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THE PALO ALTO CONFERENCE ON LAW AND BEHAVIORAL SCIENCE

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At the invitation of the Center for Advanced Study in the Behavioral Sciences, Palo Alto, California, a conference of law teachers and social scientists was held this summer. The group met at the Center for nine sessions during the period from August 7 to August 11. It is believed that the Conference was a sufficiently important event in the recent history of law and social sciences to warrant this brief report on it. Perhaps the single most important thing about the Conference was the simple fact that it occurred. It is one of several recent phenomena which suggest strongly that we are in a new period of interdisciplinary contact, interest, and activity.

The Conference was limited to a group of twenty-four participants, on the hunch that this was the largest group which would permit informal and easy participation by all members. Those present on the social science side were: Dr. Henry W. Brosin, psychiatry, University of Pittsburg; Preston Cutler, Assistant Director, Center; Morton A. Kaplan, political science, Brookings Institution; Gardner Lindzey, social psychology, Harvard University; James G. March, political science, Carnegie Institute of Technology; Vincent Ostrom, political science, University of Oregon; David M. Schneider, anthropology, Harvard University; Philip Selznick, sociology, University of California; Martin Shubik, economics, Princeton University; Ralph W. Tyler, Director, Center; and Hans Zeisel, sociology, University of Chicago. Those present on the law side were: Frank Allen, University of Chicago; Julius Cohen, University of Nebraska; Brainerd Currie, University of Chicago; John Dawson, University of Michigan; Hardy Dillard, University of Virginia; Richard Donnelly, Yale University; Lon Fuller, Harvard University; Walter Gellhorn, Columbia University; Harry Kalven, Jr., University of Chicago; Clarence Morris, University of Pennsylvania; Dean Carl Spaeth, Stanford University; Dean Lehan Tunks, Rutgers University; and Herbert Wechsler, Columbia University. Mr. Kalven acted as chairman of the sessions. It was an amusing detail of the meetings that they began with the lawyers sitting on one side of the conference table and the social scientists on the other and ended with at least an interdisciplinary seating arrangement.

The meetings had two objectives: First, to explore the question of the utilization of the Center by lawyers. The Center wished advice on the feasibility and utility of inviting distinguished lawyers to the Center as Fellows for a year or so, in the same fashion as it has been inviting distinguished social scientists. Second, the meeting was viewed as an occasion for informal, but serious, exploration of the limits and promise of interdisciplinary work in law and social science. Fortunately, it was agreed at the outset, that the minutes of the meetings not be published; that no formal report or series of

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recommendations be the final product; and that the group should aim simply at good and candid discussion.

It is the impression of the participants that the meeting was successful in both objectives. The Center received valuable advice on its problem, and considerable impetus was given to securing law participation at the Center in 1957-58 and 1958-59. It is the purpose of the latter part of this comment to advise the law school and legal world more generally of the operation and functions of the Center for Advanced Study in the Behavioral Sciences.

The meeting also furnished the participants with an unusual and fruitful opportunity for what might be called "adult conversation" about the underlying issues. As a by-product, the law people were impressed with the advantages of such specially created opportunities for discussion among law teachers, where their day-to-day routine is interrupted for a few days and the maximum opportunity for group and individual contact is offered.

I

It is not possible within the scope of this comment to report in detail on the discussions. The group exchanged correspondence on agenda prior to the Conference, and there was general agreement that the agenda be left flexible and that the discussion "feel its way." The agenda which thus "just grew" out of the course of the discussion can be most readily summarized by sessions. The first session was introductory and exploratory; the second session was devoted to a review, led by Brainerd Currie, of prior efforts at collaboration in law and social science, with special emphasis on the Columbia-Johns Hopkins experience in the 1920's. The third session turned to the segregation cases as a concrete and controversial instance in which social science data was, to some degree, utilized on a major legal problem; Hardy Dillard made the principal presentation. The fourth session shifted to problems of law and psychiatry, with Clarence Morris reporting on the current Pennsylvania project to prepare teaching materials in this area. The fifth session centered on the Model Criminal Code of the American Law Institute as an example of a major legislative venture in which considerable effort is being made to utilize existing social science data in the formulating of recommendations. Herbert Wechsler made the principal presentation. The sixth session, under the rubric of what social science might learn from the law, was devoted to a discussion led by Lon Fuller of the manifold areas where the lawyer, along with others, functions as an architect of good arrangement and order. Mr. Fuller referred to his topic as that of the very young science of economics and offered it as not so much an area for joint empirical research, as an area for joint reflection and exchange of insight.

The seventh session gave some of the social science participants a chance to sketch problems which currently interested them. James March discussed a contemplated study of a three-man tribal court among the Mescalero Indians. Dr. Henry Brosin discussed an on-going project in the study of psycholinguistics, which is, in effect, the start of systematic recording and analysis of "body" language. Finally, Martin Shubik discussed certain problems in the antitrust area. The eighth session was spent on a report and discussion of the jury project research currently going on at the University of Chicago, with Harry Kalven leading the discussion. The project was offered as an

example of long-term collective field research by a team of lawyers and social scientists. Finally, the ninth and last session turned to the role of the Center and the problems of recruiting lawyers to it, with Ralph Tyler leading the discussion.

The sessions were arranged so as to permit extended discussion by the group of each of the topics presented. In the course of such discussion, several major issues emerged cutting across the substantive areas; disagreements on these matters were explored, but for the most part, the disagreements were not fully resolved. As might be expected, there tended to be considerable consensus within the disciplines, and the disagreements turned largely on differences between disciplines.

One such point was the disclosure that not only the professionalization of law, but the professionalization of modern social science, acted as a barrier to joint work. On the law side, the special characteristics of legal education were urged—the emphasis on training for practice, the general absence of graduate work comparable to the Ph.D. level in other fields. A special point which did produce debate within the law ranks was whether the enormous success of the case method had not itself hindered any serious utilization of nonlegal materials in law teaching. Another point of debate was whether relevance to the law curriculum was the exclusive measure of serious research in law today.

There were parallel difficulties on the social science side. Here, the desire to be professional, to work at “the core of the discipline,” to be patiently scientific rather than impatiently practical, to avoid plunging the social sciences prematurely into the areas of public and political controversy, and to avoid unscientific value judgments loomed large in the discussion. Despite an abundance of good will on both sides, there was an impression that, by and large, the lawyer saw the work of the social scientist as remote and impractical and the social scientist saw few questions suggested by law as close enough to the heart of his science. It was agreed that, in part, this gap resulted from the difficulties of communication, including communication at the simple level of keeping in touch with issues in other disciplines.

A closely related point went to the conditions under which interdisciplinary work in law and social science would, in fact, be carried out today. It was widely recognized that the difficulty of providing suitable conditions is, in itself, a considerable barrier. The social scientist expressed concern at being only a junior partner in the research. Should, for example, not only the answers, but the questions be formulated as a joint venture? Must the points of inquiry to be worthwhile be equally exciting and rewarding to both disciplines? Can the careers of either lawyers or social scientists be adequately protected if they break so sharply with conventional patterns of activity?

A further point which concerned all participants turned on the problems of collective research, on what Lon Fuller called “projectitis.” It was agreed that there were in large collective research ventures risks of a loss of the intellectual freedom to follow where an individual’s curiosity would lead; but it was also agreed that there were kinds of data that could only be obtained by large-scale effort and which offered, in turn, new fields for intellectual curiosity.

Another point of recurring debate was the question of relevance and significance. It was agreed that the task of dropping empirical footnotes, as it were, to the entire corpus of law would be of staggering magnitude, but no one had a ready formula for identifying "strategic areas" of joint research.

From time to time, and perhaps not sufficiently, attention was turned directly to the referent of "social science." It included such diverse matters as the consumer research survey, monetary theory, and the psychoanalytic interview. And much of the discussion was implicitly keyed to social science as a source of methodology rather than theory.

There was considerable discussion of the ways in which social science data might be relevant to law. The lawyers stressed the multiple functions of most rules of law and the fact that facts alone would seldom be decisive of the policy issues involved. It was noted that the social science data might become relevant at various levels—at the level of the advocate's brief, at the level of an issue of fact in a trial, at the level of adjudication of constitutional issues, at the level of informing a legislator or administrator, at the level of broadening a judge's insight into his culture. And it was noted the level of proof required from the scientist might vary considerably depending on the level at which the data was being used. The lawyers stressed another basic distinction—that between law as a social phenomenon, a process to be studied by the social scientist as other institutions in society are studied, and the law as a conceptual scheme of rules for ordering a great variety of human conduct, which potentially could use the widest variety of knowledge about human behavior in the formulation of its rules.

If the Conference be taken as a fair sample of the relationships between law and social science today, how stands the balance sheet? Perhaps no two participants would sum it in quite the same way, but this much seems clear. There are a variety of efforts currently in progress in the law schools which involve the social sciences directly, and there is increasing interest in such ventures on the part of law faculties generally. There are even limited areas of law practice where social science data are being used. But there are substantial difficulties too, because of the professionalization of both disciplines, in locating the fruitful areas for collaboration; there is still considerable mutual skepticism about how interesting the other man's problems are; there are serious administrative difficulties in effecting collaboration in the universities; and there are, as yet, few results of joint work which are recognized by both disciplines as durably important. But the lawyer is beginning to be literate about the social sciences, and, without rejecting the achievements of legal scholarship as he has known it, he is willing seriously to consider ways of enriching it. And the social scientist, if not yet fascinated by legal problems, is beginning to see the possibilities for disciplined and socially important work in collaboration with lawyers.

The prospectus today is not, therefore, as it has seemed to be at various points in the past, for a brave new world of law revolutionized by the stimulus of behavioral science, but is rather a less glamorous and far more sensible image—a traditional world of law, gradually enriched by and enriching the systematic study of human behavior.

II

As a result of this Conference, the Board of Directors of the Center authorized the award of fellowships each year to two or three students of the law who are interested in the relationships between law and the behavioral sciences. The Center, located on a knoll a mile southwest of the Stanford University campus, is a place where, each year, fifty highly selected students of human behavior come on post-doctoral fellowships to study, individually and with others, in seeking to broaden and deepen their competence. The Center was established in 1954 by the Ford Foundation on the unanimous recommendation of a committee of twelve scientists and academic administrators as one major means of developing the behavioral sciences. The Center offers one kind of opportunity not previously available. It provides the scholar with free time to devote entirely to his own study and with access to colleagues of the same and related disciplines who are interested in some of the same problems.

In building the roster of fellows for a given year, consideration is given to representation of the various fields which comprise the behavioral sciences, such as anthropology, economics, genetics, history, neurology, neuropsychology, political science, psychiatry, psychology, sociology, and related fields such as law, and to a balance among the three age-groups: above 45, 35 to 45, and below 35. The fellowship stipend is based on the fellow's salary at his home institution, calculated to enable him and his family to be in residence at the Center with no serious financial sacrifice.

The program of activities at the Center is governed by the fellows themselves. The mornings are spent in individual study, and the group activities in the afternoon are developed as desired by those participating. Collaborative activity commonly takes place in informal conversations, in small working groups, and in continuing seminars. The Center does not employ an instructional staff, but emphasizes mutual education—fellows learning from each other. The Board of Directors, largely drawn from academic institutions, agreed that, although universities were providing more time and better facilities for research than a decade ago, the emphasis upon specified research projects and upon training students in the things which a faculty member already knew best greatly restricted opportunities for him to explore new possibilities, to round out gaps in his previous training and experience, to pursue new and untried lines of work, and to feel free from the tension of schedules and publication deadlines. Freedom in these respects was deemed the rarest and most important opportunity which the Center could provide for the scientist. However, when the responsibility for the choice of activities and the development of these activities is left to each individual, he needs to know what resources are available, what activities are possible, and what values they might have.

The physical resources are generally easy to describe. The Center's plant provides an individual study for each fellow, meeting rooms, a dining room, and a library. In the library, an effort is made to purchase every book or journal which the fellows expect to be using frequently. This forms a working collection in the library. Then, the Center has a contract with the Stanford University Library to loan materials not available in the working collection. Typewriters, calculating machines, the more common items of IBM

equipment, and a room with a one-way vision screen for study of small-group behavior complete the physical plant. Secretarial and research assistance is provided. The Center has the facilities normally used in analyzing data previously collected and in guiding interpretations.

Although the physical resources are useful, the unique and most valuable resources of the Center are the fellows themselves. By the use of screening committees in each field, an effort is made to assure that those awarded fellowships are judged by their peers to be highly competent scholars. By building the roster each year to assure that a range of fields is represented and that each fellow will find several others with similar interests, there is potential for highly profitable communication. Those who have been at the Center report enthusiastically on the value of the ideas gained from other fellows. To students of the law interested in relations between law and the behavioral sciences, a fellowship at the Center offers a unique opportunity. At the time of this writing, Professor Clarence Morris, of the University of Pennsylvania Law School, and Professor Brainerd Currie, of the University of Chicago Law School, are planning to be at the Center in 1957-58, and Professor David Cavers, of the Harvard Law School, in 1958-59. The Center welcomes additional nominations of highly competent students of the law who would be interested in a Center fellowship.