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Behavioral Science and the Law

Abraham Kaplan

In presenting a challenge to the law, Professor Kaplan is of the opinion that one of the most important questions that the law presently faces is in the area of shaping morality. He maintains that behavioral sciences are not only relevant in this regard but perhaps even essential to the law and its method. Professor Kaplan, while recognizing that there is presently a gap between the law and the behavioral sciences, urges a new joint activity between these two disciplines in order to stimulate and guide new programs of scientific activity, pointing especially to the areas of obscenity, capital punishment, and legal responsibility.

ALMOST 50 years ago, when the United States entered World War I, one of the great American chemists of the time wrote a letter to President Wilson, offering to his country his services as a scientist. Wilson turned the letter over to his then Secretary of War, Newton D. Baker, who replied in memorable terms, "Thank you very much, but the Army already has a chemist." I am inviting you to consider the prospect that 50 years from

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now some speaker will call attention to the circumstance that as late as the 1960's or 1970's, American schools of law were saying, "Thank you very much, we already have a behavioral scientist."

In suggesting that the behavioral sciences are not only relevant but perhaps even essential, both to the substance of law and to its method, I am only repeating an observation already made by the profession itself. For instance, Sir Henry Maine in his classic treatise on ancient law,¹ written well over a half century ago, commented that "The inquiries of the jurist are in truth prosecuted much as inquiry in physics and physiology was prosecuted before observation had taken the place of assumption."²

To speak of science is to speak of an insistence on an empirical and inductive approach. It is to speak of looking forward to consequences rather than backward to principles which might be taken deductively to provide a warrant for a particular position. The empirical approach, even more fundamentally, aims to get away from the bookishness that to a layman seems so characteristic of what is

¹ H. MAINE, *ANCIENT LAW* (10th ed. 1906).

² *Id.* at 3.

called "research" in the law. The aim is to turn from books to their primary subject matter, man and his affairs, and to recognize that ultimately we can learn to understand that subject matter only by dealing with it directly and in its own terms.

The fact that the behavioral sciences as yet have had so little impact on the law seems to me to be quite understandable. This results partly because these disciplines are so difficult of access to the outsider. Either they purport to belong to hard core science and are full of impenetrable mathematics, or else they present themselves as fundamentally humanistic in character and are couched in an impenetrable jargon. It is not at all surprising that the layman is repelled by these disciplines from the very outset. To make matters worse, it is difficult, not only for the layman but apparently for most of the behavioral scientists themselves, to be able to assess the scientific standing of contributions made in these fields. Even if we ask only what the specialists purport to know, we are confronted with answers ranging from the advice to the lovelorn columns all the way up (or down, as you prefer) to the latest reports of academic research projects.

It may even be argued — I would so argue, indeed — that most behavioral science is far from maximizing its relevance to the problems with which the law is, or ought to be, concerned. The responsibility for this gap, however, does not lie wholly with the behavioral sciences. For example, the military, government, and industry have no hesitation in sponsoring and guiding scientific research so as to get help with their problems. It may be that the task of the law here is not simply to make use of what behavioral science has already produced, but also to take the initiative in urging the behavioral scientist to direct his inquiries to areas that are of immediate importance to the law. Being myself neither a behavioral scientist nor a lawyer, I am in the happy position that irresponsibility always brings of being able to encourage an affair between the two disciplines without compromising my own virtue.

I propose now to sketch against this general background a view of the law as seen by the behavioral sciences. I want also to call attention to a few areas where the introduction of behavioral science outlooks, and perhaps even data and results, would make a significant difference to the institutions and practices of the law.

As seen from the outside, the law most fundamentally provides a stable basis for expectations about other people's behavior. Its fundamental role in any society, so far as I can see, is to provide a

certain continuity of social practice. The great part that precedents have played in the law seems to me not only defensible but even essential to the very workings of the institution.

Some nameless genius of the behavioral sciences — I cannot now recall who — recently proposed an exact measure of the degree of civilization of any society: the number of strangers in that society whom you can trust. This is rather a good index, it seems to me. The trustworthiness of strangers, in turn, is a manifestation of the workings of some system of law in the society.

There is a relevant passage in Carl Sandburg's *The People, Yes* which runs as follows:

"Get off this estate."
 "What for?"
 "Because it's mine."
 "Where did you get it?"
 "From my father."
 "Where did he get it?"
 "From his father."
 "And where did *he* get it?"
 "He fought for it."
 "Well, I'll fight you for it."³

The law is intended to prevent the occurrence of that later fight. Law formulates, if you like, the rules of the societal game. One might feel impelled to say about society what was said by the inveterate gambler on being reproached for spending night after night in a game well known to be crooked. "Sure, it's a crooked game, but what can I do? It's the only game in town!" This is the line taken by Thomas Hobbes in his analysis of the nature of the law. The only alternative to law is anarchy, and that is the worst of all possible worlds.

What I think is of particular importance on the contemporary scene is this: the recognition that law presents itself essentially as a substitute for individual judgment even if that judgment is based upon the dictates of morality.

Descartes once remarked that of all good things in the world, the one that is most fairly distributed is good sense, because every man is so well satisfied with his own share.⁴ The trouble is, however, that none of us is satisfied with the share that others have. We always try to structure our relationships with others so that our actions will not have to depend on what we know to be the

³ C. SANDBURG, *THE PEOPLE, YES* 75 (1936).

⁴ R. DESCARTES, *DISCOURSE ON METHOD* 1 (1637).

unreliability of *their* "good sense." It is therefore (quite reasonably, it seems to me) not an acceptable defense for driving through a red light to say, "I looked up and down and saw no traffic." Even if it could be established that there was none, your offense was not in proceeding against the traffic but in acting on your own judgment rather than on the rules of the traffic signal. Of course, *my* judgment would make the road safe but I will not put myself at the mercy of *your* judgment.

Phrased in terms of judgment, I think this doctrine might appeal to many of us; phrased in terms of conscience or morality, it acquires a more equivocal status. Yet corresponding to Descartes' remark about good sense is the remark of Freud about conscience, criticizing another philosopher, Immanuel Kant, who found two things that filled the mind with awe: the starry heavens above and the moral law within. Freud said that the starry heavens are indeed sublime, but that when it comes to the moral law God was guilty of a careless and uneven piece of work, since everyone feels he has so much more of a conscience than others, and each conscience has its own content. If society were to rely solely on conscience, ultimately, it seems to me, we would be reinstating naked power, the very antithesis of the moral claim.

This whole perspective on the law must be supplemented by another that has implications of an exactly contrary kind. From the standpoint of a student of human behavior, law is not only an agency of stability and conservatism but also an instrumentality of change. Law not only specifies the rules of the game but is also concerned with the payoffs that are provided, with the strategies that are pursued, and perhaps with the significance of the game in a wider perspective of human values that may require radical changes in the way in which the game is played.

It seems to me, as is especially clear in the present period, that decisions made in the courts may be in advance of the decisions of the legislatures. While court decisions may purport to rest on statutory law, they may in fact reflect an awareness of social needs and interests, as interpreted in that particular context, which have not yet been codified into patterns of stable expectations. From this standpoint law can be seen as doing more than providing a procedure and a rationale for resolving disputes. It also performs a much more pervasive and important function for society than that, namely, taking part in the general process of decisionmaking in society. We must recognize that law is not just a matter of litigation

but also of mediation, of arbitration, and of a variety of patterns of interposition by which groups of people can arrive at a sufficient consensus to allow their actions to move forward to their several goals. For this reason the behavioral scientist, I think, would be more willing to view the lawyer as a specialist in negotiation than as a specialist in the interpretation and application of a formal system of rules governing interpersonal relationships.

This point of view might be carried even further in a direction that we know already in medicine as well as in other areas. Like medicine and education, law serves its clients best when it makes its own services dispensable. Perhaps we should begin to speak of *preventive law* in analogy to preventive medicine, where the task of medicine is conceived as not just dealing with illness when it arises, but also taking such a part in the process of decisionmaking with regard to health that disease is less and less likely to arise and to demand treatment.

As applied to law, this is such a very ancient idea that it is to be found in the writings of Confucius among other places. Confucius said about himself, "in hearing cases, I am like everyone else. The important thing, however, is to see to it that there are no cases." In my own tradition I was also made acquainted with the same point of view. There is a story of a rabbi who was riding in a horse-drawn coach with some of his disciples. When they came to a hill he ordered his disciples to get out, and explained, "It is a steep hill, it will be hard for the horse to draw this load, and when we appear before the Heavenly Court the horse will bring me to trial, and claim that I added to its burdens." One of the disciples said, "Yes, but, Rabbi, a horse was created for this purpose, in order to draw burdens. Wouldn't you win the suit?" And the rabbi said, "Of course I would win the suit! But who wants to go to trial with a horse?"

Historically, the first area in which the behavioral scientists interested themselves in possibly making contributions to the legal process was decisionmaking in the law. No less a personage than Aristotle characterized law as "reason unaffected by desire."⁵ Yet Aristotle, who was a great realist with regard to human nature, also saw that there is an element in the law which transcends pure reason and depends on experience. Paradoxically, reason itself demands this recognition. There is a splendid argument formulated by Immanuel Kant to call attention to the limits of logic. It runs

⁵ R. MCKEON, *THE BASIC WORKS OF ARISTOTLE* 1202 (1941).

as follows: Good judgment — the skill of applying general principles to particular cases — is indispensable because if one tried to make judgment unnecessary by formulating rules to govern the application of the general principle to particular cases, good judgment would be needed to apply these rules.

There is no way of escaping the necessity of going beyond the bounds of what is formulated in any logical system. The question is, however, what is it that lies outside those boundaries? Oliver Wendell Holmes, in speaking of this topic remarked, "The life of the law has not been logic: it has been experience."⁶ The question is what experience we can bring to bear on understanding "the felt necessities of the time, the prevalent moral and political theories, intuitions of public policy,"⁷ and such like, which Holmes lists as playing a fundamental part in determining what is the law.

There is a relevant notion which many behavioral scientists deal with, though none has been in a position to put it in a very exact fashion. It is often useful in connection with decisionmaking to speak of the *hidden agenda* on which the decisionmaker is operating. We suppose ourselves to be confronted with a problem of such and such a kind and to be dealing with it on the basis of specified data and of such and such requirements for an acceptable solution. There is a hidden agenda, however, containing problems of quite another kind, and quite other requirements for acceptable solutions. Increasingly in the various depth psychologies and in many social and political theories the hidden agendas are being brought to the surface to assess their bearing on the problems being explicitly faced. The Kinsey studies, for instance, reveal how marked the differences are in the judicial treatment of various sexual offenses according to the class background, status, and other social variables, not only of the offenders, but also of judges and juries.

From an empirical standpoint the conclusion is quite inescapable that it is nonsense to suppose that what is happening is that "the law" is being applied. Instead, law is being referred to in the course of applying systems of values, moralities, prejudices, philosophies, and the like. These systems are playing a hidden but no less important part in the situation. Additional examples are provided by the decisions of the courts in many of our Southern States on race questions. Or again, one need not go very far back in American history to recognize comparable hidden agendas in the application

⁶ O.W. HOLMES, JR., *THE COMMON LAW* 5 (1881).

⁷ *Id.* at 5.

of "the law" to various problems of labor relations. The list can easily be extended. There is, therefore, a great need for empirical studies of what are the considerations that actually enter into legal decisions. For that matter, we need empirical data about the considerations which play a part in all the stages of various legal processes.

Such data, however, is not easy to acquire. For instance, a few years ago a sociologist at the University of Chicago undertook a study of the workings of juries. He began, as any scientist would, by trying to find out what actually goes on in jury rooms, what kinds of things are said by what sort of people, to whom, and when. For this purpose he obtained the consent of the judge and also of the attorneys for both adversaries in a certain trial to put a microphone in the jury room. But the matter came to the attention of the Illinois Legislature, questions were raised, and the whole inquiry was made impossible. I am not here arguing without further consideration that he should or should not have been allowed to proceed. I don't know. It is a complicated matter that itself ought to be looked into on an empirical basis. What I am calling attention to are the difficulties that stand in the way of scientific study of the legal process.

Many people today take the position that most of the important questions of social policy are matters of morality rather than of law, and that questions of morality, in turn, belong to the domain of religion or of conscience or some such thing rather than to the behavioral sciences. From these or similar premises they derive the conclusion that it is ridiculous and perhaps even dangerous or downright subversive to suppose that the behavioral sciences have any contribution to make to the law, or that law, in turn, has any significant contribution to make to these areas of contemporary social concern.

If I may speak for a moment in my own person, as representing philosophy and not the behavioral sciences, I am struck by the perfectly obvious and yet enormously important circumstance that every civilized society has enacted into law the basic moral commandments: Thou shalt not kill, thou shalt not commit adultery, thou shalt not steal, thou shalt not bear false witness. These injunctions do not fall only within the domain of morality; they are also recognized as intrinsic to a significant portion of the law. Law, it has been very well said, cannot force a man to love his wife and

children, but it *can* see to it that he contributes to their support if he is capable of doing so.

In American philosophy, I think it has been recognized from the beginning that the statism which is incompatible with our democratic principles does not lie in the wide range of functions performed by the state. It lies rather in the wide moral claim made by the state. The standpoint of democracy is not that morality and law have nothing to do with one another, but rather that morality is fundamentally superior to law. The state cannot lay claim to moral autonomy. Yet we are here confronted with a paradox which derives from the consideration I mentioned earlier, that if morality governs without restraint, the logical outcome (and historically, in many instances, the empirical outcome) is either lawlessness or tyranny. If this paradox is only resolvable in scientific terms, we surely cannot live with it without all the help that the behavioral sciences can give us.

It seems to me that law must come to terms with the most important questions it faces — most important from the standpoint of society, if not from that of the profession. Such questions lie on the moral frontier. Law cannot merely reflect morality, for the question then is irresistible, "Whose morality is to be reflected?" Law must be prepared to assume the awesome burden and responsibility of *shaping* morality. This is a burden and a responsibility with which lawyers are all quite familiar, and perhaps even painfully familiar. If it turns out that morality follows your lead, you have played a part in a "landmark" decision and you take your rightful place as a social prophet; if not, you lose the case and your decision is overruled. These are the alternatives that in politics define the difference between revolution and rebellion. In the great preoccupation with rebelliousness which I find in some quarters in America today, especially when we are looking at the young, I think we are courting the danger of losing sight of our great revolutionary heritage.

Now, what does behavioral science have to do with the problems of morality and with the part that law might play in dealing with these problems? To start with, the actual situation with regard to both our moral behavior (or lack of it) and our ethical theorizing about that behavior is different in quite significant ways from what it is commonly taken to be. It is the business of the behavioral sciences, as of all sciences, to assist us in discriminating between appearances and reality. I once characterized the prevailing

American morality as a tyranny tempered by hypocrisy. The insistence on artificially elevated standards and the actual departures from these standards are both, I think, quite characteristic of American life. Indeed, it has sometimes seemed to me (I think there are sociologists who would be inclined to agree) that Americans are as much ashamed of their virtues as they are of their vices. We sometimes present the fascinating spectacle of rationalizing our nobler motivations by pretending that we are serving hardheaded, down-to-earth, and selfish interests.

One matter of concern — and an area in which law is directly relevant — is that it is so easy in American life today for morality to be trivialized. At any rate, it is easy for us to make of what we formally acknowledge as moral issues something incomparably less significant than moral issues actually are. People are concerned about toplessness as though in these days American virtue hangs by a thread. It is imagined that if certain ordinances are adopted then morality will be preserved, and if not — the fall of Rome was as nothing to what we can expect.

Even when, as in Congress, a so-called "Committee on Ethics" occupies itself with rather more serious matters than waitresses' costumes, ethics is still too narrowly circumscribed. There is a world of difference between a conception of ethics as localized in violation of law or departure from established patterns of conduct, and a conception of ethics which recognizes moral issues in the very substance of those patterns themselves. While a "Committee on Ethics" may concern itself with how members of Congress may use moneys at their disposal, it will probably not be regarded as appropriate for such a committee to occupy itself, for example, with the immorality of the inequalities of economic opportunity that exist in our country today, and with which programs like the "war on poverty" are concerned.

I am saying that if we were to look at morality empirically, inductively, as the behavioral sciences must, rather than deducing it from some set of preconceptions, we would find that there is ground for *moral* concern with such matters as economic inequalities, civil rights and liberties, and no doubt also various aspects of our foreign policy. Correspondingly, there would be significant changes in our perspectives of what law can and cannot contribute to the achievement of moral ends.

I would like to pursue briefly two specific areas in which the law has been very much involved, and with regard to which the be-

havioral sciences have made what I think are significant contributions, and yet where the two seem not to have paid much attention to one another.

The first of these is with regard to obscenity. (This is a matter with which I happen now to be personally involved, as Chairman of the University of Michigan Civil Liberties Board. The Cinema Guild, a student organization which for 17 years has been exhibiting films — classics, documentaries, silent movies, and so on — recently presented a program of experimental films. One of these was confiscated by the police as obscene, and the student officers and the faculty adviser were arrested.) Now, law often deals with states of mind, and properly so. Questions of intent, for example, are often undeniably relevant. But as Abraham Krash has remarked, with regard to the law of obscenity the situation is unique because here the law is often concerning itself with a state of mind that is not associated with any overt action.

Now the point where behavioral science becomes relevant is the following. It is constantly assumed — by courts and legislatures, if not by lawyers — that what makes obscenity a social problem, what makes it so objectionable, is that it is likely to produce actions of a certain kind on the part of those who are exposed to it. Perhaps so, but I would like to see the evidence, since there is also evidence, adduced not only in countless clinical cases, but also in various theories of human behavior and motivation, that such exposure may serve, not as a stimulus to action, but as a catharsis, a substitute for action. I am not at all convinced that when I reread *Treasure Island* and see again with my mind's eye the cutlass in the teeth of the bloodthirsty pirate and the gore dripping on the decks of the ship, that I am then more likely to kick my dog or beat my children. A good case might even be made that I am less likely to do so: the fantasy has discharged some of the affect, and the impulse to action has been weakened. I say a good case *might* be made; I don't want to say that a good case *can* be made. I don't know — I think no one *does* know — what the truth of the matter is. I do know that often we are proceeding here on the basis of purely gratuitous assumptions.

The second point of which I will speak very briefly is one on which the data available is rather more clear cut; I am referring to capital punishment and its effect. For many years I lived in the State of California, and as you perhaps know, this has been an important issue in the state for a long time. Data is available from 11

states which practice capital punishment and 6 states which do not. The evidence indicates that over a period of some years there was no significant difference in the rates of homicide; indeed, the rate was slightly less in the states without capital punishment, though the difference was not statistically significant. I do not say that this consideration in itself provides a basis for adopting one or another legal pattern. That would be going too far and is not warranted by the evidence. But I do say that the contrary claim is without foundation. What is absurd is to make claims about matters which depend on evidence and yet ignore the scientific attempt to get the evidence.

The words of Sir Henry Maine echo again in my mind. We are proceeding here as we did in physics before Galileo; it does not occur to us to time the swinging chandelier, or to actually drop different weights from the tower and see for ourselves whether they fall in the same time. We do not bother to look because we imagine that we already have a fundamental understanding of the nature of things. It has often been said: "Of course capital punishment must act as a deterrent to crime — it is human nature!" But it is not so easy to find out what does or does not deter a human being from acting in a particular way. If the law is indeed seriously interested, as it purports to be, in what deters men from acting in one way or another, or inclines them to action, it seems to me that intellectual integrity, if nothing else, demands that law concern itself with what the behavioral sciences might have to say.

The last of the areas of which I want to speak, where behavioral science is undeniably relevant to law, has to do with the whole question of legal responsibility. I will not presume to trace in detail the sequence of changes in the conception of responsibility. At one time a man was exempt from punishment for his crime only if he was "like a wild beast." In modern times it was held that he is not accountable unless he knew the difference between right and wrong and was aware of what he was doing — the famous M'Naghten rule. (This rule has always disturbed me, for I wonder uneasily whether I could *ever* pass that test.) Later it was recognized that a man might be acting on an irresistible impulse so that even though he knows that what he is doing is wrong, he cannot help himself. Most recently (though hopefully, not finally) the Durham rule recognizes the whole broad category of mental illness.

There are many complex patterns of pathology, many degrees and types of mental illness. To me it seems indisputable that a

concern with the nature and workings of these pathologies — or perhaps more accurately, a concern with the nature and working of the healthy human being — is absolutely fundamental to any reasonable determination of what should constitute legal responsibility — what is really a free choice. The contributions of psychoanalysis are quite considerable here, with some analysts, like Franz Alexander, being directly concerned with the legal question. I certainly do not mean to say that psychiatry has solved all the problems in this field. My argument is not that the behavioral sciences have all the answers for lawyers; but lawyers cannot continue to ignore what they do have to say. Lawyers cannot repeat, "We already have a chemist." But neither can behavioral scientists claim that they already have the chemistry. What I am calling for is a joint effort by law and the behavioral sciences to open up, to stimulate, and to guide a whole new program of scientific activity.

Now, it would be a misrepresentation both of the situation and of my feelings about it, if I were to leave the matter at this point and make it seem as though all the shortcomings of law in modern society are to be laid at the door of the legal profession itself. I think it must be recognized that there are many institutions in our society and many patterns of action today which contribute to maintaining and even increasing the gap between law and a genuinely scientific attempt to understand and control human behavior.

For instance, there are many forces at work which are weakening the basic legal principle that it is better that the guilty escape than that the innocent be punished. There is even what is to my mind (and I hope to yours also) a dangerous weakening of the more basic principle, if that be possible, that a man is innocent until he is proven guilty by due legal process. In the University of Michigan episode to which I referred earlier, I was shocked at how casually some of my colleagues talked about "the obscene film" rather than "the *allegedly* obscene film", or even better, "the film that a particular police officer at a particular time thought was obscene." At the very least the matter should wait for a judicial determination, and I am not prepared to say that I would concede the point even then.

The progressive invasion of privacy is another social tendency of concern both to law and behavioral science. Fortunately, it is beginning to receive some of the attention that it deserves. A professor of the University of Michigan Law School, for instance, has recently pointed to the dangers of a computerized central intelli-

gence system through which a great deal more will be known about us and will be much more readily accessible than I think most of us would be comfortable in contemplating. It is worth noting that in the lifetime of even the youngest among us here there have been more than 5 million government personnel investigations; and the Civil Service Commission has in its files the names of more than 2 million people who have been allegedly affiliated with some kind of subversive organization or activity.

From the other side of the political spectrum there are also tendencies undermining respect for the law. Those who increasingly rely on civil disobedience in order to dramatize the importance and sincerity of their convictions, may be weakening — though no doubt unintentionally — the possibility and perhaps even the desirability of seeking relief within the law. But by far the most important, and to my mind the most dismaying attack on the moral and legal order of society, comes from those in authority who cannot countenance either disobedience or dissent. This is what I call the poisoning of the wells — the progressive loss of respect for the law precisely on the part of those who have the obligation to enforce it.

Legal fictions undeniably have an important place in the law. They present many fascinating logical problems, perhaps some social problems, too. I want to distinguish here between legal fictions and what I would call *legal fakeries*, legal dishonesties of various kinds. These are by no means to be found only in the Southern States. For instance, fakery seems to be increasingly widespread in the formulation of referendum propositions, which are deliberately so worded that if you support them you must vote "no" and if you are against them you must vote "yes." This was true of the California Open Housing Measure in 1964, the proposal for a Civilian Police Review Board in New York in 1966, and a measure for fluoridation in Detroit in 1966.

There is another cynical perversion of the law which I find most despicable — the persistent and bitter attack on our courts, especially the United States Supreme Court, in the name of the Constitution, or for allegedly patriotic or religious reasons. With regard to school prayers, I would like to remark that I think the last word was surely said by an educator who commented that there will always be prayers in our schools as long as there are final examinations.

Fundamentally, of course, the responsibility for maintaining a legal order must be shared by all of us, not only in our respective

professions, but also as individuals. From the standpoint of the behavioral sciences, laws are made not just by legislatures, courts, and lawyers but also by the law-abiding.

We are witnessing in our time a distressing apathy with regard to the law and its violation. I am less disturbed by the crimes in our city streets than I am by the fact that they can occur openly and no one comes forward to testify or even to call the police. Witnesses later explain, "I just didn't want to get involved." All of us, I am sure, can recognize this feeling of not wanting to get involved. But our wants have nothing to do with the matter. Whether we want to be or not, we *are* involved. If there is any proposition with regard to which the behavioral sciences can say, "Everything we understand about human behavior points to this," it is that indeed no man is an island. In our very innermost individuality we are still creatures of society, in mutual dependence and reciprocal identification with our fellow human beings. What is said in the Gospels is still very much to the point: "Inasmuch as ye have done *it* unto one of the least of these my brethren, ye have done *it* unto me."⁸

The law needs all the help it can receive, not just from the sciences of human behavior, but even more, from our behavior as human beings.

⁸ *Matthew 25:40* (King James).