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Social Relations: The Emerging Behavioral Science

Eli Goldston

Presenting the thesis that the present legal structure is run by people who apply the beliefs and insights of the social sciences which were current in the 1925 to 1935 period, Mr. Goldston is of the opinion that there now exists a new reservoir of knowledge which could be brought to bear in solving many of today's social and legal problems. Traffic and highway safety, auto theft, and Cleveland's racial discontent are the vehicles used by Mr. Goldston to illustrate the type of knowledge that is presently available to help solve these problems as a result of the "new" behavioral science known as social relations.

FOR A PERIOD of 13 years prior to 1962, I lived and practiced law in Cleveland, Ohio. It was, therefore, with some sense of dismay that I recently read in a lead article of the *Cleveland Bar Association Journal*¹ the judgment of James C. Davis, a practical and conservative Cleveland lawyer, that the economic future of Cleveland is threatened by the community's failure to arrive at a consensus as to how to make a start toward solving the city's racial problems.

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This alarming judgment comes particularly to mind in relation to the suggestions here today of Professor Kaplan for the use of behavioral science to serve the forward progress of the law. While I found Mr. Davis' article perceptive and useful, I believe that there is a level of learning and understanding which he did not explore and which should be put to use if the law is to meet the changing challenges of the times. I am led to the conclusion that there may be in the field of behavioral science, and certainly in its approaches to solutions, an immense reservoir of unapplied knowledge which could be useful in tackling Cleveland's problem.

What would seem to be especially useful is the clinical, unfettered analysis technique of modern behavioral science which is also reflected in Professor Kaplan's proposition that science looks forward to consequences, rather than backward to principles. This approach has certainly been useful in business where modern scien-

¹ Address by James C. Davis, Cleveland Bar Association Luncheon, Mar. 13, 1967, in 1966-1967 CLEV. B. ASS'N J. 105.

tific management concerns itself with monitoring the consequences and then making a careful analysis of the variation between the consequences and the original expectations.

I thought it might be useful in developing our topic to first state a thesis about the present apparent relation of behavioral science to problems of the law, thereby trying to achieve a common ground of understanding as to the definition of the science we are talking about. Then, we might try to apply the notion of a large unused reservoir of knowledge in this science to a couple of legal problems which do not evoke intense emotional responses. Finally, having experimented in a neutral atmosphere, we can return to the comments of Attorney Davis and see whether behavioral science may be applied to what is probably the single largest political-social-legal problem that Cleveland faces.

My thesis concerning the present use of behavioral science by law is a simple one. It is that the legal structure is largely run by people in their fifties and sixties. These are the leading lawyers, judges, legislators, mayors, governors, and police chiefs. Few people, however, after college or law school keep current with new developments in any field except their own specialty. This means that today's law, in its policy and administration, is applying the beliefs and the insights that were current in the colleges and law schools in the period from 1925 to 1935. And so the administration of justice, the passage of laws, the agitation, indeed, the reform of society, are made by those whose great unveiling of new truths in behavioral science came from the findings of Freud, Jung, and their followers and opponents. They are concerned and interested in passing on to their fellow man the great insights of that day into the behavior of the individual in a new period when a good deal of that learning has become obsolete because of changed social conditions against which the individual plays out his role. Thus we have the precepts of an obsolete behavioral science known to and used by those who are running our social machinery and a reservoir of new wisdom which is scarcely used at all.

We have also in our thinking the knowledge and wisdom of the law of the 1925-1935 period. Frankfurter, Douglas, Thurman Arnold, Jerome Frank, and the dissents of Brandeis and Holmes broke from the notion that there were constitutional restrictions on social experimentation. But at that time there was no reservoir of hard knowledge available from studies in the field of behavioral science to help guide them. As has been suggested by Professor Kaplan,

this involved a use of analysis rather than a use of fact — a philosophy rather than a science.

Thus, we see now, as Professor Kaplan has indicated, our legal thinking partially absorbing and partially applying the insights of the science of individual behavior. On the strength of this, we have begun to throw aside the notions that capital punishment deters possible murders, that drug addiction or alcoholism can be treated as crimes, or that the M'Naghten rule has any scientific validity. These are natural results of applying the behavioral science of individual behavior which ripened during the formative years of those who presently comprise our legal and government personnel.

Their inheritance also included a too naive belief that economic planning can produce a reasonably balanced prosperity throughout society, that free public schools can by themselves provide sufficient opportunity for the talented individual so as to promote social mobility, and that laws could and should accomplish by legislative fiat many miracles of social change. Altogether, we have suffered from lack of a yardstick or a benchmark — the statistics with which to monitor social change.

But while we have been trying to absorb the older behavioral science, a whole new behavioral science has been growing up which is known almost exclusively by those who are now 20 to 30 years old. It is not concerned with the id and ego of the *individual*, but rather with how numbers of people behave — the special patterns arising from the *interplay* of individuals. This new behavioral science has about as much relationship to the subject which used to be called "sociology" as a Cape Kennedy missile has to a Kitty Hawk airplane. There is a whole new science of interpersonal relationships to help us understand how people are likely to act in groups, and an immense reservoir of economic and social data which is transforming our ability to perform economic and social planning. For example, during the depression of the 1930's we never really knew the true rate of unemployment. We had only a measurement through the census every 10 years. Today employment and unemployment data are processed monthly and are regarded as accurate to one-tenth of 1 percent. We have also developed mass interviewing techniques which can calibrate attitudes and beliefs with considerable precision and which have provided new insights about class structure and ethnic influences. For the reasons I have mentioned, however, I believe that little of this new behavioral science and accumulated data is now being used effectively.

Having agreed that we are talking about the possible application of the *new* behavioral science and its techniques to social problems, perhaps they could be tested on a couple of matters in which there is little social or emotional involvement. Let me apply them first to the field of traffic and highway safety, which, after all, is an area of minor emotional excitement these days. Traffic victims do not picket, they do not carry banners, they do not cry out that expenditures in Vietnam should be diverted to additional traffic signals at the crossings where accidents occur. So here is an unemotional area in which some of the reservoir of techniques and knowledge now available might be used.

If you apply to a problem "systems analysis," a popular tool in the field of social science, you first inquire into the fundamental objective of the system, you study the steps in the system, and you determine the elements or components involved. The most naive young student of traffic management today could list the four elements or components of our highway traffic system: There is the human element, the driver; there is the social element, the requirement for travel — why the driver goes where he does and what leads him to drive; there is the machine itself; and finally, there is the environment through which or over which the machine passes.

Let us turn to the human element. There is persuasive evidence today that practically everything we believe about the driver, upon which our legal treatment of him is based, is entirely wrong — with the single exception of the belief that he drinks too much. There is, for example, nothing in behavioral research to suggest that most of the popular remedies and popular legal approaches to the problem of automobile safety have any use at all. Drug addicts, for example, statistically have a lower accident rate behind the wheel than nonaddicts. People with visual and hearing defects and physical impairments have better safety records than the general population. They are, of course, much more careful since they are aware of their defects. There is also no evidence that high school driver education or general safety propoganda campaigns are effective. Therefore, in most of the problems with which we concern ourselves in the area of traffic management, we start out with a complete lack of use of the behavioral science knowledge available to anyone who can read English.

Now, consider the social aspect. As I indicated, alcohol is the one factor which clearly stands out as contributing to accidents. Almost two-thirds of the fatal accidents involve drivers who have

been drinking. Yet the social pattern of our society increasingly is to leave home, get in an automobile, drive some distance to a place where alcohol is served and consumed, and then drive home. Unless we are prepared somehow to intervene in this social process — and our intervention in cigarette smoking has not yet been notably successful — then perhaps we should say to ourselves that in order to reduce traffic fatalities we should design automobiles and highways to be driven upon by people who are mildly intoxicated. This is the simple and logical thing to do. Yet, as a practical matter, we have not faced up to the realities that are elementary to behavioral science.

This takes us to control of automobile design about which little need be said. Any student of traffic engineering could have told us 15 years ago most of what Ralph Nader has recently told us,² and which the motorcar industry is now acting upon.

Finally we come to environment. All of the traffic victims have not died in vain, for road design and traffic warning devices today are fairly good. It is the legal administration of traffic which flies in the face of all knowledge. In Ohio, as in most other states, highway safety is placed in the hands of a state highway patrol. They are dressed in boots, Sam Brown belts, cowboy or Spanish-American War campaign hats, and provided with sidearms, powerful automobiles, and an armful of speeding tickets. It is part of our conventional wisdom that they will force us to travel below the statutory speed limits and thereby decrease accidents. This is what they are trained and equipped to do. Yet every study shows that there is absolutely no correlation between accident frequency and intensity of patrolling. Indeed, between 25 and 80 miles per hour there is no correlation between speed and accident frequency.

It would seem, therefore, that the most significant contribution of our present system is the detection and reporting of the accident, and that the most useful approach to the reduction of highway fatalities might be to provide more prompt medical care after an accident. Perhaps we could greatly reduce the severity of injuries and the frequency of fatalities if the highway patrols, as we now know them, were done away with and arrangements made for the quicker dispatch of medical or subprofessional care to the scenes of accidents. New operational tactics could be developed on the basis of this approach that would include the design of new emergency vehicles, the positioning of emergency facilities, and the training of personnel to deal with emergencies.

² R. NADER, UNSAFE AT ANY SPEED (1965).

I may well have exaggerated to make my point, but I do not believe it destroys the validity of it — that much of the administrative and legal framework of our current traffic management program ignores a vast reservoir of information that is available from behavioral science.

A second problem where group behavioral studies offer an opportunity for constructive social action is cited in the recent report of the President's Commission of Law Enforcement and Administration of Justice.³ This report emphasizes that auto theft has a tremendous social cost. About 28 percent of the inhabitants of federal prisons are sent there following conviction for interstate auto theft under the Dyer Act. Auto theft is commonly the first step of juveniles to more serious criminal involvement.

Many thefts occur simply because a boy sees an unlocked automobile. The FBI reports that 42 percent of the autos stolen had keys in their ignitions or their ignitions unlocked. Even of those stolen when the ignitions were unlocked, at least 20 percent were stolen merely by shorting the ignition with tools as simple as paper clips or tinfoil. In one city, the change in the Chevrolet lock (eliminating the unlocked "off" position) in 1965 resulted in about 50 percent fewer 1965 Chevrolets stolen than the previous year's model.

These findings suggest that easy opportunity to take a car may contribute significantly to auto theft and that thefts by the relatively casual or marginal offender would be reduced by making theft more difficult than merely starting the car. Educational campaigns advising drivers to lock their cars are important, but their effect is difficult to sustain. A more fundamental change in the ignition system and other automobile components is needed. Many possibilities exist. Spring-ejection locks can prevent the driver from leaving the key in the ignition; sturdier housings can enclose the ignition terminals; heavier metal cables can surround the ignition wires; steering wheel locking devices can be used, as is done on several foreign cars.⁴

General Motors Corporation in 1968 will install a buzzer which will sound as soon as the car door is opened if the key is left in the ignition switch.⁵ This indeed is an instance where what is good for General Motors is good for the country. It is another instance where a pragmatic, objective approach, using the tools of behavioral science could start us in a vastly more useful direction than the myth-based tactics of the past. If we accept, for example, that

³ PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, REPORT ON THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967).

⁴ *Id.* at 260.

⁵ BUS. WEEK, Apr. 1, 1967, at 104.

the ease of stealing an auto is a temptation which youth cannot resist, that it is the first step into much more serious involvement, and that attempts to change the youth have been unavailing, then perhaps we should attempt to remove the temptation. Suppose that one-half of the 200,000 cars stolen last year with unlocked ignitions had not been stolen. How many fewer boys would have started on a career of crime? If this approach can offer so simple a device for making a significant dent in the beginning of juvenile delinquency, it is certainly time to eliminate a cultural lag between the administration of justice and the application of behavioral science.

And so let us turn to the topic upon which I started — racial strife and Cleveland. I would here not try to solve the problem, but rather merely suggest the type of knowledge that is available to be applied.

Take, first of all, the police. To most of the community the police represent a system of protection. Behavioral scientists, however, will tell you that in the Negro slums, the police are the occupying force of an alien army. This is particularly true if there are few Negroes on the police force. In addition, if the few Negro police are a significantly smaller percentage than the total percentage of Negroes in the population, there will be pressure on them to perform their duties with great rigidity and diligence. As James Baldwin recently said in *The New York Times*: When he was growing up in Harlem, the saying was, "If you *must* call a cop . . . for God's sake, make sure it's a white one."⁶

It is an elementary fact that we could solve much of our problem by changing the slum concept that police are an occupying army. This can best be done by introducing more members of minority groups into the police force. But qualified minority representatives are just not available; most police forces have a minimum age limit of 21, and a Negro out of school at 18, unlikely to continue in school, cannot wait 3 years until he is eligible. During that time, the situation being what it is, he may well earn a criminal record which will disqualify him.

The simple and easy way, recommended for years by behavioral scientists, to help solve this problem is to set up training courses for young Negroes. As they complete high school, they could be hired by the police force for duties that do not really require a 21-year age limit. For example, they could be put to work

⁶ Baldwin, *Negroes are Anti-Semitic Because They're Anti-White*, N.Y. Times, Apr. 9, 1967, § 6 (Magazine), at 27, col. 2.

ticketing illegally parked cars. In a brief period of time, using the easy insights of behavioral science, a vast change could be made in the meaning of a policeman to the Negro ghetto.

Today, most whites believe Negroes are being treated reasonably and are pushing too hard. Any behavioral scientist would tell you there are two reasons for this belief. First, the white man lacks identification with the Negro. It is just too difficult for a white man to imagine what the world would be like if his skin were black. Second, the white man lacks any sense of urgency because the 20- to 25-year-old principle of "relative deprivation" is little understood except in the field of behavioral science.

This is the principle which explained findings of wartime studies of the morale of Air Force officers compared with that of Military Police officers. You entered the Air Force as a lieutenant, became a major in a week, and a colonel within the month. The Military Police, on the other hand, advanced slowly. A lieutenant there stayed a lieutenant for a long, long time. It was tempting to think that the morale of Military Police officers would be poor and that of Air Force officers good. However, behavioral scientists could have predicted the reverse, and the reverse was found to be true when the studies were completed. This was because the quick Air Force colonel was himself aware that everyone knew he was not a general — either because of some sort of evil hand he had not yet detected, or because of some lack of appreciation of his talents. But if he were in the Military Police, he understood that as good as he was, and as much as they loved him, promotion came slow. In his world there was less expectation.

Like the Air Force colonel, the Negro today is frustrated because of this atmosphere of rising expectations. Although his situation in many instances has improved in an absolute sense, his aspirations have gone up more rapidly, leaving behind a keener discontent. This is particularly true in Cleveland since behavioral scientists constantly note that Cleveland is the best among major United States cities in providing opportunities for a Negro to improve his income, to move into the middle class, and to get away from the concentration of the severely impoverished Negro slum. But this, of itself creates other problems of social control; it further increases the aspirations of the rank and file because success is right next door. The Cleveland Negro is the Air Force officer. Secondly, it drains from the indigenous leadership of the Negro community those with the talent, the energy, the motivation, and the character

most easily understood and readily accepted by the white population. The city administration must then deal with a type of indigenous leadership in the Negro ghetto that is furthest removed from the majority concept of how reasonable people should act.

In conclusion, and without exploring what wise municipal courts and wise legislators might do with such findings, I suggest only that there is a large reservoir of knowledge from modern behavioral science which could be brought to bear on these problems. This is not the old behavioral science familiar to those who learned sociology or psychology years ago in their college days, but a behavioral science known as "social relations" which is concerned with interpersonal, group, and community action and interaction. There is also the apparatus of statistical control that could monitor the results and predict the problems before they arise. These tools of decision and change can be, and should be, applied to legal administration and legal and social planning. All this is worth doing because, after all, the legal system we can thereby save will be our own.