RESEARCH MODELS IN LAW ENFORCEMENT AND CRIMINAL JUSTICE

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A generation ago, one professor at Harvard Law School used to greet his students at the beginning of the semester with an offer to debate them on any subject so long as *he* was allowed to "state the question." Any review of the crime, law enforcement, and criminal justice literature produced during the last ten years indicates that there is still as much disagreement over how the "relevant" questions should be stated as there is over the answers to these questions. Despite a strong public demand to "stop crime," there is little consensus within the research community as to the questions (if any) which, if answered, would assist in the prevention of crime or the improvement of police, court, and correctional processes. Much of the literature "states the question" in terms of the narrowly defined "efficiency" of law enforcement and criminal justice agencies; a second group asks questions concerning the functions assigned to the criminal justice system; and a third set of critics are concerned with the implications of decisions made by the police, judges, and correctional officials for a democratic system of government. While I cannot attempt to review the literature which has been generated under these three models, I will describe each briefly and suggest some of the problems that have risen in research on law enforcement and criminal justice.

The Efficiency Model. Much public debate and most expenditures in the criminal justice field tacitly assume an efficiency model for the reduction of crime and improvement of criminal justice. *If* the police can apprehend more offenders,

AUTHOR'S NOTE: *The opinions expressed in this paper are entirely those of the author and do not necessarily represent the position of the National Institute of Law Enforcement and Criminal Justice, the Law Enforcement Assistance Administration, or the United States Department of Justice.*

https://doi.org/10.2307/3052853 Published online by Cambridge University Press

if the courts can process cases more speedily and sentence offenders on the basis of more "relevant" information, and *if* probation, prison, and parole agencies can provide better rehabilitation services, the efficiency model assumes that there will be a substantial reduction in crime. Working from this model, cities, states, and the federal government are investing heavily in manpower, equipment, facilities, and improved management procedures.

Major areas of research and experimentation in the area of manpower deal with systems for recruitment, testing, assignment, and promotion within criminal justice agencies. There are simultaneous movements toward professionalism (college education for police and correctional officers, sentencing institutes for judges, creation of specialized roles such as crisis intervention teams in police departments, or vocational counseling in correctional agencies) and toward the utilization of non-professionals and sub-professionals to handle the non-criminal duties of the police and the counseling functions of probation and parole officers. Paralleling the tension between "neutral competence" and "executive leadership" which has plagued public administration at least since the advent of "merit" systems (Kaufman, 1956), efforts are now under way to change the traditional organization of police departments to permit rapid promotion, incentive pay for education or superior performance, lateral entry at command ranks, and other devices to permit a more flexible use of police manpower.

To make the most efficient use of this new manpower for the criminal justice system, extensive research is now being conducted on the operational practices of police, court, and correctional agencies. Computers and the skills of operations research and systems analysis are being utilized to analyze the distribution of criminal activity within a city, to plan the allocation of police patrol resources, to schedule cases on court dockets, and to develop information systems which allow criminal justice agencies both to understand the current distribution and effectiveness of their activities and to identify the individuals (suspects, offenders, convicts, etc.) with whom they are dealing (President's Commission, 1967b; Blumstein, 1967). With these enhanced administrative skills, there is some reason to expect that police resources will be distributed in rough proportion to the incidence of crime, that court cases will move more speedily, and so forth. The impact of these changes on rates of crime has yet to be established.

The Restricted Functions Model. The efficiency model of criminal justice research takes the purposes of law enforcement as givens and explores new ways to achieve those purposes. At least since the days of Jeremy Bentham and *The Principles of Morals and Legislation,* however, there have been serious challenges to the assumption that the criminal law and the criminal justice system are omnicompetent devices for the control of antisocial behavior. While the reach of the criminal law is being expanded in such areas as organized crime, collective violence, and environmental control, many critics are arguing that the scope of the criminal law should be redefined to exclude such "crimes without victims" as traffic offenses, gambling, prostitution, consenting homosexuality, drunkenness, and the use of drugs.

The logic underlying these proposals varies. One group of critics argues simply that these offenses are not particularly threatening to society and that the resources of the police and the court system should be devoted to more important matters. With one-third of all arrests in the United States being made for public drunkenness (Stern, 1967; President's Commission, 1967a), and millions of traffic tickets written each year, it is argued that patrolmen and judges could more profitably be asked to concentrate on robbers, muggers, and burglars. A second line of attack against the involvement of the criminal justice system in this area is based upon a right of privacy—that unless others are injured, society has no legitimate interest in the activities of gamblers, vagrants, homosexuals, or drug users. A third group of critics accepts the goal of reducing these forms of behavior but argues that medical and mental health techniques will be more efficacious than enforcement-prosecution-conviction-imprisonment. Finally, it has been argued that attempts by law enforcement and criminal justice agencies to act in this area have had a number of undesirable side effects, including corruption (Gardiner, 1970), unethical police practices, and a general loss of public respect for and confidence in the criminal justice system (see, generally, Packer, 1968, and Kadish, 1967).

The Legal-Democratic Model. The classic legal-democratic requirement for the criminal justice system has been that police, courts, and correctional agencies will be bound by the "rule of law" and that responsiveness to public desires can be ensured through a general citizen supervision over agency policies. Recent studies of criminal justice agencies provide

little support for the belief that statutes and public scrutiny can or will provide detailed control over decisions made in the criminal justice system. Resource limitations dictate that many infractions are unseen or overlooked, and statutes seldom provide precise answers for the complex problems faced by the patrolman (Goldstein and Remington, 1967, and LaFave, 1965). In most cases, active public scrutiny is confined to crimes of unusual violence or a sensational trial; *rates* of crime, patrol patterns, "tolerence" policies on traffic offenses, sentencing patterns, and conditions in local prisons are unknown and uninteresting to the average citizen, the mass media, and legislators. As James Q. Wilson has summarized the relevance of the community and its officials to basic police policies,

> ... the prevailing police style is not explicitly determined by community decisions, though a few of its elements may be shaped by these decisions... Thus police work is carried out under the influence of a *political culture* though not necessarily under day-to-day political direction.... With respect to police work — or at least its patrol functions — the prevailing political culture creates a "zone of indifference" within which the police are free to act as they see fit [Wilson, 1968: 230-233]. (See also Gardiner, 1969, and Skolnick, 1966.)

The supervisory role of statutes, citizens, and elected officials is even further diminished, of course, where criminal justice agencies are corrupt or choose to exercise discretion through "curbstone justice" or the "rousting" of suspects or "troublemakers" who are unlikely to complain to the courts or the newspapers.

The Research Priorities of the National Institute. The Omnibus Crime Control and Safe Streets Act of 1968 created the Law Enforcement Assistance Administration, to provide financial and technical assistance to states and localities to improve their law enforcement capabilities, and the National Institute of Law Enforcement and Criminal Justice "to encourage research and development to improve and strengthen law enforcement." "Law enforcement" is defined by the Act as "all activities pertaining to crime prevention or reduction and enforcement of the criminal law." The Congress appropriated $2.9 million for the Institute for fiscal 1969, $7.5 million for 1970, and $7.5 million for 1971.

In response to this extensive mandate, the Institute has attempted to specify a series of research priorities and to seek grant and contract proposals directed to those priorities rather than simply to support the technically most qualified proposals submitted. These priorities focus upon the crimes of major

concern to the nation—stranger-to-stranger crimes of violence or threatened violence, burglary, collective violence, organized crime, and narcotic-related crimes. With this focus on the more serious types of crimes (although other forms of criminal behavior are considered insofar as they affect the operations of criminal justice agencies), the Institute has supported research projects based on all three of the models described above, although the efficiency model has been predominant. With a clearly stated Congressional desire that the Institute develop practical hardware for law enforcement agencies, the Institute has been working to improve the communications, weapons, and other equipment available to the police. Other Institute priorities to improve the efficiency of law enforcement and criminal justice agencies deal with the selection and training of personnel, the evaluation of the effectiveness of various correctional programs in rehabilitating different types of offenders, and the reduction of court delay.

While the development of new technology to improve the efficiency of the criminal justice system has been the major concern of the Institute during its first two years of activity, major programs are under way to determine the appropriate functions of the system and to improve relationships between law enforcement agencies and the community. Among the Institute's activities exploring the boundaries of an effective system and new crime prevention roles for non-criminal justice agencies are programs dealing with citizen crime prevention patrols, detoxification strategies, municipal ordinances to require builders to take steps to protect against criminal entry, and delinquency prevention programs in schools. To minimize violations of legal rights in the criminal justice process, Institute programs deal with systems for the supervision of patrolmen, the guarantee of effective counsel to defendants, and the assurance of the post-conviction rights to prison inmates.[1]

Ethical Issues in Law-Enforcement Research. While behavioral, social, and physical scientists, lawyers, and engineers are becoming more and more interested in the issues of law enforcement and criminal justice, a number of ethical issues have been raised concerning research in this area. In the mid-1960s following the collapse of Project Camelot, university-based social scientists began to ask questions about their role in research dealing with major government programs. Frequently exacerbated by disagreement with government foreign and military policies, critics argued that defense-related research

compromised the scholarly neutrality of the investigator, placing him in the service of the government policy of the moment as fully as the soldier or diplomat. As issues of law enforcement and criminal justice become more salient to both elected officials and university scholars, the question has been raised whether research on these issues poses ethical and status questions equal to those raised concerning defense research.

Several issues appear to underlie this disquietude. First is the matter of investigators invading the privacy of individual citizens. While it is possible to analyze the merits of Faction A vs. Faction B in a power struggle in Nation C with some sense of detachment, the scholar riding in a patrol car soon learns more than he really cares to about the family squabbles of a housewife who called for help or about the sexual history of a sixteen-year-old girl who claims that she was raped. No matter how much his research report disguises the identity of victims, witnesses, or offenders, the investigator of police, court, or correctional activities is left with the uncomfortable sensation that he is hearing things that are none of his business. Regardless of whether the research procedure is reactive or nonreactive, or whether the observer can retain a measure of objectivity concerning the events he is witnessing, participant observation in law enforcement research poses in extreme fashion issues of the privacy rights of individuals being studied.

A second broad issue raised about law-enforcement research concerns objectivity, neutrality, and confidentiality. If a project is funded by a law-enforcement agency, or if the investigator promises pre-publication review privileges to his subjects in order to gain access, there is a danger that published results will be so biased as to be worthless. Here it is necessary to know more about the terms under which funds or access were given. Some agencies sponsor research solely to evaluate their own programs and have no intention of releasing the results unless they are favorable; other agencies prefer to let the grantee or contractor speak for himself and make whatever use of the research he wishes. The granting of access is even more varied: some courts or police departments will open themselves completely without asking to screen the results; some departments promise total access but only expose the investigator to their best men or noncontroversial programs. On the other hand, some investigators promise screening rights or disclaim any intention to publish and then publish without allowing the department a chance to review. The obligations of the investi-

gator to his audience obviously vary: so long as he reveals the source of his funding and any agreement to submit to prepublication screening, the investigator who accepts restricted funding or access is only obligated to avoid false statements, not to provide facts harmful to his sponsor or host department; the unrestricted investigator, of course, should be expected by his peers to publish everything he finds. If there is such a thing as a responsibility to future scholars, we might also ask that the investigator who does not intend to give his subjects an opportunity to screen findings should not promise such a relationship and then "burn" the department for future research by publishing his findings. Whether an individual investigator should accept restricted funding or access must remain one of personal preference, and many may choose to remain free from such obligations, but each scholar who does present his findings to his peers has an obligation to indicate the ground rules under which he is operating.

A final issue concerning research on law enforcement and criminal justice which troubles some potential analysts is one of disagreement with the policies of the agency being studied. Where, for example, the police are viewed as "repressive," either through the enforcement of "political" laws (e.g., unlawful assembly, inciting to riot, sedition) or through the discriminatory application of criminal laws, some scholars feel an obligation to avoid any research project which might ultimately contribute to the efficiency of the repression. The relevance of this problem must vary with the department and the issue being studied: research into strategies for crowd control could contribute to "repression" where a police department chose only to break up labor rallies or student protest sessions, but could contribute to freedom of expression where the police used the strategies to protect *both* sides in a political debate. Analyses of gambling behavior or organized crime could serve as the base line for legislative reform or as an intelligence manual for police vice squads. Given the fact that the overwhelming proportion of police activities involves the delivery of social services and the reduction of street crime (which disproportionately victimizes the poor, the nonwhite, and the elderly), and given the fact that "political" offenders are a minute segment of the workload of the courts and correctional agencies, the fear of contributing to repression seems rather overstated. I do not in any sense question the duty of the scholar to consider the uses to which his research will be put before he undertakes a project; I only wish to point out that lawyers and social scien-

tists have long claimed an ability to analyze major public issues and policies and should be willing to turn their skills to law enforcement problems. If those who are most familiar with research on issues of human behavior, social conflict, and legal values are unwilling to define and analyze the issues of law enforcement and criminal justice, the field will be explored by scholars who are not attuned to those issues. Until there is agreement on how the major questions of criminal justice should be stated, such an abdication is socially irresponsible.

FOOTNOTE

[1] The *1971 Program and Project Plan* of the Institute may be obtained from the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, Washington, D.C. 20530.

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