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TOWARD A THEORY OF LEGAL IMPACT:
SOME PERSPECTIVES ON COMPLIANCE

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ABSTRACT

An important question to both social theory and policy is the impact of law on behavior. This question has received considerable empirical attention, but the need for a consistent theoretical approach is evident. In this paper a preliminary theory of legal impact is suggested, and one specific aspect of it is detailed.

The paper points out that a number of distinctions are necessary in a theory of impact. First, impact may occur at two levels, that of compliance and that of broader social impact. Second, three factors may be expected to influence impact, the source of the law, the content of the law, and the characteristics of the affected unit. Each of the three factors must be discussed separately, for both compliance and social impact, if a rigorous theory is to be developed.

An ideal-typical approach is used to develop one aspect of a theory of impact, the relation of the source of the law to compliance. The ideal type is based on a conception of law developed by Weber, and it involves four topics, legitimacy, sanctions, enforcement, and integration. The paper concludes with some suggestions for using the ideal type in further empirical and theoretical studies.

Toward A Theory Of Legal Impact: Some Perspectives On Compliance

The role of law in social change is a classic issue to social scientists and to those interested in policy. Social scientists have noted that laws are a major means by which governments attempt to control society, so that an understanding of law is useful in determining how governments operate. From a policy perspective the importance of law is equally obvious. Laws are a means of control, and to those who are interested in altering society legal change is often one way of obtaining societal change.

While few would argue that law is important in society, the exact boundaries of change produced by laws are not fully established. Despite the large number of case studies published, only limited progress has been made in determining how much and in what direction laws may impact behavior. Further, theoretical consistency is lacking in most research on the subject. This paper will attempt to improve on past works by developing a consistent, if preliminary, theory of the impact of law on behavior.

1. THE LITERATURE

Legal impact literature includes hundreds, and perhaps thousands, of studies. Works have focused on many different legal agencies including the police [Skolnick 1966], courts [Becker 1973], grant agencies [Derthick 1970] or special enforcement commissions [Mayhew 1968]. The various legal issues covered range from school prayer [Birkby 1973] to

desegregation [Jenkins 1966] to modernization in general [Galanter 1966]. Authors have included lawyers, political scientists, historians, and sociologists.

Despite the breadth of the literature, theoretical advancements in the area have been sparse. True, studies have focused on interest groups [Wirt 1970], social psychology [Muir 1967], societal values [Mayhew 1968] or bureaucratic obstacles [Skolnick 1966]. Yet while writers using each approach may have successfully described the impact of a specific issue, they contributed little to legal impact as a whole. Because each distinct author developed a set of principles that was heavily based on the specific case, the perspectives have had little to say about other issues.

While theoretical advancements are seldom found in the case studies, two major types of theoretical enterprises developed from the various works. Many authors tried to develop lists of general principles that would help enhance the impact of a law. For example, perhaps the most interesting case study in the area is that of Wirt [1970]. His work details the impact of many different laws on a southern town, laws as diverse as voting rights and welfare benefits. After a quite complete review of specific issues, Wirt tells us that four general points are evident. Laws can be made more effective when a) the regulation is enforceable, b) the regulation is well-conceived, c) the regulated group has a low level of integration, and d) the benefited group has a high degree of regulation.

While Wirt does not claim that his list is applicable to all types of legal impact, it may be noted that the list cannot be a major aid in

developing a more general theory. The first two points Wirt lists may be valid, but they lack substance. Exactly what is involved in enforcement or well-conceived legislation is quite key, but Wirt cannot give us information on the issue. For example, one might imagine that laws enforced by the police may differ from grant laws. In the former case, simple to understand regulations with behaviorally obvious violations may be important in enforcement, while the impact of grant agencies may depend on a large number of different factors, such as the expertise of the granting and receiving agency.

Wirt's last two factors are more specific, but less applicable. In many cases the integration of groups is not important. For example, one would not expect the effectiveness of a speed limit to depend upon the integration of the regulated and benefited group. In fact, in the case of a speeding regulation the two groups include the exact same individuals, drivers.

The point is not to criticize Wirt in particular. His list is at least as valuable as efforts put forth by many other authors [Colombatos 1969, Pound 1942, Murphy 1964, Muir 1967, Levine 1970]. All lists tend to simplify complex issues, generalize points that are rather specific, and leave out some obviously key components of impact.

A related, but slightly different form of theorizing involves a set of hypotheses. The most comprehensive set is found in Wasby's [1970] rather comprehensive study of the impact of Supreme Court decisions. From my, somewhat inexact, count Wasby lists one hundred and thirty-eight separate propositions. They include everything from the importance of the clarity of the decision to the role of community interest groups.

A long list of hypotheses can be criticized on the same bases as the various lists of factors involved in impact. Wasby fails to indicate the conditions under which each hypothesis will play a role in impact. Clearly any study of an actual regulation cannot attempt to test all of the propositions, yet Wasby gives no guide as to which proposition is important in a specific instance.

Perhaps more important, a list of hypotheses does not contain the crucial element of a complete theory, some sense of order. Theories can lead to numerous hypotheses, but to be useful the overall perspective should be a more simple one. For example, a theory might state some mechanisms that underlie all of the hypotheses, mechanisms such as the reaction of individuals to social control. Using these criteria, a satisfactory theory of legal impact does not exist.

2. TOWARD A THEORY OF IMPACT

The rather brief review of theories of legal impact indicates two general conditions that lead to more advanced theories. Most important, the theories must develop from a single frame of reference encompassing a few general principles. Such a frame of reference enables a researcher to develop hypotheses for any individual case, while it promotes an overall understanding of impact. Second, it is useful to specify conditions under which certain hypotheses might hold. What leads to effectiveness of one law may be irrelevant in other instances; a complete theory would be able to differentiate cases.

The current work is a preliminary attempt to develop a useable theory of legal impact. It is based on an extensive review of legal impact literature, focusing on works concerned with the protection of rights of individuals [Sosin 1975]. There is no need to review the literature here; rather, examples will be utilized to demonstrate key points. Like any other theory, the effort can best be judged with respect to internal consistency and applications to new legal issues.

Types Of Legal Impact

While a theoretical enterprise must begin with a set of logically consistent definitions, it is perhaps surprising that legal impact literature has been quite remiss in this respect. Most important, the definition of legal impact, itself, is vague. Legal impact is used to indicate a wide number of different effects of laws, from compliance to a specific issue to broader social change. Some authors have even begun to develop lists of types of impact [Evan 1965].

The term legal impact has been so broadly used that it would be hopeless to attempt to define it more specifically. It must be defined as all possible consequences of a law. But a theory should use more specific terminology. In the present context, legal impact will be much easier to discuss if a simple differentiation is developed. Some studies of legal impact are concerned with compliance, or the extent to which a new law is obeyed. Others are concerned with social impact, or the broader effects a law has on society. Indeed, an examination of these concepts and some subconcepts should help structure legal impact inquiries.

Compliance

A first step in establishing the impact of a law includes obeying the legal mandate. While compliance is often taken for granted at the time a law is passed, in reality this aspect of impact is problematic. Thus Skolnick [1966] documents the discrepancy between rules on proper searches as they are written and as they are practiced by the police. In theory, police can only search with a proper warrant; in practice, often a preliminary search is undertaken and a warrant is obtained only if the search is successful. The entire study of deviance, of course, is focused around the fact that laws do not meet automatic compliance.

Two important degrees of compliance may be distinguished. First, there is formal compliance. This segment of compliance involves obeying the obvious forms a law entails. Many studies of compliance look only at its formal aspects. Birkby [1973], for example, undertook a study of the effect of school prayer decisions on the behavior of local school districts in Tennessee. He discovered that 42 percent of the districts in his sample completely ignored the decision. His prime indicator was one of formal compliance, whether districts changed due to the mandate or not.

Full compliance represents a somewhat more careful fulfillment of the law. This type of compliance includes obeying both the letter and the spirit of the law.

Perhaps the distinction between formal and full compliance can best be presented using an example. In my research on compliance to due process mandates in the juvenile courts [Sosin 1977], I discovered that

nearly all of the courts said they used "proof beyond a reasonable doubt" as opposed to "preponderance of the evidence" as a standard for establishing guilt, as required by the Supreme Court. However, about half of the judges reported that they at least "sometimes" had access to the social file of a youth during the adjudication decision. The social file contains information that tends to reduce reliance on proof beyond a reasonable doubt. It contains information of a youth's history of past offenses and associations, references a judge may utilize to make decisions on nonlegal grounds. While nearly all judges said they formally complied with the proof beyond a reasonable doubt, actually only half of the judges fully complied by eliminating the use of material other than evidence at adjudication. Indeed, a similar pattern exists for many other issues, such as the right to counsel at adjudication.

Compliance has often been studied in terms of its opposite, non-compliance. Efforts such as those of Birkby are aimed at determining if laws meet with even surface level compliance. In this case one is interested in the opposite of formal compliance, or ignoring a law. On the other hand, many studies have documented the difference between formal and full compliance. For example, in a study of station houses in Washington, D.C., Medalie, Zeitz, and Alexander [1969] looked at the effects of Miranda upon police operations. In theory Miranda guarantees that all individuals taken in for questioning will be told of their right to counsel and their right to remain silent. Washington policemen seem to formally obey this legal mandate, yet only 7 percent of individuals questioned asked for a lawyer, and 40 percent waived the right to remain silent and signed a confession. A large part of the problem may be due

to the manner in which defendants are told about their rights. Thus another study [Wald 1969] reported that only one-third of those individuals taken to the station house were given "full" explanations of their rights; it was more common to present only some of the rights to accused individuals. Even when rights were read fully, often they were phrased in a manner that subtly implied that asking for a lawyer was tantamount to admitting guilt. In the Washington study the problem was further compounded by the technical language used by the police. Apparently only 24 percent of the defendants understood what their rights were. In short, ignoring seldom occurred in the situation, but compliance was less than complete. We may consider this as an evasion of the law, activity that involves formal but not full compliance.

It is important to note that the distinction between formal and full compliance is not relevant to every legal issue. For example, when an individual obeys a speed limit he is both formally and fully complying; there is no distinction. In fact, the possibility of making formal and full compliance identical underlies many lists of principles aimed at increasing impact. It is common to note that a law is more effective when it is written in a simple and straightforward way. This can be interpreted as writing a law in which full compliance is guaranteed by formal compliance.

The legal strategy which involves joining formal and full compliance also has its costs. Some issues cannot be easily established through a simple regulation. Individual rights, particularly, are too complicated to be encompassed in a simple law. In other cases equating formal and full compliance can lead to goal displacement. For example, the use of

racial quotas seems to be a simple extension of equal opportunity ideas, and it was adopted partially due to the ease of enforcement. However, it is clear that a quota speaks to equalizing results, not chances for success, and the two may not be closely related.

The concept of compliance can be adopted to describe all legal issues. To be sure, often one's first association with compliance involves laws that forbid certain behaviors. Noncompliance in this case is linked with many laws enforced by the police or by other enforcement agencies. However, noncompliance is also descriptive of a resistance to opportunities granted by a new law. The failure to vote when given the franchise, or the failure to obtain available grants from a grant agency, also represents noncompliance. Indeed, later on it will be demonstrated that one theory can encompass laws as diverse as grants and criminal sanctions if the general definition of compliance is utilized.

Social Impact

Social impact may be defined as all those aspects of legal impact that range beyond compliance. Obviously, this definition takes into account a mixed bag of effects. Laws can include issues as diverse as pollution control, racial discrimination, or public welfare. Each type of law involves a different standard.

Within this broad category of social impact, one aspect, legal effects, can be differentiated. Legal effects may be defined as the direct, behavioral consequences implied in a piece of legislation. For example, the legal effects of due process mandates involve creating an

adversary system and guaranteeing basic rights, the legal effects of school aid programs include an upgrading of personnel and materials, and the legal effects of welfare legislation may involve the distribution of benefits to certain individuals.

In many ways legal effects may seem to be close to compliance, because both issues involve elements implied in the law. The main distinction is that a failure to comply with a law can result in either negative or positive sanctions, while a failure to use legal effects will not. Thus one way in which legal effects may not occur involves subversion of purpose. In this case the affected group can undertake efforts to corrupt or pervert legislation. Indeed, in the study of the impact of school desegregation decisions in the South, Blaustein and Ferguson [1969] point out ways in which lower courts and legislatures subverted Supreme Court decisions without technically disobeying law. Often the judiciary used the "interposition" argument to avoid ordering schools to desegregate. Local judges argued that the Supreme Court decision had no effect in the states because the higher tribunal could not interpose itself between the people and their local government. In other words, a strictly legalistic reading of the Constitution was used to minimize legal effects.

Local school boards also played a role in subverting Supreme Court mandates. Often local districts created voluntary integration plans. Due to the tense racial situation in the South, voluntary plans did not lead to a large number of school transfers. Some communities adopted such criteria as aptitude or personality that tended to correspond quite closely to racial divisions.

A second barrier to legal effects concerns inadequate knowledge. Often a law may be written in a manner that limits the possibility of legal effects. Supreme Court decisions often may have such limitations; my own research concerning due process in the juvenile court, for example, indicates that due process guarantees should not be expected to increase adversarial rights or other rights at adjudication due to the special nature of juvenile courts [Sosin 1977].

Beyond legal effects, the study of social impact is much more difficult to consider in the form of a gradiant. The study of broader impact of laws can be seen as one example of evaluation research as a whole. As with any evaluation study, the nature of the impact of laws is quite specific for each individual case.

While it is difficult to categorize issues, it is possible to determine possible mechanisms by which a law may produce social impact. For example, my research on juvenile courts notes five possible types of impact: direct effects, impact by atmosphere, impact by definition, impact by constraint, and impact due to a change in decision-making. A detailed examination of these types of impact may be necessary for a complete theory of legal impact. However, the focus of this paper will be on compliance, and a further elaboration of social impact must wait for another time.[1]

Further Distinctions

A theory of legal impact must also take account of at least three other sets of factors. First, clearly theory must consider the qualities of the legal system promulgating the law. Each law may combine different

sanctions, enforcement techniques, levels of legitimacy, and so forth. Second, the qualities of the complying unit also vary. They may be individuals or organizations, and within these two types of units great differentiations are possible. Legal impact must also take into account the specific nature of the issue. One would not expect a traffic regulation to respond to the same determinants as a discrimination ordinance, for example. The degree of controversy, complexity of the issue, or degree of change desired may be vital variables within this topic.

In sum, a complete theory of legal impact must be comprised of six different pieces. One major distinction involves types of impact, including compliance and social impact. Within each category the attributes of the legal system, the complying unit, and the issue can be distinguished.

3. A THEORY OF THE STATE AND COMPLIANCE

A short paper cannot expect to deal with all six components of impact. Rather, some choice must be made. Partly due to personal interest, partly due to the importance of the issue, and partly due to the ease of theory development, I have decided to focus on determinants of compliance at the level of the State, that is, the unit promulgating and enforcing the law. To be sure this is only one component of the issue, and further work will focus on other components. In fact, one empirical piece already written considers the relation between the State and the unit that must comply [Sosin 1977]. This short paper should be seen as an attempt to develop some concepts and to demonstrate the utility of the various distinctions involving impact.

Law And Authority

It has been noted that a theory of law is most useful if it accomplishes three things. It should begin with a set of concepts that may be deduced from some broader approach, it should state a few general principles from which hypotheses may be developed, and it should indicate reasons why certain relations hold.

Such a set of theoretical interests lead to two decisions. First, the theory of compliance must have a single dependent variable, the extent to which the State agency may influence units to comply. In other words, the theory is aimed at developing a model of the most effective type of enforcement agency. Effectiveness does not imply efficiency, and the matter of cost will be ignored in this inquiry. Rather, factors leading to the maximization of compliance will be discussed.

It must be noted that calling a strategy the most effective at inducing compliance does not indicate that the mode of enforcement is ideal from any other perspective. Just as students of bureaucracy see much to be concerned about in the control made possible by this form, students of law may feel uneasy about the most effective enforcement agency. One interesting further line of inquiry concerns the balances between effectiveness and freedom that are developed in practice. In fact, while an "ideal type" will be presented, at the end of the paper the possibility that its elements often clash will be discussed.

The second decision concerns a general framework for analysis. That is, propositions must be deduced from some type of general system

concerning how compliance occurs. Such a perspective must take into account the nature of the role of the State in compliance. A study of law involves ways in which an arm of the government accomplishes its task of control. Therefore, the characteristics of an effective law must be related to characteristics of an effective central government.

Max Weber's unfinished work concerning law and society [1967] provides the best preliminary framework for understanding law as a form of state control. Weber seems to imply that from the point of view of the State two major factors determine the control of society. His most central concern is one of these, legitimacy. Legitimacy occurs when individuals in the society obey a law because they believe that the central government has a right to promulgate the ordinance. Weber, as is well known, distinguishes three types of legitimacy. Individuals may obey because they view obedience as customary, because a leader has some special power, or because they believe in the rules leading to control by a specific agency. The last, rational-legal authority, is crucial to law. Some aspects of legitimacy certainly indicate the ability of the State to exact compliance.

While Weber stresses legitimacy in his own work, he actually seems to believe that this is the less basic of two reasons why government can rule. Behind any order, legitimate or not, stands coercion. A government, as a last resort, may always resort to force to ensure decisions. While force, itself, is seldom applied, the threat of force is constant. Criminal sanctions, for example, indicate the expected consequences of refusing to obey a law.

A general theory of control must include these two main elements, legitimacy and coercion. But the second element is a bit more complicated than Weber discussed. Coercion actually has three components. Sanctions involve the specific reward or punishment a law engenders, and Weber concentrates on this aspect. But if sanctions are to be effective, violators must be caught. Therefore enforcement is also crucial to compliance. Finally, in a modern society the enforcement is undertaken by an agency that represents the State, but is actually somewhat differentiated. The relation between the State and the enforcement apparatus, which will be called integration, also influences compliance to law. The four elements help determine how effective enforcement may occur.

Legitimacy

While the general issue of legitimacy has been raised in previous works, few details are provided. Literature concerning the Supreme Court, especially, indicates that the legitimacy of the agency plays a key role in enforcement [Muir 1967]. Yet few have specified exactly what leads to the importance of legitimacy.

A reading of the literature indicates that legitimacy may accomplish two purposes with respect to compliance. First, a more legitimate agency receives a good deal of publicity, and publicity has been shown to be important in the promulgation of laws [Birkby 1973]. Publicity acts directly by making affected units aware that the law has changed. Publicity also acts indirectly by creating a situation in which interested groups who have a stake in the compliance of others are aware of the

legislation. Awareness can lead to pressure, either directly through the legal system or indirectly through political means [Wirt and Edwards 1967].

The second form of legitimacy is more obvious; the target of a legal change will comply more often if he believes that he should do so because the agency promulgating the law is legitimate. However, just what makes a law more or less legitimate is an open question, one to which existing literature does not speak. Perhaps such legitimacy is due to the source of the legislation rather than to the enforcement agency. There are some exceptions, such as the increased compliance to voting rights laws due to the legitimacy of the Justice Department [Wirt 1970]. But in general the public may separate enforcement from enactment. The most obvious case is the Supreme Court, where the agency mandating change is considered as the source of legitimacy, even though most of the enforcement stems from lower courts.

Two factors may underlie a legitimate promulgating agency. First, an agency that has more expertise in an area should be more legitimate. Thus the Supreme Court tries to bolster its legitimacy by claiming unique abilities to understand the Constitution [Strumm 1974]. An organization that is said to represent the people is also more legitimate. This seems close to Weber's view of legitimacy. An organization representing the people is one whose existence follows some agreed upon rules. Of course, this distinction restates Parson's [1947] footnote concerning two types of legitimate authority.

The main point is that the most effective law will involve a promulgating agency that is most legitimate. An agency that can mobilize

publicity, that is perceived as having expertise, and that apparently represents the will of the electorate will be most effective in increasing compliance.

Sanctions

Sanctions often bring to mind the notion of criminal law. Imprisonment and capital punishment are quite common sanctions, ones that have received much attention (for example, Gibbs 1969). Yet the criminal sanction is only one of many types of strategies an enforcement agency may use. Indeed, there are two major sanction categories, each with many variants.

The major differentiation among sanctions is between a reward and a punishment. Many laws, of course, involve the punishment. Noncompliance can be met with a fine, a prison sentence, or even death. But the reward, while not as common, also plays a role in law. For example, the federal government is increasingly interested in grants. Grants are laws that reward individuals or organizations that are able to obtain them. More directly, bounties or rewards have been common. Some nations have used rewards in order to encourage or discourage population growth, for example.

Penalties, themselves, are of many different types. Criminal sanctions are most common, but steps short of this may be taken. The fine, or a less drastic action, is the restraining order that warns of the possibility of a fine or prison sentence for further noncompliance.

Considerable evidence has been gathered concerning the effect of the extent of punishments on individuals [Middlendorff 1968; Ross,

Campbell and Glass 1970; Moore 1941; Gibbs 1969; Chambliss 1967]. However, evidence concerning the matter is perplexing. For serious criminal acts variations in certainty or severity of punishment show limited effects on compliance, but certainly, in general, sanctions must play some role. Thus, one would suspect that eliminating sanctions would have a quite significant impact on commissions of just about every crime imaginable.

Perhaps a more promising road than the study of the extent of a negative sanction is the study of different targets and types of sanctions. Laws affecting organizations offer the most clear-cut case. Some sanctions punish specific individuals within organizations. Thus a union official may be punished for a pension fund violation. Other sanctions can be applied to the chief executive or the organization as a whole, as are fines for civil rights violations. One would imagine that the effectiveness of the two strategies varies depending on the amount of control an organization has over its members. When there is little control, by definition individuals are free to weight their own costs against potential benefits for compliance or noncompliance. In this case a sanction against the individual will certainly affect the decision. However, a sanction against the organization as a whole will not have such an effect. Punishments to leaders or to the organization simply will not affect strongly the individuals in the organization if superiors cannot control their subordinates.

The situation will be reversed for tightly controlled organizations. In this case sanctions against individuals can often face strong resistance if organizational rewards or punishments are stronger. As

Watergate demonstrated, organizational loyalty can triumph over sanctions in tightly structured organizations. On the other hand, sanctions applied to the organization or its leaders can have serious effects. Both types of punishments will make the organizational elite quite sensitive to noncompliance, and the elite should be able to control its members.

Little evidence exists, but one might guess that the positive sanction also is a powerful weapon. Again, the primary example involves organizations, and specifically grants. Grants are awards given to organizations for a specific purpose. Their benefit is that they make some individuals "winners" without making others "losers" in an organization. In other words, grants add resources to those who desire to undertake a new program without penalizing others. Thus Derthick [1970] reports that the offer of funds relating to Aid to Dependent Children in Massachusetts was almost tantamount to acceptance. A few interest groups might oppose the grant on moral grounds, but the groups favoring the grant had a stronger incentive. The political struggle was largely between highly motivated groups that favored the grant and poorly motivated groups that had some moral qualms against accepting funds. All other conditions being equal, the more committed interest groups generally had their way. Both in the case of individuals and the case of organizations, grants offer an incentive--money--that may overcome many resistances.

Once an organization or individual originally accepts a grant, the problem of subversion might occur. That is, the grant may be used for purposes that were not intended. While enforcement can be difficult,

the sanction can be quite useful in this respect. Once a grant is accepted the funds become expected by an individual, or institutionalized into an organization. The threat of withdrawing funds is a strong motivation to comply fully with law. Derthick [1970] thus points out that the threat of withdrawing funds motivated many changes in the Massachusetts welfare bureaucracy, including very controversial re-organization and professionalization of local units.

One might suppose that the nature of the affected group influences compliance to different types of rewards. Thus loosely structured organizations may tend to respond more to individual rewards while tightly structured ones may respond to rewards to the organization as a whole for similar reasons as was expressed with respect to penalties.

Of course, the analysis of sanctions is speculative due to the dirth of useful data. However, one point is clear; sanctions have varying effects on different types of units. Thus the successful application of sanctions must depend upon flexibility. The enforcement agency that is most effective will be able to match the nature of the sanction to the specific case.

Enforcement

It appears obvious that enforcement tends to increase compliance to law. Enforcement presumably has a deterrent effect upon those who may contemplate ignoring or evading a law, while it may be used to directly rectify a violation of the law.

The most effective legal agency should have its own enforcement agents. These individuals should be full-time, specialized employees.

They should be experts in one set of issues, as in the case of an accountant whose only function is to determine the honesty of the books of the regulated organization. Commitment to the enforcement task should be high.

The importance of full-time, specialized agents in the enforcement of any specific law is apparent when one considers the opposite, generalists. The police are the most general enforcement agency, and limitations in terms of enforcement necessarily ensue. A generalist does not have the ability to study a situation in detail, and must make a decision based upon immediate evidence. Further, the generalist has many laws to enforce and can only must decide to enforce some, rather than others. Such problems as police discretion are a necessary result of the situation [Skolnick 1966, Campbell 1971].

The enforcement agents should also be able to fully penetrate the regulated unit. Penetration is necessary to develop an awareness of noncompliance; evasion, especially, is quite common if a detailed analysis of the target's environment is not possible. Thus laws enforced by the police are quite often evaded by those able to comply only to the outward forms police notice. Indeed, grants probably also may be evaded if penetration of an agency is incomplete.

While such enforcement agents are generally part of the governmental apparatus, this need not always be the case. Many laws are enforced only by the courts with the aid of complaintants. In this instance complaintants

or their lawyers are the enforcement agent, and condition for their activity proceed a discussion of impact [Handler 1976].

Once a case of noncompliance is discovered, it is necessary to prove guilt. Obviously, the closer the enforcement agency comes to controlling the guilt or innocence process, the more efficient--though of course not necessarily the more just--will be the enforcement procedure. It is likely that specific rules of proof also favor the enforcement agency, rules that are the exact opposite from what is required under many western systems of government. For example, rules of evidence requiring a preponderance of the evidence rather than proof beyond a reasonable doubt or those giving less say to defense attorneys will produce more guilty verdicts and perhaps more efficient enforcement.

The advantages of control over the process of assigning verdicts can best be demonstrated with respect to an extreme example of a totalitarian means of enforcement. A rather complete picture of enforcement exists in the work of Sprunt [1961] in his study of the Paris Tribunal. He notes that the agency set its own standards of proof, was both the enforcement agency and the administrative agency, used loose standards of proof, and gradually came to limit the role of the defense. The result, of course, was a situation in which very few innocent verdicts were returned.

Integration

While the relation between enforcement and compliance is somewhat speculative, it would at least appear obvious that an agency with specialists, penetration of the enforcement unit, and favorable rules

of evidence would be able to obtain more guilty verdicts. However, some evidence suggests that this is not always the case. Commissions established to deal with discrimination in housing or in employment often in theory had broad powers with respect to enforcement, but seldom used them. Three examples make this evident:

(a) Extensive powers were granted to the Massachusetts Commission Against Discrimination [Mayhew 1968]. The statutes forbid all discrimination in housing and employment, but they left the commission with the power to determine exactly what discrimination was. The commission was thus allowed to establish its own criteria and rules of evidence as necessary. Further, it could actively seek out evidence rather than waiting for complaints, and it had a large number of sanctions at its disposal. However, the commission used few of its powers. It preferred negotiation to confrontation, and often ended its inquiry with voluntary agreements. Further, the commission applied its rules in ways which made proof of discrimination difficult. Often proof that a job action was "solely racial" was required. Finally, the commission did not use its power to investigate cases on its own. Under the circumstances it is not surprising that many dismissals and minimal social change ensued.

(b) The New Jersey Commission Against Discrimination [Blumrosen 1965] had fewer powers than did the Massachusetts organization. It could not be as flexible in its rules of evidence and was more limited with respect to sanctions. Nevertheless, the commission acted in a manner that was almost identical to the Massachusetts counterpart. It waited for cases rather than seeking them out; it required strict

rules of evidence that made proof difficult; it preferred negotiation to sanction. Again, few cases, guilty verdicts, and limited social change resulted.

(c) Berger's [1952] study of the New York State Commission Against Discrimination [1952] evinces a similar pattern. Broad powers in terms of sanctions, rules of evidence, and active intervention were allowed; none were used. As a result a large number of cases were dismissed, and little social change resulted.

The similarities of the three agencies are quite striking. No matter how broad powers were in theory, in practice the agencies were quite meek. All saw few cases, allowed many acquittals, and provided minimal direct social change.

The difficulty in establishing compliance in the three agencies seems to be due to cooptation. The three agencies, the studies note or imply, developed quite close ties with the agencies they were meant to regulate. The rules and procedures adopted were meant to avoid antagonizing these interests.

While some amount of cooptation may be a natural result of the contact between the regulated and the regulator [Blau 1957], it is likely that certain types of integrative mechanisms would limit the problem. That is, the closer the enforcement agency is to the seat of power, and the more committed the source of power is to enforcement, the less cooptation will take place.

Integration avoids cooptation in at least two manners. First, integration ensures that the enforcement agency is not vulnerable to political pressure from regulated groups, and as Mayhew [1968] notes

such pressure is quite important in the hesitancy of discrimination commissions to act. Second, integration is one means by which the commission or enforcement agency can be controlled so that the employees are induced to utilize the sanctions and enforcement techniques at their disposal. In fact, Wirt [1970] notes that agents who were tightly aligned with the central agency in the Justice Department were quite successful in bringing about voting rights changes in the South.

4. USES OF THE THEORY

It should be obvious that the theory developed falls under the category of an ideal type. It assumes that the key to compliance is a combination of legitimacy and power, and it establishes the extreme forms of legitimacy and power possible in law. However, like any ideal type one cannot claim that empirical reality matches the ideal in any form.

One possible reason why empirical laws do not match those mentioned in the ideal type revolves around <u>interactions</u> between elements of the model. For example, it is possible that a trade-off exists between legitimacy and harsh punishments or severe enforcements. Perhaps a government that stresses legitimacy cannot rely heavily on enforcement or broad rules of evidence because use of the latter two tends to limit the amount of legitimacy a regime achieves.

While the effects of all of the elements is clearly interactive, the empirical types of legal apparatus available also fall into patterns. Agencies such as the courts have broad discretion in some senses, yet

are bound by strict rules of evidence, while agencies with broad rules such as discrimination commissions are often found with little legitimacy or integration. In other words, in western society, at least, the agencies are always limited in power. Quite obviously, such limitations are intentional. The American idea of checks and balances is precisely aimed at insuring that unbridled power does not exist in the legal system.

The various combinations do not indicate weaknesses of the ideal type, but strengths. As a preliminary theory, the advantage of the ideal type is that it enables one to begin to ask questions concerning the relationship between elements or the effect of various combinations on outcome. In other words, the ideal type is clearly meant to establish a small number of concepts that can be operationalized, tested against each other, and analyzed in a wide variety of contexts. Perhaps with some such study the legal impact field can advance beyond its current case-study phase.

NOTE

[1]The distinction between compliance and social impact can help sort out many controversies in the legal impact literature. It is especially useful in the controversy concerning Miranda. The impact of Miranda has been differentially assessed by many authors, with some believing that it is quite effective and others disparaging its effects. These differences are largely due to levels of legal impact. Studies concerning formal compliance demonstrate high levels of impact, studies concerning full compliance find more moderate results, while studies focusing on social impact find the least favorable results. Carefully distinguishing compliance from impact can help clarify the discussion by specifying the impact involved.

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