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EMPIRICAL VERIFICATION AND BLACK'S *THE BEHAVIOR OF LAW**

(COMMENT ON GOTTFREDSON AND
 HINDELANG, ASR, FEBRUARY, 1979)

Donald Black's (1976) *The Behavior of Law* was a major contribution to sociology because of the integrative way it brought together propositions about stratification, morphology, culture, organization, and social control to explain variations across time and space in the quantity of law. At last the sociology of law had a genuine theory which could be a focus for formerly directionless empirical work. The strength of *The Behavior of Law* lay in the fact that because it was in explicit propositional form, it was eminently testable.

Sadly, however, in his recent contribution to ASR, Black (1979), out of his own mouth, compromised the value of his theory. Incidentally, in his effort to defend *The Behavior of Law* against a nonsupportive empirical test by Gottfredson and Hindelang (1979a), Black has also neutralized the considerable worth of some of his earlier work (Black, 1970; 1971). This comment is, inter alia, a plea for sociologists to continue to see value in Black's work by ignoring his comment in ASR.

Gottfredson and Hindelang (1979a) have used victim survey data to test whether, in accord with Black's theory, the wealthy, the

employed, the married, are more likely to report to the police events regarded as crimes than are various other groups. The test seemed reasonable as Black states clearly that "a complaint to a legal official, for example, is more law than no complaint" (Black, 1976:3). However, in his ASR comment, Black rejects Gottfredson and Hindelang's use of victim survey data because such surveys require subjects to report only incidents they consider to be "crimes." Hence, the data show only whether people called the police when they considered an incident a crime, not whether some incidents were more or less likely to be interpreted as crimes in the first place. While victim survey data certainly ignore the crucial first-stage labelling process, either the second-stage decision to call the police, given the labelling of the event as a crime, must be relevant to the theory or the theory must become less general than we thought it to be. Gottfredson and Hindelang were able to show that Black did intend the theory to have this level of generality; that he did intend the theory to make predictions about the quantity of law conditional upon the incident having reached some prior stage of processing; and that he did intend victim survey data to be relevant to testing the theory (since Black himself cites such data in support of it).

Black's reversal to the position that his theory cannot explain increments in the quantity of law from one stage of criminal processing to another both limits its generality and renders it untestable in any practical sense. Black (1979) suggests that a relevant test will gather "data based on direct and unobtrusive observation" to ascertain whether any particular type of incident will be more often dealt with legally by one group than another. Black does not address himself to the problem of which types of incidents will be selected for "direct and unobtrusive observation," and how such selection might fundamentally affect conclusions drawn.

In practical terms, we can never get into the offices, the bedrooms, and the boardrooms in order to observe an unbiased sample of the quantity of law arising from "the universe of incidents people experience in their everyday lives" (Black, 1979:20). Through his ASR comment Black has transformed what was a testable general theory about increments in the quantity of law into an untestable collection of ideas.

Gottfredson and Hindelang's examination of reporting of crimes to the police uncovered little support for Black's theory as originally stated. What they did find was that the "seriousness" of the offense, as measured by the Sellin-Wolfgang (1964) index was strongly pre-

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dictive of the quantity of law. Black (1979) correctly retorted that perceived seriousness is a matter of value, not fact; a response to crime, not a characteristic of it. Gottfredson and Hindelang have therefore simply explained one response to crime with another. Black makes much of this. He likens it to explaining the response to an idea with its "truth." Black seems to be suggesting that there is something inherently unsound about this. If one were to say that Donald Black never wrote a book called *The Behavior of Law*, sociologists would reject this assertion because it is not true. In this case, explaining the rejection of the idea with its lack of truth would not only be sound, but it would also be the best explanation possible. The problem with Gottfredson and Hindelang's explanation is not that it is unsound, but that it is banal.

It is hardly telling for Gottfredson and Hindelang to denigrate the predictive power of Black's theory by suggesting that the gravity of the infraction against legal norms is a better predictor than Black's stratification, morphology, culture, organization, and social control. Imagine a critique of a theory about what training method is best for weightlifters which points out that how heavy the weights are is a better predictor than are training methods used.

Black's more general point is that Gottfredson and Hindelang's preoccupation with seriousness is evidence that the sociology of law has yet to escape the common sense of the people it studies. This point is well taken. However, the blanket rejection by Black of the use of the seriousness concept, to the point of repudiating his own studies on the severity of sentencing controlling for seriousness (Black, 1970; 1971), goes too far. In the weightlifting analogy above, while it is banal to use weight as an *explanation*, it would be negligent not to use weight as a *control*. Similarly, a study of sentencing which fails to control for the perceived seriousness of the offense is methodologically unsound since the purpose of such work is to determine whether incidents which are perceived as equally serious when decontextualized are dealt with as incidents of unequal seriousness when placed in certain social contexts.

Black persuasively hammers home the seriousness question because it is the weakest part of Gottfredson and Hindelang's (1979a) analysis. However, Gottfredson and Hindelang (1979b:4) correctly point out that even if seriousness variations were deemed irrelevant to Black's propositions, then the validity of the propositions should be assessed by collapsing across the rows (representing different seri-

ousness levels) in their tables. When this is done, the fact remains that the data provide little support for the propositions.

Taking Black's theory in its "proximally conditional" form, data from the Australian crime victims survey will now be used to confront the same propositions selected by Gottfredson and Hindelang for test on American data. The importance of testing the theory of law in a variety of cultures hardly needs to be argued. The methodology of the survey has been described in detail elsewhere (Australian Bureau of Statistics, 1979; Braithwaite and Biles, in press), and is not substantially different from that of the American surveys.

The data have not been disaggregated by seriousness, but have been disaggregated by offense in tables which are not presented in the text. In an attempt to strengthen the generalizability of Gottfredson and Hindelang's empirical test, this replication is on a wider selection of offense types—motor vehicle theft, robbery with violence, theft, break and enter, rape and attempted rape, assault, and nuisance telephone calls, as well as fraud, forgery, and false pretenses.

The first proposition tested by Gottfredson and Hindelang was that the quantity of law varies directly with social rank. Their data, contrary to the theory, show no relationship between family income and reporting to the police. Table 1, part A, shows that in the Australian data there is also no association between household income and reporting to the police. This remains true for seven of the eight offense types when totals are disaggregated by offense. The notable exception is the category of fraud, forgery, and false pretenses which shows a markedly higher rate of reporting to the police among high-income victims.

The second key proposition addressed by Gottfredson and Hindelang is that law is inactive among intimates and is used increasingly as relational distance increases. Black has predicted that since, up to a point, relational distance will increase with city size, the quantity of law will be positively associated with city size. Gottfredson and Hindelang found that, if anything, the reverse was slightly the case. From Table 1, part B, it can be seen that, in Australia also, the data do not support the prediction that reporting to the police will be greater in larger cities. Assault was the only individual offense type which showed a trend in support of the prediction. Assault was twice as likely to be reported to the police in cities over a million than in cities and towns under 50,000.

A more direct way of tapping the relational distance aspect of morphology than that tested

Table 1. Percentage of Victimizations Reported to the Police, by Selected Predictors

A. Weekly Household Income						
<\$80	\$80-139	\$140-199	\$200-259	\$260-339	>\$340	
34%	31%	43%	38%	34%	41%	
B. City Size						
500-50,000	50,000-100,000	100,000-500,000	500,000-1,000,000	>1,000,000		
33%	43%	41%	38%	37%		
C. Residential Mobility						
Low	Medium	High				
37%	36%	39%				
D. Victim's Knowledge of Offenders						
Knew at least one offender		All strangers				
26%		42%				
E. Relationship between Victim and Offender (Where offender known)						
Family member	Other relative	Close friend	Speaking acquaintance	Knew by sight		
20%	50%	23%	26%	34%		
F. Marital Status						
Never married	Now married		Widowed	Separated or divorced		
34%	36%		38%	44%		
G. Employment Status						
Not in the work force		Unemployed	Part-time	Full-time		
28%		30%	35%	42%		
H. Education Level						
Still at school	Never attended or left school under 15		Left school over 15	Trade or technical	Tertiary	
31%	21%		38%	39%	41%	
I. Number of Offenders Involved in Incident						
1 only	2	3, 4 or 5	6 or more			
26%	45%	52%	70%			
J. Time of Day at Which Incident Occurred						
6 a.m.-Noon	Noon-6 p.m.	Unspecified daytime	6 p.m.-Midnight	Midnight-6 a.m.	Unspecified nighttime	
35%	34%	34%	38%	58%	39%	
K. Location of Incident						
Inside home	Near home	At work	Inside public areas	Outside public areas	In a motor vehicle	Other
35%	30%	55%	40%	41%	49%	56%

by Gottfredson and Hindelang is through the residential mobility of the respondent in the years preceding the interview. Respondents who have been geographically mobile should be at a greater relational distance from those around them than people who have lived in the same spot all of their lives. Table 1, part C, shows no relationship between an Australian Bureau of Statistics' residential mobility index and reporting to the police. Nor was there a tendency for high residential mobility to be associated with high reporting to the police on any of the eight individual offenses.

Relational distance is clearly greater in the situation in which offender and victim are strangers than in one in which they are acquainted. While Gottfredson and Hindelang showed only a moderate tendency for offenses to be more likely to be reported when the of-

fender was a stranger, this tendency was quite strong in the Australian data (Table 1, part D). Moreover, the Australian data clearly suggest (Table 1, part E) that where the offender is more intimately known to the victim (family member, close friend) the offense is less likely to be reported than where the offender is less intimately known (speaking acquaintance, knew only by sight).

The next proposition tested is that law varies directly with integration into the center of social life. Black specifically proposes that married and employed people are more integrated than unmarried and unemployed people. Gottfredson and Hindelang found support for the prediction that married people would be more likely to report offenses, but they found no support for higher reporting by those employed compared with those unemployed. The

support for Black's theory on the marital status question was not replicated on the Australian data. Apart from a tendency for separated or divorced respondents to report more victimizations to the police, there was little variation according to marital status (Table 1, part F). The one exception by offense was with assault. Respondents who had never been married reported assault victimizations to the police at only half the rate of both those who were married and those who were separated or divorced.

On the employment variable, the Black prediction is supported by the Australian data. People working part time were more likely to report offenses than the unemployed, and people working full time more likely to do so than both people in part-time employment and the unemployed (Table 1, part G). In the present study, persons keeping house were classified as "not in the work force," for the purposes of testing Black's prediction about morphology, whereas Gottfredson and Hindelang classified these people as "employed." Clearly, if persons keeping house had been classified as employed in the present study, the trend supportive of Black would have been greatly diminished.

Black's proposition that law varies directly with culture was operationalized through the indicator of culture suggested by Black: level of education. Gottfredson and Hindelang found a weak positive association between education and reporting to the police. This trend receives strong confirmation in the Australian data (Table 1, part H), and there were no individual offense types which provided significant exceptions to the aggregate trend.

Black hypothesized that "law is greater in a direction toward less organization." In operational terms, Black suggested that more organized offenders (a group of offenders) are more likely to have the law used against them than less organized offenders (a lone offender). Moreover, more organized victims are more likely to use the law than less organized victims. Data are not available from the Australian victims survey on number of victims. However, data are available on the number of offenders. Contrary to Black's prediction, the Australian data show a strong tendency (consistent across offense types) for recourse to the criminal justice system to increase as the number of offenders increases (Table 1, part I). This contrasts with only a very slight tendency in the same direction in Gottfredson and Hindelang's data.

The theory of law asserts that, in settings which permit people to continuously observe and react to each other's conduct, law is less

important as a mechanism of social control. "When people go to sleep, for instance, most social control relaxes as well and law increases" (Black, 1976:110). Consistent with this prediction, for both the American and Australian data there were clear tendencies for reporting to the police to be greater for offenses occurring between midnight and 6 A.M. (Table 1, part J).

More crucially, Black maintains that in private settings more nonlegal social control exists, so less law is required than in public settings. Gottfredson and Hindelang produced the surprising finding that their most public setting ("on the street") evidenced a lower rate of reporting to the police than their most private setting ("own home"). Table 1, part K, shows that in the Australian survey the expected finding—that "inside home" and "near home" had lower reporting rates than "outside public areas"—applied. However, "at work"—a more private setting than "outside public areas"—showed the highest reporting rate of all settings.

In summary, the data from the Australian national crime victims survey are almost as discouraging as data from the United States survey in the way in which they refute most of the predictions which have been derived from Black's *The Behavior of Law*. These tests—even though they are on more massive data sets than would be available for any alternative type of verification—are only very partial tests of a theory meant to apply to many other domains. The theory is relevant to the social construction of the event as a crime which occurs prior to a decision about reporting to the police, to a number of stages of processing through the criminal justice system which are subsequent to reporting to the police, and to an infinitely wider range of justiciable types of conduct than the eight which are the subject of this paper and the four which are the subject of Gottfredson and Hindelang's paper. It is a pity that Black has so counterproductively erected the barricades at the first discovery of disconfirmatory data. It may be that his theory can accommodate them.

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TRITE BUT TRUE*

(RESPONSE TO BRAITHWAITE AND BILES)

Braithwaite and Biles support our critique of Black's (1979) response to our test (Gottfredson and Hindelang, 1979a) of his theory found in *The Behavior of Law* (1976). They find value in, and essentially replicate, our empirical work.¹ They also see the difficulty in reconciling Black's original presentation of his theory with his subsequent defense of it, and they agree with our argument that to accept Black's "explication" is to accept the conclusion that his theory is not falsifiable.² For all these rea-

sons we quite naturally agree with the bulk of Braithwaite and Biles's comment on our paper.

With respect to our use of the concept, "seriousness," however, Braithwaite and Biles restate the position adopted by Black in his comment on our paper. This position, central to the labelling approach to law, is that legal reactions can be explained without reference to individual conduct. Black (1976; 1979) adopts this labelling premise, and when we invoke a measure of conduct and its consequences (the Sellin-Wolfgang [1964] seriousness scale) as a rival hypothesis he counters with the argument that we have explained one response to crime with another (Black, 1979:25). Braithwaite and Biles repeat this assertion, telling us that the seriousness measure we used is "a response to crime, not a characteristic of it" (1980:335).

This interpretation of our use of seriousness has little connection with what we did. However, a theory that denies the relevance of conduct, but which is confronted with evidence of its superior predictive power relative to propositions derived from the theory, is left with few alternative strategies other than to define the rival hypothesis as synonymous with the criterion.³ Thus, Black (1979) and now Braithwaite and Biles (1980:335) argue that seriousness cannot be used to explain calls to the police because, in effect, seriousness is the same thing as calls to the police (and therefore is a "banal" explanation).⁴

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¹ We are, however, prohibited from appreciating the full significance of their data for Black's theory because they are not fully displayed. It is usually standard practice to indicate the numbers of cases upon which percentages are based when offering data as a test of ideas. In the absence of these numbers, and in the absence of a measure of association, we are not able to judge the relevance of some of the tables they present to the theory. (The total sample may be sufficiently large for some of the tables presented, but we are, quite frankly, unsure about those which rely on small parts of their data—e.g., Table 1, part "E".)

² Braithwaite and Biles (1980) suggest that Black's (1976) theory, when viewed in its "proximally conditional" form (Gottfredson and Hindelang, 1979b), is of research interest and therefore sociologists should ignore Black's (1979) discussion of his theory in relation to our work. Although we agree with their premise, it is difficult to abide by their conclusion. After all, the theorist must be the ultimate arbiter of "what the theory means" in such jurisdictional dis-

putes. Thus, we are forced to conclude that the inconsistencies (apparent to us and to Braithwaite and Biles) between Black's presentation and defense of his theory are resolved by Black's (1979) response. If his response is accepted, then, for the reasons stated in Gottfredson and Hindelang (1979b), Black's collection of ideas is not falsifiable; in any event, it can hardly be ignored, as Braithwaite and Biles suggest (1980:334).

³ A priori, it would have seemed that this strategy would be more persuasive when the theory being tested also is predictive of the criterion. In such cases the field must choose between empirically established, but theoretically incompatible, predictors. But apparently this strategy is also useful in cases—such as this—in which one of the competitors has virtually no demonstrated explanatory power with respect to the criterion (i.e., Black's [1976] theory, in relation to calling the police).

The labelling perspective has other strategies that are useful for coping with the problem that conduct is a major correlate of legal reaction. Some of these strategies—such as invoking the claim that even a trivial amount of explained variance is of theoretical interest—have been discussed in the literature (e.g., Tittle, 1975).

⁴ Braithwaite and Biles confuse us with their attempt to mediate the dispute between ourselves and