrounds of bankruptcy. (William O. Douglas and Dorothy S. Thomas, "The Business Failures Project —II. An Analysis of Methods of Investigation," 40 *YALE L. J.* 1034-1054 (1930).)