

Perils of Value Neutrality

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Whenever the person of science introduces his personal value judgments, a full understanding of the facts *ceases*.

– Max Weber, “*Science as Vocation*”

Scientific inquiry strives to advance human values, but for a long time we have been advised to set those values aside before we undertake it. Joined at the hip in the work of enlightenment thinkers like Adam Smith and David Hume (e.g. Haakonsen 1981), moral and social inquiry have since come apart.

Max Weber made the most famous case for the divorce when he took over as editor of the *Archive of Social Science and Social Policy*. Lamenting that the journal had become associated with the pro-labor agenda of its narrowing circle of contributors, he worried that this partisan slant would stifle free inquiry and blind its readers to “uncomfortable facts” (1949: 58). He instructed the *Archive*’s contributors:

In the pages of this journal, especially in the discussion of legislation, there will inevitably be found social *policy*, i.e. the statement of ideals, in addition to social *science*, i.e. the analysis of facts. But we do not by any means mean to intend to present such discussions as ‘science’ and we will guard as best we can against allowing these two to be confused with each other. . . .It should be made explicit just where the arguments are addressed to the analytical understanding and where to the sentiments. The constant confusion of the scientific discussion of facts and their evaluation is still one of the most widespread and also one of the most damaging traits of work in our field (1949: 60).

As long as social scientists drew a clear distinction between moral commitments and factual discoveries, they could serve practical ends without squandering their objectivity. The scientific task was to identify the best means to given ends, leaving questions about the ends themselves to philosophy and personal conscience (1949: 53). Weber elaborated this stark picture in various ways, and his full account is more complex than this capsule summary suggests. But it is the

oversimplified version that became a rallying cry for much of 20th and 21st century social science, which pushed moral reflection and the academic disciplines that engaged in it to the margins.

Throughout his long career Phillip Selznick rejected that cry. His first flurry of work in organizational theory culminated in *Leadership in Administration*, which insisted that any value neutral view of organizational leadership missed its defining features. By defining the leader as “primarily an expert in the promotion and protection of values” (1957: 28), charged with channeling adaptations in way that would forge and preserve an appropriate organizational character, Selznick made it difficult to draw the sharp distinction between facts and ideals that Weber’s followers wanted. As Hugh Heclo archly observed, “this was not what might be called value-free description” (2002: 297). Soon he brought the same approach to legal sociology, insisting that law is an inherently normative enterprise committed to reducing the sway of arbitrary power over individuals (Selznick 1961); studying the human resource practices of private firms, he found an implied commitment to norms of due process that his analysis aimed to elaborate (Selznick 1969). By the time he wrote the *Moral Commonwealth* and *The Communitarian Persuasion* his work had shifted from morally informed sociology to sociologically informed moral philosophy.¹ In all this work Selznick provides a stark contrast with the model of value neutral inquiry that has dominated American social science (O’Connor 2007), advocating the reintegration of moral philosophy with social science (Selznick 1992: xiii-xiv, 37).

The Weberian tradition that Selznick challenged emphasizes the perils of moral engagement in scientific study—the risk of wishful thinking it supposedly brings, the alleged impossibility of learning “ought” from “is”, and the subjectivity commonly attributed to moral

¹ For a detailed discussion of Selznick’s project, see Krygier (2012), which provides much more background about the continuities and changes in Selznick’s thought over time and the main sources of inspiration it drew from, especially John Dewey and American pragmatism.

commitment—but that diagnosis is at best one-sided.² It is worth asking not just what value neutrality might achieve but also what it sacrifices. What do we lose if we refuse Selznick’s invitation to make moral inquiry an integral part of social science? What are the perils of value neutrality itself?

In this paper I will try to answer these questions by investigating the consequences of the effort to bracket moral concerns, focusing on the applied fields like management, law, and social policy that Selznick himself focused on—believing as he did, with Dewey, that scholarship should grapple with the problems of life and practice rather than its own internal debates (e.g. Selznick 1978, 1996; Krygier 2012: 7). There is a larger debate about whether value neutrality is possible or wise in *any* domain of social science (e.g. Nagel 1957; Gouldner 1962; Miller 1979; Sen 1987), and what I say may be relevant to that larger debate as well. But I mainly intend to clarify the perils of value neutrality for applied research designed to inform some practical enterprise. It was on that terrain, as the new editor of a social policy journal, that Weber launched the contemporary debate about value neutrality. Setting out to clarify how social science could be most useful for practice, Weber thought he had arrived at a viable answer: Social scientists should distinguish the moral components of practical deliberation from the scientific components and focus their own attention entirely on the latter. They had no need for the skills and preoccupations of moral inquiry, since value neutral study could still provide useful guidance for practice. Like Selznick (though sometimes departing from his own arguments), I want to argue that the division fails. Value neutrality in applied social science can fatally sever inquiry’s connection to the practical concerns that originally motivated it, and it can distort our understanding of those concerns by recasting them in the scientific mold.

² At worst, it fails on its own terms, as it arguably relies on a faulty understanding of moral reasoning (Anderson 2004; Thacher 2006)

This argument does not necessarily deny that the ideal of value neutrality can serve important purposes. As the incoming editor of a journal whose reputation had been marred by ideology, Weber had good reasons to worry about the potential for wishful thinking to hobble scientific understanding. Value neutrality may safeguard scientific autonomy in subtler ways as well. By setting aside the moral dimensions of social phenomena, social scientists free themselves to conceptualize the social world in scientifically tractable ways—in particular, by isolating phenomena with stable causes and effects (Nagel 1957: 31; Mill 1956: 122). When we define the objects we study in terms of the human values they implicate rather than their scientific properties, we may doom some forms of scientific inquiry from the start.³ These and other virtues of value neutrality are real ones, but the fact that value neutrality has benefits obviously does not entail that it has no costs. (It would, ironically, be a clear case of wishful thinking to assume otherwise.) A clear-headed investigation of them can serve to clarify an important dilemma of social research.

I begin in the next section with a brief look at Selznick's own rationale for making moral inquiry an integral part of social scientific study. The section that follows then pursues the themes he raised in more detail, drawing on philosophical analyses of how facts and values intertwine to argue that value neutral inquiry is not in fact neutral. With that background, I turn to a brief review of recent work on procedural justice in organizations and the law to illustrate the consequences of ignoring this entanglement for the practical concerns that this research aims to inform. Finally, I illustrate the perils of value neutrality in detail with a case study of recent sociological work on the link between disorder and crime. That work has pointedly refused to

³ Arthur Stinchcombe lucidly described this challenge as a basic dilemma of applied research: "One of the fundamental difficulties with applied research generally is that natural variables that create administrative problems generally are not the same variables that have a unique set of causes. Sometimes applied researchers formulate this by saying that a natural variable 'has multiple causes.' From a scientific point of view, this means that the applied researcher is trying to explain the wrong thing" (1968: 42).

interrogate the normative dimensions of its central concepts, and as a result the practical lessons scholars have drawn from it turn out to be unfounded, despite the wide influence they have had; in the meantime, it has ignored and possibly sown confusion about the hard moral questions the police need to answer.

Selznick's Humanistic Science

Although he practiced it from the beginning, Selznick first explained and defended his morally engaged approach to social inquiry as he made the transition from organizational theory to legal sociology. He argued that the attempt to segregate facts from values marginalized or distorted serious study of many social phenomena, particularly those “whose very nature encompasses the realization of values” such as “friendship, scholarship, statesmanship, love, fatherhood, citizenship, consensus, reason, public opinion, culture (in its common-sense and value-laden meaning), democracy” (1961: 88, 86). Concepts like these simultaneously describe and evaluate whatever they are applied to—indeed they evaluate a phenomenon *by* describing it, and describe it partly *by* evaluating it—and philosophers have come to refer to them as “thick ethical concepts” (Williams 1985: 129-30). Selznick argued that value free social science fared badly when it studied the phenomena normally picked out by thick ethical concepts. He lamented, for example, that “in the name of objectivity and rigor, the idea of friendship is left largely unanalyzed,” replaced by “sociometric studies of reciprocal choice or differential association” that “say little about the quality of the relationship” (1961: 87). To bring such topics back into sociology, sociologists would have to engage in moral inquiry, developing morally defensible concepts they could use to classify their observations (1961: 88).

In the study of social systems like formal organizations, the lens of value neutrality gave an especially distorted picture:

There is a strong and understandable tendency to identify what is required for the maintenance of a system with what is required for the *bare survival* of a group or individual. . . In fact, however, systems may decay despite the continuity of individual or group life . . . If an organization maintains its personnel and budget, and even its formal identity, but transforms its effective goals, capabilities, commitments, and role in the community, then too a system has changed. To be sure, *some* systems are indispensable if life is to exist at all; but other systems are required if a certain *kind* of life is to survive (1961: 91).⁴

A major goal of social research in this area was to understand the conditions that allow a social institution not just to survive but to achieve its “master ideals”—the “ideal states” it ought to approximate (1961: 87). *Leadership in Administration* had already advanced this idea: “No institutional leader can avoid concern for minimum conditions of continued organizational existence. But he fails if he permits sheer organizational achievement, in resources, stability or reputation, to become the criterion of his success” (1957: 27). The Tennessee Valley Authority was the paradigm case. The agency’s strategy of cooptation allowed it to survive but at the price of undermining its purpose—of becoming a “conservation” agency that blocked environmental regulations and ravaged hillsides and streams through strip-mining (Selznick 1949, 1992: 338-42). To make such judgments the sociologist had to rely on a defensible normative judgment about what the mission of an agency like the TVA should be.

In places Selznick seemed to minimize the force of these claims, viewing master ideals and thick ethical concepts through the detached eyes of an anthropologist who treats values as data. “None of this is inconsistent with detachment on the part of the observer,” he maintained. “The student of a normative system need not have any personal commitment to the desirability

⁴ Ironically, Weber expressed the same idea: “We must know what kind of action is functionally necessary for ‘survival’, but even more so for the maintenance of a cultural type and the continuity of the corresponding modes of social action, before it is possible even to inquire how this action has come about and what motives determine it. It is necessary to know what a ‘king’, an ‘official’, an ‘entrepreneur’, a ‘procurer’, or a ‘magician’ does, that is, what kind of typical action, which justifies classifying an individual in one of these categories, is important and relevant for an analysis, before it is possible to undertake the analysis itself” (1978: 18). I will return to the question of whether Selznick’s interest in thick ethical concepts really posed a challenge to value neutrality.

of that system” (1961: 87-8). For example, in *The Organizational Weapon* (Selznick 1952) he took the Bolsheviks’ values seriously even though he rejected them (Krygier 2012: 55-65). He reiterated that possibility in his last book, observing that “we may be able to say what makes a burglar successful without necessarily endorsing his actions” (2008: 122). He invoked and apparently endorsed Ernest Nagel’s influential distinction between “characterizing” and “appraising” judgments—between detached judgments about whether a standard has actually been met and committed judgments about whether the standard is a good one (Nagel 1957: 490-5; cf. Jaeger and Selznick 1964: 666; Selznick 2008: 38-9). Nagel had argued that scientists only needed to make characterizing judgments, and doing so did not commit them to any appraising judgment; they could conclude that an animal meets the definition of “anemic” without deploring the conclusion.

In practice Selznick was often more engaged, particularly towards the end of his long career. *The Moral Commonwealth* and *The Communitarian Persuasion*, in particular, engaged explicitly with arguments about what ideals like justice, responsibility, and integrity really require. He wanted to get these concepts right, not just to summarize what people in our culture think about them; he saw no worthwhile boundary between sociology and normative fields like moral philosophy, legal theory, and political theory, all of which he included as “part of the intellectual enterprise we call sociology” (1992: xii; cf. p 37). Earlier works like *Leadership in Administration* were more equivocal on this score, but Hugh Heclo argues that they pursued the same morally committed agenda more subtly: “Selznick moralizes *sotto voce*. The teacher never takes to the pulpit, and even at the lectern his demeanor is that of the righteous pointer-out of things, the gentle *zaddik* who lives out what the community already knows, or should know, is right” (2002: 299).

In these respects Selznick often embraced the stronger view about the place of values in social inquiry. His practice, if not always his words, suggests he felt not just that it is a bad idea to empty social science of thick ethical concepts but that social scientists should try to get those concepts right. “Characterizing” how well an arbitrary standard had been met was typically not enough.

None of this meant that Selznick abandoned social science in favor of a priori moral analysis. He did not import moral standards into the social worlds he studied from academic philosophy, imposing “an external ethic brought to the world like Promethean fire” (1992: 19). Instead, like Michael Walzer’s (1993) internal social critic, he tried to develop and refine appropriate standards through philosophically sophisticated reflection on the complex commitments that people and institutions embraced and the conditions of life they had to contend with. That effort, however, requires much more than the brand of value-free description of existing commitments that guides some forms of survey research or ethnography. It requires engagement with the moral commitments of the people we study on the terms they are typically offered—as claims about which priorities make sense, not just as brute, unanalyzable statements of preference—grappling with their internal contradictions, the traditions they purport to develop, and the substantive problems that prompted them. The goal is to develop a constructive interpretation of these commitments in the light of those traditions and problems that makes them the best they can be (Dworkin 1986; Walzer 1983), trying to determine “what is genuinely valuable” through a “fruitful union of philosophy and social science” (Selznick 1992: xiii).⁵

⁵ I cannot describe Selznick’s methods for doing all this in detail (see Selznick 1992: ch. 1; Lacey 2002); here I only want to stress that moral engagement need not mean imposing *a priori* moral commitments without regard to context. According to Selznick’s naturalistic approach to ethics, “genuine values emerge from experience; they are discovered, not imposed” (1992: 19); if anything, social scientists are better positioned to arrive at defensible normative judgments than philosophers. I examine this aspect of Selznick’s work in Thacher (2006).

The Virtues of Moral Engagement

Despite the ambiguities in Selznick's own position, I want to argue that the stronger version of his claim about the place of values in social inquiry is the most compelling. Anything less threatens to sever the connection between social research and practice that mattered so much to Selznick, allowing inquiry to lose its anchor in the moral framework it will ultimately need to reconnect with to inform action.

A position like Nagel's—the view that the use of normative concepts like “friendship” provides “no compelling reasons for the claim that an ethically neutral social science is inherently impossible” (1957: 494-5)—remains controversial. It rests on the claim that thick ethical concepts can be factored into distinct descriptive and evaluative criteria, making it possible to classify phenomena appropriately without evaluating them, but that assumption has long been disputed (Williams 1986: 141; McDowell 1979; Putnam 2002). If we cannot successfully apply a normative concept like “friendship” to new examples without grasping its evaluative point, then social science must shed its moral detachment to employ these concepts successfully (Anderson 2004: 14).

This is contentious terrain (Millgram 1995; Hare 1952), but there is another response to Nagel. The claim that social science could restrict itself to “characterizing” judgments as a logical matter provides no real defense of moral detachment. Nagel treated the dispute about value neutrality as itself a value neutral question—as a question of whether anything in logic or nature made value neutrality impossible. But the proper approach to science depends not just on the imperatives of logic and nature but also on the human purposes that motivate scientific inquiry in the first place (Kitcher 2001). Medical researchers who studied an arbitrarily defined concept of “anemia”—one that did not necessarily identify an *undesirable* condition—would be

doing bad medical research. The logical possibility of “characterizing” without “appraising” tells us that social science logically could be value free, not that it should.

Nagel’s view treats scientific practice as purely technical, embodying no moral commitments of its own. That assumption does not exactly beg the question—it is the necessary role of values in action, not inquiry, that I want to begin with—but it ignores the interdependence between means and ends that Selznick stressed in other contexts. Selznick did accept that some tools really are just neutral, all-purpose devices for achieving any ends whatsoever, and therefore their standards of excellence do not depend on moral commitments at all. “In one major class of cases,” he wrote, “technique is largely or wholly autonomous. It follows a logic of its own and may serve many different ends. . . Here technique—as technology—is morally neutral; but it is also a potential ‘loose cannon’.” (1992: 326). Often, however, we cannot decide whether a technique is a good one without making a judgment about the ends it makes it possible to advance:

In child-rearing, education, health care, business, and government, including foreign policy and military operations, the line between technical and moral decisions often blurs. . . In these cases, technique is not autonomous. What constitutes a method of education, for example, depends crucially on what we take education to be. . . As the meaning of ‘method’ is enlarged, so too is the continuity of ends with means. As methods lose their autonomy, they become more like art than technology. They require *a pervasive exercise of judgment* rather than the application of a recipe or rule. An artist’s tools and materials have their own imperatives, to be sure, but they must yield at every point to an informing vision (1992: 327, original emphasis).

These are difficult ideas, but it is worth unpacking them for the light they shed on the moral dimensions of social inquiry. I want to view social science itself as a technique, and suggest that it often has more in common with Selznick’s “arts” requiring judgment rather than with the autonomous “technologies” that embody no moral commitments.

Scientific Concepts as Moral Lenses

It is a familiar point that knowledge itself is a scarce and valuable resource, so for that reason alone questions about the form that research should take are not just scientific matters. The choice of research subjects relies on some implicit judgment about the claim that different interests, values, and groups ought to have on social development—specifically, on the development of the knowledge that social development requires. This point is usually noted in connection with the support that science implicitly provides for particular groups. Radical critics of science complain that medical research and agricultural science implicitly favor the first world over the third world because they disproportionately study the diseases associated with obesity and old age and the impact of expensive capital inputs on agricultural yields (Tiles 1987: 295). In the organizational context, I have argued elsewhere that the specific brand of program evaluation research that has come to dominate fields like criminal justice meets the needs of managers and policymakers much better than those of front-line workers (Thacher 2008). This kind of favoritism towards particular groups carries over to the domain of values. Individual studies and whole bodies of research may help society to pursue a particular complex of values in a more sophisticated way, throwing their support to the intelligent pursuit of a specific conception of what government should achieve while providing none to other conceptions. The visions of social development that each scientific discipline helps to advance ought to attract a kind of normative scrutiny that they have rarely received.

All of that said, the support scholarship provides to specific moral purposes runs deeper than the examples of agricultural and medical research suggest. This support involves not just the immediate instrumental contribution it can make to the development of particular interventions; it also involves the morally freighted conceptual scheme that scholarship necessarily relies on, which relates more easily to (and therefore assists) some moral frameworks than others. Hilary

Putnam expressed this interdependency between facts and values in his tale of the Super-Benthamites, who embrace the uncompromising utilitarian view that everyone should always act in a way that will bring the greatest happiness to the greatest number. They apply this logic so ruthlessly that they would have no qualms about torturing a child or punishing an innocent if doing so would in fact raise the general level of happiness. The rest of us would condemn the Super-Benthamites as morally sick, while they would blast us as “prisoners of irrational tradition” (1981: 140). Putnam argued that this disagreement about values would unavoidably lead to divergent perceptions of the facts:

Every super-Benthamite is familiar with the fact that sometimes the greatest satisfaction of the greatest number (measured in ‘utils’) requires one to tell a lie. And it is not counted as being ‘dishonest’ in the pejorative sense to tell lies out of the motive of maximizing the general pleasure level. So after a while the use of the description ‘honest’ among the super-Benthamites would be extremely different from the use of that same descriptive term among us. And the same will go for ‘considerate’, ‘good citizen’, etc. . . . Not only will they lack, or have altered beyond recognition, many of our descriptive resources, but they will very likely invent new jargon of their own (for example, exact terms for describing [quantities of happiness]) that are unavailable to us (1981: 140).

“In short,” he concludes, “it will not be the case that we and the super-Benthamites ‘agree on the facts and disagree about values’.” The Super-Benthamite description of almost any interpersonal situation will differ dramatically from the description we would give. “Even if none of the statements they make about the situation are *false*, their description will not be one that we will count as adequate and perspicuous . . . Even if we put aside our ‘disagreement about the values’, we could not regard their total representation of the human world as fully rationally acceptable” (1981: 141). Because they have different values, they see the world in terms of different facts.

If the Super-Benthamites decamped to the United States and took charge of our social science departments and (especially) our professional schools, they might acknowledge the disagreement about values between themselves and American society but insist that their

research simply provides the facts;⁶ we are free to adapt those facts to our own values (or even ignore them altogether) as we see fit. We would rightfully dismiss that defense of their research priorities. The scientific picture of the world they would develop, while not false, would be irrelevant to our own concerns. It would explain “outcomes” defined in terms entirely foreign to us (consider Putnam’s example of “good citizen”) and provide useless knowledge about the “effectiveness” (defined once again in terms of an outcome we find bizarre) of interventions that we would summarily reject as immoral. The Super-Benthamite science might well even be counterproductive: Many of the concepts we use in our everyday lives are tended to, refined, and even created by scientists (Hacking 1985), so we might over time find it harder and harder to perceive the world in morally relevant ways. Either way, we would have plenty to complain about the way they ran our universities.

The Existentialist Gaze

The advocate for value neutral social science might maintain that this is exactly the problem she wants to solve. In place of a sectarian conceptual scheme like the one the Super-Benthamites use, she wants to create something more ecumenical—something that can serve any moral purposes whatsoever. *That* is why we need to eliminate thick ethical concepts, or at least distance ourselves from their moral connotations.

Unfortunately, neutral concepts are not neutral about morality. If the Super-Benthamites produce a science suited to utilitarian judgment, value neutral science serves the needs of its own moral tribe that we might call the Super-Existentialists. The aspect of existentialism I want to emphasize has been drawn out by the philosopher and novelist Iris Murdoch, who more than anyone else put the topic of thick ethical concepts on the philosophical map (Millgram 1995). In

⁶ Never mind that their utilitarian ethic would forbid such a hands-off attitude!

a series of essays she maintained that existentialism exemplified the impoverished moral life that results when we deprive ourselves of concepts like these.

Murdoch's concerns focused on the picture of the human mind that dominated not just philosophy but also major fixtures of Western culture during the 20th century. That picture drew a sharp distinction between a non-moral faculty of perception and a faculty of willing charged with the whole task of moral judgment. Someone faced with a moral dilemma begins with a neutral, purely factual description of the situation she finds herself in and then sets out on a separate quest to decide which moral principle ought to guide her action. "There is no moral vision. There is only the ordinary world which is seen with ordinary vision, and there is the will that moves within it" (Murdoch 1971: 34); on this view, our moral sensibilities are "switched off in between the occurrence of explicit moral choices" (*Ibid.*, p. 36). Different schools of ethics defend different ideas about how to make those choices—is the most defensible principle the utilitarian principle, a principle of duty, or something else entirely? Or perhaps no rational principle at all can underwrite moral judgment, leaving us with momentous but arbitrary choices familiar from the popular understanding of "existentialism"—but Murdoch pointed out that many otherwise dissimilar views share this basic picture of moral reasoning.

Murdoch challenged that picture at its roots. "Man is not a combination of an impersonal rational thinker and a rational will. He is a unified being who sees, and who desires in accordance with what he sees" (Murdoch 1971: 39). Where the view she challenged puts the burden of moral judgment on the will, Murdoch adapted an idea from Simone Weil (1985) to put that burden on perception: "I can only choose within the world I can *see*, in the moral sense of 'see' which implies that clear vision is a result of moral imagination and moral effort" (Murdoch 1971: 38). The philosophers she criticized (such as her Oxford colleague R.M. Hare) treated the

task of perceiving a situation clearly as unproblematic, unworthy of the ethicist's attention, but she believed that in doing so they missed the really crucial steps in moral judgment:

If we ignore the prior work of attention and notice only the emptiness of the moment of choice we are likely to identify freedom with the outward movement since there is nothing else to identify it with. But if we consider what the work of attention is like, how continuously it goes on, and how imperceptibly it builds up structures of value round about us, we shall not be surprised that at crucial moments of choice most of the business of choosing is already over (Murdoch 1971: 35-6).

The hard ethical problem, then, is not deciding what to do in the face of a neutral, taken-for-granted description of one's predicament, but seeing the predicament correctly in the first place—in particular, seeing it through the lens of thick ethical concepts. When we view a situation through the lens of such concepts, our description already contains the seeds of our ethical conclusion about it, and when it comes time to act there may be no separate decision about what moral principles to apply: “True vision occasions right conduct” (Murdoch 1971: 64). Students of framing and sensemaking in organizations will undoubtedly find these ideas familiar (Schön and Rein 1996; Weick 1995).

Murdoch (1953) believed that the denial of all this in much of 20th century thought generated the existentialist angst that had become so prominent early in her career. To the extent that we strip all evaluations out of our perceptions to arrive at a purely factual description, we defer an overwhelming and ultimately impossible burden of moral judgment until the moment of choice. She worried that the drive to do that had spread further than the philosophical and scientific worlds, particularly through the modern novel, which at its worst had degenerated into a combination of stripped-down journalistic description and existential philosophy—an exploration of the heroic and ungrounded moral choices made by its protagonists (Murdoch 1997: 278-9). That approach to literature, she complained, had “reduced our vocabulary and simplified and impoverished our view of the inner life” with the result that “we are losing our sense of form

and structure in the moral world” (1997: 293). If you picture the world the way Hemingway does, you get the existential angst of Nick Adams as part of the bargain.⁷

The Super-Existentialist is someone who sees the world the way Murdoch criticized, through the lens of purely descriptive concepts emptied of all evaluative connotations. He does not *want* to be “compelled by obedience to the reality he can see” (Murdoch 1971: 40); he does not *want* to “build up structures of value” that leave little need for moral deliberation once a moment of choice arrives (Murdoch 1971: 35). If he did his dramatic moments of choice would lack their *frisson*, and the raw power of his will would be cut down to size. The rest of us, worried about making *good* choices and avoiding paralysis, are not so sure (Millgram 1997). For our purposes, an entirely neutral perspective on the world (assuming that were possible) would simply not be useful (Williams 2000).

Donald Black’s well-known critique of Selznick illustrates the Super-Existentialist in action. Claiming Weber as an ally, Black advocated for a “pure sociology” that replaced value-laden concepts with neutral equivalents, and that simply eschewed topics that resisted such translation. He accepted the validity of what he called “impact” studies—studies “that compare reality to legal ideals with a very plain and specific operational meaning” such as those established in *Miranda v. Arizona* (1973: 43)—but he rejected studies of more ambiguous ideals:

Sociologists, however, may launch these implementation studies where legislation or judicial opinion is considerably more ambiguous than in *Miranda*. In such instances, the ‘impact’ may be difficult to measure. What must be done, for example, to implement *In re Gault*? Though it is generally recognized that *Gault* guarantees to juvenile suspects constitutional rights previously accorded only to adults, the extent of these juvenile rights is not at all clear. Hence it becomes difficult, if not impossible, to identify the degree to which *Gault* has been implemented (Black 1973: 43-4).

⁷ Weber would find Murdoch’s analysis familiar. As rationalization disenchant the world, stripping values out of it, it leaves modern men and women saddled with momentous existential choices; they must choose decisively between “warring gods” but lack any moral reasons for choosing one way rather than another. Since the rise of value neutral science is part of that process of rationalization and disenchantment, Weber found himself ambivalent about his own achievement (Flyvbjerg 2001: 126)

Even worse, he insisted, are studies where sociologists try to “compare legal reality to an ideal grounded in neither statutory nor case law,” such as “rule of law” or “arbitrariness” (1973: 44). In Black’s view, science should avoid such topics altogether, or else it should reduce them to impact studies by simplifying the relevant ideals, translating these thick ethical concepts into unambiguous value neutral substitutes.

Selznick’s morally engaged approach to the sociology of law violated this austere doctrine. Social scientists have no special expertise in the kind of moral concepts Selznick employed, Black insisted; indeed there is no expertise to be had because moral concepts are fundamentally subjective, a matter of entirely arbitrary preference. Moral feeling is one thing, and factual inquiry is another. Thus Black commented on Marxism: “As a scientific theory the Marxian analysis of society and history has no logical implications for political action. Without passing judgment upon the exploitation and growing misery of the proletariat, one could just as well sit back passively and watch history unfold as join the revolution” (Black 1973: 49).

It must be hard to live like Donald Black. Even when he sees nothing but exploitation and misery, he still has significant moral judgments to make—not because there are competing considerations to contend with (it would take too much bloodshed to eliminate the misery) or because the descriptions are inapt (that isn’t *really* exploitation) but because those descriptions simply carry no moral force at all for him. From this austere perspective “exploitation” and “misery” are just characterizing judgments, not the (*pro tanto*) assessments normally conveyed by thick ethical concepts.

Most of us aren’t like Black, but the snapshots of the world we get from neutral social science put us in his shoes, regardless of our own philosophical predilections. We see things through the lens of value neutral concepts (or thick concepts accepted by others that we do not

accept ourselves—concepts we use to characterize rather than appraise). We no longer see friendship, but only reciprocal choice and differential association (or “what *they* call friendship”); we no longer see authority and consent, but only influence and compliance (or “what *they* call authority”) (Selznick 1961: 87; Selznick 1992: 266-7). A social science that describes the world like that systematically deprives us of the moral concepts that Murdoch thought we had to employ to become intelligent moral agents. Sometimes there is little harm in that: The experience in question is not morally complex in the first place, or perhaps we have no intention of using our findings to inform practice. But when social science turns its attention to hard practical choices and insists on viewing them through the lens of neutral concepts, it risks distorting our understanding. By draining morality from the swamp of experience and posing choices on the stark landscape that remains, it may make the choices harder rather than easier. Lacking any moral cues in the images we perceive, judgment has to begin from scratch. Worse, we become blind to important moral considerations altogether.

Austere Justice

Tom Tyler’s remarkable work on procedural justice provides a subtler and more sophisticated example of the perils of value neutrality, and it serves as a good example of those perils precisely because it lies far from the extreme position exemplified by Black. Tyler has contributed to both of Selznick’s major substantive fields—the sociology of law (Tyler 1990; Tyler and Huo 2002) and the sociology of organizations (Tyler and Blader 2000)—and he has aligned himself with aspects of Selznick’s research program (Tyler 2002). But throughout this work he embraces an avowedly neutral conception of the seemingly normative concepts he uses.

Tyler’s influential argument requires little introduction. At the broadest level he has advanced a distinctive account of human motivation, one that treats people as moral actors

concerned with what is “right and proper” rather than self-interested utility maximizers (1990: 178). (Unlike some other students of legitimacy, such as many of those collected in Jost and Major [2005], he does not see claims about “legitimacy” solely as masks that cover the self-interested exercise of power.) In his work on motivation in the workplace, for example, Tyler shows how and why judgments about fairness matter more than self-interest in evoking commitment to an organization. People participate in social groups not just to make exchanges that advance their material interests but also—and more important—to maintain a healthy sense of identity. They want to be part of an organization they can be proud of, and they want to feel that the organization’s authorities and other members respect them. Procedural justice matters because it tells them something about their status in the group, as when “the opportunity to voice one’s views conveys to a group member that he or she is respected and that what he or she has to say is valued” (Tyler and Blader 2000: 105). Tyler’s legal sociology sounds similar themes. Legal institutions cannot always give people what they want or what they think they deserve, but even when they are disappointed they will obey as long as they view legal procedures as fair (Tyler 1990; Tyler and Huo 2002). To evoke cooperation, both managers and legal authorities should invest most heavily in fair procedures rather than the systems of reward and punishment associated with the self-interest model.

Tyler’s vision is an attractive one, but part of the attraction is unearned because it derives from an appraising connotation carried by the thick ethical concepts he insists he has only used to characterize. Such concepts pervade his work: “procedural justice”, “trustworthy” motives, “dignified” treatment, “informed” decision making, and so on. He presents no detailed philosophical analysis of these concepts of the sort one finds in Selznick’s work; he wants to treat justice and these other ideals as purely empirical phenomena, avoiding moral debates about

what they ought to mean. He recently described his own approach to legitimacy as “thoroughgoing in its empiricism” and contrasted it with work like David Beetham’s (1991) that “brings together both [the] normative and the descriptive” (Meares, Tyler, and Gardener 2012: 3). He means to document how the people he studies actually understand ideas like “procedural justice” regardless of whether their understanding is defensible (Tyler 1990: 147-8). He aims to identify the attitudes and behaviors that engender cooperation without regard to whether a philosophically sophisticated critic would be willing to call them “just”.

Tyler takes this approach because he sees himself as working within the tradition established by Weber (Tyler 2004), who aimed to study legitimacy as an empirical phenomenon. Selznick commented on the limits of that tradition in *The Moral Commonwealth*:

Weber wanted to give the idea of legitimacy a clear empirical meaning and, in keeping with his general views on fact and value, he sought to avoid confusing the fact of legitimacy with its moral justification. The easiest way to accomplish these aims was to associate legitimacy with doctrines of one sort or another, without looking behind the doctrines to assess their claims. In other words, Weber thought of legitimation as fundamentally nonrational expression of group or cultural values (1992: 271).

Thus “in Weber’s analysis authority is a form of domination. . . . People who accept a regime as legitimate do so in a spirit of submission” (*Ibid.*). Selznick accepted the merits of a framework that emphasized “the bare fact of acceptance” of government authority as a “starting point”, but he believed the starting point should eventually be transcended. “Such a choice loses its innocence if it is not presented as an integral part of a stronger *theory* that speaks to the dynamics of authority and particularly to the transition from primitive to more elaborated forms. Because Weber was not aware of this logic, or not interested in it, he helped foster a rather crude understanding of what authority entails” (1992: 271; cf Pitkin 1973: 280 ff.). In the meantime, people who defer to “legitimate” authority in Weber’s morally agnostic sense of that term—the sense indicated by the “bare fact of acceptance”—could just as easily be cowed into submission,

hoodwinked, or confused as impressed by a well-founded sense of moral rightness; or conversely they may refuse to go along with official requests unless the authorities pander to their whims.

The “legitimacy” and “procedural justice” that Tyler studies suffer these same ambiguities. Tyler leaves decisions about what kind of treatment to call “fair” or “dignified” to his survey respondents, and he explicitly sidelines questions about whether their standards are overly demanding, overly meek, or simply confused. Perhaps managers have to be downright indulgent, not just fair, to get cooperation; or perhaps they can trick their employees with the illusion of fairness. Either way, the win-win proposition Tyler’s work seems to offer—if the authorities treat people fairly they will *also* get cooperation—disintegrates, and the empirical finding that “procedural justice” engenders cooperation loses much of its force; we are left with a set of tactics for engineering compliance without any reason to think those tactics really deserve to be called fair. As Austin Sarat put it in a long review of Tyler’s most influential book, such findings may help a Machiavellian prince secure obedience from his subjects but not to advance real justice (Sarat 1993: 657-8). That is too harsh, but when we treat social science as an entirely neutral technology by stripping its concepts of moral judgment, it does become a “loose cannon” capable of serving Machiavellian purposes unwittingly. To really clarify whether compliance and procedural justice are compatible, and how best to manage employees when they are not, requires a kind of normative engagement that Tyler disavows.

The alternative, again, is not for a researcher to impose her own standards of legitimacy or those of her favorite political philosopher. It is to engage with moral claims about what makes authority legitimate in the same way that the subjects of our research engage with them, recognizing that *they* do not typically treat the claims they make about “legitimacy” as arbitrary preferences they happen to hold but as objective statements about the world around them—

statements that can be interpreted and criticized using standards the subjects themselves embrace (Pitkin 1973: 280 ff.).⁸ In his own work on legitimate authority, for example, Selznick tried to clarify and draw out the implications of the principles embraced by the associations he studied. That approach led him to develop his influential conception of due process as the reduction of arbitrariness in law and to conclude that private organizations implicitly embraced it, regardless of the overt claims made by those who purported to speak for them.

These are brief and abstract examples, and they may leave the exact contours of the problem I want to call attention to unclear. To bring that problem into focus, the next section will develop a more sustained and grounded example of the perils of value neutrality. I draw the example from my own recent work on one of the boundaries that define the limits of the police role simply because I know the topic well enough to present it in detail. There are good reasons, however, to believe that the problems it illustrates arise throughout the practical fields like legal sociology and organization studies where Selznick did most of his work.

⁸ Social researchers who deny that possibility impose an existentialist ethic on the people they study that those people themselves typically reject. Hanna Pitkin made this point eloquently: “Weber has taken on the stance of the visiting anthropologist, the outside observer looking on, and defined ‘legitimacy’ to mean so-called legitimacy or ‘what they (the natives) call “legitimacy”’. He has refused to take on the commitment and responsibility implied in the word’s signaling functions, trying to take himself as a speaker entirely out of the picture. It is as if he had defined ‘red’ to mean ‘having the status of being considered red’. . . . In seeking to insulate the sociologist from the context of judging and taking a position, Weber in effect made it incomprehensible that anyone might judge legitimacy and illegitimacy according to rational, objective standards. For by what criteria do the subjects whom the social scientist observes make their decision about legitimacy? Weber’s definition gives them no criterion. The necessary counterpart to the ‘objectivity’ of Weber’s social scientist is the total subjectivity and irrationality imputed to the subjects he studies. The positivistic conviction that peoples’ decisions about what is legitimate must be irrational expressions of personal preference is a perfect correlate to Weberian ‘objectivity’ (1973: 282-3)

Disorder through the Eyes of Science

There is a quality even meaner than outright ugliness or disorder, and this meaner quality is the dishonest mask of pretended order, achieved by ignoring or suppressing the real order that is struggling to exist and to be served.

– *Jane Jacobs*, *The Death and Life of the Great American Cities*, p. 15

No one doubts that the police should try to prevent and control serious offenses like homicide and larceny, but since the inception of modern police there has been debate about their proper role in regulating less serious and more common forms of public misbehavior like public drunkenness, indecency, aggressive solicitation, verbal harassment and intimidation, obstruction of walkways, and excessive noise. The term “disorder” has become the most common label for these offenses, and police efforts to regulate them are called “order maintenance”.

The debate about this aspect of the police function underwent a fundamental transformation after James Q. Wilson and George Kelling published their influential essay titled “Broken Windows” in the March, 1982 *Atlantic Monthly*. Writing as advocates for a robust order maintenance role, Wilson and Kelling argued that order maintenance may indirectly reduce serious crime, as unchecked disorder drives law-abiding residents indoors and sends potential criminals a message that a neighborhood is ripe for predation because it has lost control of its public spaces. Though individual acts of disorder often seemed trivial in isolation, if police ignore them they may eventually destroy the neighborhood.

This argument brought the concept of “disorder” into the terrain of explanatory social science, locating it as a step in a long causal chain that may lead to neighborhood deterioration. In the process, the ideal of value neutrality that has so much influence in that terrain altered its meaning. The “disorder” studied by the leading social scientific studies of broken windows have diverged from any defensible concept of disorder that police themselves might rely on.

Order as a Normative Ideal

“Order” is a practical concept; it picks out a condition that police officers should try to create or defend. To play this role appropriately it must define a defensible normative ideal. As Selznick insisted, the only way to understand a concept like this is to engage with the moral and legal questions about what it ought to mean that police themselves must struggle to answer.

Although city and state legislatures have always authorized order maintenance policing through a variety of statutes (particularly the overarching “disorderly conduct” and “disturbing the peace” statutes), in the 1960s and 1970s courts declared many of these laws unconstitutional, forcing legislatures to replace them with new, more narrowly-tailored statutes (Livingston 1997). Many critics worried that order maintenance involved too much discretion and thereby opened the door to discriminatory enforcement. (In some cities police used broad breach of the peace statutes to harass civil rights activists, and others used it as an all-purpose tool for investigating and harassing suspicious people whose suspected crimes could not be proven.) Others complained that order maintenance served as an exclusionary tool for driving out undesirables and enforced a sterile, middle-class homogeneity (Sennett 1970). Still others emphasized how order maintenance weighed most heavily on the poor, who often lived out a greater share of their life in public (Stinchcombe 1963: 157). At the extreme, Jeremy Waldron observed that the condition of homelessness is *defined* by the fact that a homeless person has no unconditional access to private space, so that the rules of behavior in public spaces mark out the extent of his freedom. As a result, the growing enthusiasm for strict order maintenance in the 1980s (including new statutes prohibiting behaviors like sleeping in public and crackdowns on behaviors like public urination) represented a dramatic incursion into the freedom of the homeless to take care of a variety of basic human needs. “What is emerging,” Waldron warned, “is a state of affairs in

which a million or more citizens have no place to perform elementary human activities like urinating, washing, sleeping, cooking, eating, and standing around” (1991: 301).

These concerns about discriminatory enforcement and unjust incursions into the personal freedom of the poor and homeless mark out the limits of legitimate order maintenance. Against them must be arrayed the legitimate interest in the viability of public spaces that has always motivated order maintenance (Thacher 2014). A society where people live out their lives entirely in private spaces could be content with a police focused on protecting life and property, but a society where people spend important parts of their lives in shared public environments needs rules to regulate the sharing. The rise of the great cities during the 19th century brought this more communal kind of society into being. As the institution for social control established to cope with the new challenges posed by the urban environment, the modern police have a central responsibility for tending to those rules (Thacher 2015).

In some cases, individual acts of disorder by themselves make unfair use of public spaces; obstruction and verbal harassment of passersby provide examples. The burdens these actions pose on other people may not amount to “harms” of the sort that comprise the traditional focus of criminal justice, but they undoubtedly qualify as “offenses” in legal philosopher Joel Feinberg’s idiosyncratic sense of that term, which encompasses a wide range of conduct that annoys, frightens, disgusts, or humiliates an unwilling audience. As Feinberg argued, some of these offenses—for example, those deliberately *designed* to offend—may be legitimate concerns for criminal justice (1985: 5-14); in particular, they provide a clear justification for a suitably qualified breach of the peace statute (1985: 46). Moreover, even when individual disorderly acts do not unduly burden other users of public space, they may qualify as accumulative harms—actions like littering and pollution that are trivial in isolation but could make our public spaces

unusable if everyone engaged in them (Feinberg 1984: 225-32). To prevent that we agree to fair terms of cooperation that will keep the accumulated damage below the crucial threshold where inconvenience fades into serious harm.

A defensible conception of order maintenance lies at the intersection of these two broad considerations. Legitimate order maintenance only targets behaviors that make unfair use of the shared urban environment, such as wrongful offenses and accumulative harms, and it does so equitably and with due respect for personal freedom, particularly for the homeless and others with limited access to private space.

Many local governments violate even these minimal standards, but a few illustrate roughly what legitimate order maintenance might involve. In the 1990s the New Haven Police Department worked with patrol officers and community members to develop guidelines regulating police order maintenance. The guidelines develop a complex definition of disorder to serve as a basis for police intervention. (For example, they do not define all cases of public urination as disorderly; instead they instruct officers that “we would be less concerned about a person who urinated publicly if the person attempted to find a solitary location and maintain a sense of modesty than someone who flagrantly exposed him or herself in a highly visible location”.) They then lay out a graduated series of interventions while instructing officers to use “*the least forceful means possible* to achieve [their] purposes” (“while we will not hesitate to cite or arrest offenders, our approach, at all levels of the organization, will be to attempt to get citizens to obey laws and ordinances as unintrusively as possible”).

This brief discussion can only suggest the contours of suitable ideal of order, but it will serve as a useful contrast for the definitions used in social science. I do not claim that any definition that diverges from the concept of order I just described—vague and incomplete as it

is—is for that reason flawed. The discussion so far simply serves as a backdrop for the more specific criticisms of social science definitions of disorder I will make.

The Scientific Viewpoint

Many studies of the broken windows thesis have relied on surveys of neighborhood residents to gauge the extent of disorder. These survey-based studies of disorder vary widely, but most generally ask respondents “how big a problem” they think various categories of disorder are in their neighborhood. The specific categories vary from study to study but have included topics like “people who say insulting things or bother people as they walk down the street” (Skogan 1998: iv), “noisy or unruly teenagers” (Taylor 1998), and “groups of teenagers or adults hanging out in the neighborhood and causing trouble” (Sampson and Raudenbush 2004: 324).

By asking respondents about people who “bother” others, “unruly” teenagers, and groups who are “causing trouble”, the surveys attempt to gather data on *disruptive* public activity, not all public activity. By delegating the normative judgment about what counts as “disruptive” entirely to respondents, however, survey research leaves its crucial concept unanalyzed. In effect, this approach defines disorder as whatever community members disapprove of, regardless of the reasons for their disapproval. The trouble is that the set of behaviors that community members disapprove of inevitably differs from the set of behaviors that police can legitimately restrain (Thacher 2001).

The ideal of value-free social science makes it difficult to conceive of an alternative approach because any alternative would require researchers to second-guess the normative judgments made by their respondents, invoking (if not entirely substituting) their own explicit normative judgments along the way (Habermas 1989; Miller 1999; Fishkin 1997). Researchers might do that by designing survey questions that direct respondents’ attention more forcefully

towards problematic behaviors defined by a specific conception of disorder. The cost of doing so, however, would be to entangle the researchers in the moral controversy about what disorder is (Swift 1999). In the meantime, the normative reticence of survey research makes it impossible to tell whether the respondents' own definition of disorder reflect a morally or legally defensible conception. We have no way of knowing whether the behaviors that order maintenance might legitimately target coincide with those captured by surveys of neighborhood residents.

Observational studies of disorder arose partly out of concerns like these. Survey researchers have recognized that answers to survey questions could reflect the respondents' biases and projections as much as objective neighborhood conditions (*e.g.* Skogan 1990: 53). Sociologists Robert Sampson and Stephen Raudenbush argue that in fact they do, writing that "stereotypes loom large when residents are not trained as systematic or neutral observers" (2005: 320). To avoid these concerns, they developed a scientific measure of observed disorder that dispensed with the potentially distorting viewpoint of neighborhood residents. Their research, first published in the 1999 *American Journal of Sociology*, has been by far the most influential, ambitious, and meticulous study of the broken windows hypothesis.

Sampson and Raudenbush's project carried out a detailed program of systematic social observation (SSO) during the summer and fall of 1995. The SSO project sent several research assistants from the National Opinion Research Center (NORC) driving rented SUVs into a stratified random sample of Chicago neighborhoods to videotape physical and social disorder. The research assistants then watched the videotapes and recorded the amount of disorder observed on each of 15,141 "face-blocks" (single sides of a city block) using an explicit set of coding instructions. The publications this research produced (Sampson and Raudenbush 1999,

2004, 2005; Raudenbush and Sampson 1999), the coding manual used by their research team (NORC 2006), and the dataset itself (ICPSR 2007) document their concepts and methods.

In explicating the concept of disorder, Sampson and Raudenbush did not pursue the kind of moral inquiry found in Selznick’s discussion of his central concepts; indeed, they explicitly rejected it. Arguing that criminologists should conceptualize disorder as “sharing a similar causal structure and thus predicted by similar causal mechanisms” as serious crime (1999: 608), they observed that moral distinctions would interfere with this conceptualization: “Although ordinance violations like drinking in public and many ‘soft crimes’ like graffiti may not be judged as particularly serious, this is an evaluation or classification issue and not a statement on etiology” (*Ibid.*). Apart from these brief suggestions that disorder should be defined by the causal network in which it is located rather than its moral status, Sampson and Raudenbush said little about its meaning, noting only that “by social disorder, we refer to behavior usually involving strangers and considered threatening, such as verbal harassment on the street, open solicitation for prostitution, public intoxication, and rowdy groups of young males in public” (1999: 603-4).

The operational definition Sampson and Raudenbush used to collect data sheds more light on what substantive behaviors the definition of “disorder” covers. The SSO project defined social disorder using eight categories; the table below lists each category of disorder together with the number of faceblocks (out of 15,141 total) where the SSO researchers observed it:

<u>Type of disorder</u>	<u>Number of faceblocks</u>
Adults loitering or congregating	861
Drinking alcohol in public	20
Peer group with gang indicators present	20
Public intoxication	18
Adults fighting or arguing in a hostile manner	12
Selling drugs	12
Prostitutes on the street	11

By far the most prevalent form of disorder falls into the category “adults loitering or congregating”, which accounts for nearly 90% of the social disorder observed in the SSO. The NORC coding manual defined this category as any group of “three or more adults”, with the exception of “a group of people waiting for a bus” (NORC 1995: 13).

A dispute about Chicago’s anti-gang loitering ordinance that unfolded at the same time that the SSO project collected its data can serve to clarify how broad the NORC definition of disorder is. During the summer of 1995, when filming for the SSO project was underway, the city of Chicago received widespread attention to a gang loitering ordinance that empowered police to disperse any group of people loitering on the street “with no apparent purpose” if at least one member of the group was a known gang member. The Chicago Police Department then issued a general order implementing the ordinance that restricted the enforcement authority mainly to designated members of the CPD’s gang unit and to specific areas of the city “in which the presence of gang members has a demonstrable effect on the activities of law abiding persons in the surrounding community” (*Chicago v. Morales*, 527 U.S. 41 at 48). The city passed the ordinance in response to complaints that gang members were menacing city residents and that police were powerless to put a stop to this intimidation.

By December, an Illinois appeals court had declared the ordinance unconstitutional, and eventually the U.S. Supreme Court agreed. The courts found the ordinance unacceptable largely because it “drew no distinction between innocent conduct and conduct calculated to cause harm” and therefore “reach[ed] a substantial amount of innocent conduct” (*Chicago v. Morales* at 6, 16). For example, “a group of people innocently sitting in a park discussing their future would be arrested” (*Chicago v. Morales* at 57), and “a person waiting to hail a taxi, resting on a corner during a job, or stepping into a doorway to evade a rain shower” might also risk arrest if they did

these things in the presence of a gang member (*Chicago v. Morales* at 6). Along the way, the Supreme Court noted that the city could (and had) passed more targeted laws focused on the specific intimidating behaviors that city residents had complained about in their testimony to city council during a hearing about the ordinance. During the same hearing, the only police official who spoke testified that “90 percent” of the incidents of intimidation that residents had complained about in their calls for the ordinance “are actually criminal offenses where people, in fact, can be arrested” (cited in *Chicago v. Morales* at 8). In this spirit, the Court concluded that “a law that directly prohibited . . . intimidating conduct would be constitutional, but this ordinance broadly covers a significant amount of additional activity” (*Chicago v. Morales* at 7).

In the meantime, the anti-gang ordinance already relied on a narrower definition of disorder than the SSO did. The NORC codebook classifies every group of adults as loitering even if the group does have an apparent purpose (other than waiting for a bus) and even if no known gang member is part of it.⁹ And unlike the CPD’s general order, the NORC definition applies to the entire city, not just specific areas where “the presence of gang members has a demonstrable effect on the activities of law abiding persons”.

In these respects, the SSO’s loitering category, which encompasses the overwhelming majority of incidents of social disorder in the study, is doubly overbroad. It is substantially broader than the definition of loitering used in Chicago’s gang loitering ordinance, and the definition used in that ordinance is itself unconstitutionally crude; the U.S. Supreme Court and multiple appellate courts declared it unconstitutional precisely because it treated a wide range of

⁹ Elsewhere the SSO documentation mentions “waiting in line for a store to open”, and Sampson and Raudenbush state that the definition of loitering excluded people “waiting for scheduled activities or business” (2005: 326), but the codebook instructions themselves only list waiting for a bus. In any case, the category of groups “not waiting for scheduled activities or business” is itself substantially broader than the category of groups “loitering with no apparent purpose”. A separate category in the SSO coding scheme recorded the presence of “peer group with gang indicators present”; 20 instances appear in the database.

innocuous conduct as actionable disorder. Absent more specific misbehavior, a group of adults would not qualify as “disorder” under any reasonable definition of that concept.

The NORC definition of loitering encompasses behavior that is not only constitutionally protected but also, in the estimation of urbanologists William Whyte and Jane Jacobs, a positive sign of neighborhood health. Based on a systematic observation of public spaces designed to inform New York City’s open-space zoning code, Whyte concluded that groups of three were not a sign of threatening disorder but a sign of vitality: The most vibrant and well-used spaces also had the most *groups* of people, both in absolute numbers and as a proportion of all social units (Whyte 1988: 10, 55). Jacobs also criticized the idea that groups of people on public streets were a sign of decline: “Reformers have long observed city people loitering on busy street corners, hanging around in candy stores and bars and drinking soda pop on stoops, and have passed judgment, the gist of which is, ‘This is deplorable! If these people had decent homes and a more private or bosky outdoor place, they wouldn’t be on the street!’” (1961: 55). To the contrary, Jacobs insisted that these impromptu public gatherings served as the foundation of neighborhood social control, arguing that “the trust of a city street is formed over time from many, many little sidewalk contacts” (1961: 56). Any time any of this casual socializing brings a couple together with an acquaintance on the sidewalk (as when Mr. Koochagian the tailor accepts compliments on the window plants he is watering from two passers-by in a middle act of Jacobs’s celebrated “Hudson Street Ballet”), the participants qualify as disorderly according to the NORC manual’s definition.

I have focused on loitering because it dominates the incidents of disorder recorded in the SSO database. Some of the SSO’s other categories of disorder are less vulnerable to concerns about overbreadth. Nevertheless, even behaviors like public drinking, which the NORC

codebook defines as all instances of public consumption of alcohol except drinking on restaurant and bar patios (NORC 1995: 14), may be technically illegal but not real subjects of police order maintenance. For example, Officer Kelly, who served as Wilson and Kelling's central example of order maintenance policing, tolerated drinking on side streets so long as the bottles were kept in paper bags. He absolutely prohibited drinking only at the neighborhood's main intersection, and he roused drunks only when they lied down on the stoops or sidewalks or disturbed pedestrians. By contrast, the NORC manual codes any visibly drunk person as disorder (1995: 14). "Adults fighting or arguing in a hostile manner" is the least problematic category of disorder in the SSO dataset (and also the most ethically freighted, defined as it is with the thick ethical concepts "fighting" and "hostile"), but the NORC coders observed it only 12 times in 15,141 observations gathered over three months.

Why did the SSO researchers use such blunt definitions to operationalize disorder? The researchers' own accounts repeatedly stress concerns about reliability, which militates for unambiguous definitions. In previous research NORC had found that neighborhood conditions were "extremely difficult to train observers to rate objectively", and the data collection team introduced several innovations to address that challenge (such as the use of videotape, which improved quality assurance by moving coding from the street to the office) (Carter, Dougherty, and Gregorian n.d.). The coding rules described above were finalized during pilot analyses designed to improve interrater reliability. After an initial training, each analyst coded a sample of 90 block faces, and NORC revised the coding procedures in light of the discrepancies that arose (Earls *et. al.* 1995: 5). Undoubtedly the original definition of disorder had already been developed with reliability in mind.

It is easy to appreciate the problems that would result from anything like the moral and legal definitions of disorder discussed earlier, which clearly could not pass NORC's reliability tests. Even the definition of disorderly loitering that Sampson and Raudenbush used in their survey research—"groups of teenagers or adults hanging out in the neighborhood and causing trouble" (2004: 324)—probably could not support a reliable coding algorithm because different raters might often disagree about whether a group was "causing trouble". Regardless, such assessments require potentially controversial normative judgments inconsistent with the ideal of value neutrality. Again, survey research about disorder avoided (or at least concealed) this difficulty because it effectively turned the coding decision over to survey respondents, but in both cases the ideal of value-neutrality limits the available definitions of disorder. While in survey-based studies that ideal entails that researchers cannot question their respondents' own normative judgments about what qualifies as "disorder", in observational studies it entails that coders themselves cannot make normative judgments about what counts as "causing trouble". Since value-neutral coders could agree about whether there was a group of three or more people standing on a sidewalk but not whether the group was "causing trouble", something like the first definition appears to be the only tractable one for observational research focused on reliability.

Two Concepts of Disorder

In these respects, the recent social science literature about order maintenance defines disorder in a way that is foreign to any practical concept that police could legitimately rely on. There is room for debate about how that practical concept should be understood, and police agencies themselves often rely on conceptions that bear little resemblance to the idealized version I presented earlier. But the definitions of order catalogued here (such as the one based

largely on the number of groups of three or more people visible on the street) do not lie within this legitimate room for disagreement.

This replacement of a practically relevant concept of order by its value neutral analogue raises a number of concerns. The most serious worry is that the scientific concept of disorder will eventually spread more widely into the culture, distorting the understanding that legal institutions and the public already rely on, and impeding the difficult and incomplete task of developing and sustaining a more defensible concept of order. Many people value orderly public spaces without having a clear sense of what that ideal means. The danger is that social science definitions of order will provide this sense (cf. Hacking 1985). I have no evidence that this has happened, and I doubt it is possible to investigate the possibility in a serious way. But when we find ourselves objecting to order maintenance policing because it punishes the poor for living more of their lives in public spaces, or because it illegitimately tries to get rid of the homeless, it is worth asking why we think that is what order maintenance policing amounts to.

A less speculative, but closely related concern is that the surge in scholarly attention to the disorder-causes-crime hypothesis and the value neutral conception of “disorder” it relies on has left a void in serious academic discussion of what that concept should mean (Thacher 2004; Sykes 1987). Years ago academic students of the police like Robert Force (1972) tried to clarify the nature of their order maintenance authority, but today police are increasingly left to wing it, told only that whatever “disorder” is, reducing it will (or will not) also have some impact on crime. This reticence about the moral limits of the order maintenance function abandons an important defense against the abuses it has always been subject to. Accompanied by the claim that order maintenance might serve as an instrument to reduce serious crime, it may encourage a cavalier approach towards the use of police authority against people who are often vulnerable

and despised, and who in any case should not be treated simply as means to the achievement of other people's ends. Once again, setting aside the moral dimensions of a social concept for scientific purposes risks transforming it into a loose cannon.

A final concern is that the discrepancy between these two concepts of disorder makes it difficult to draw clear practical implications from the broken windows literature, even if we restrict our attention to the causal claims that literature emphasizes. Because *order_{science}* and *order_{practice}* name different phenomena, conclusions about the consequences of the former may tell us little or nothing about the consequences of the latter. Sampson and Raudenbush concluded their study with a forceful claim that “the current fascination in policy circles on cleaning up disorder through law enforcement techniques appears simplistic and largely misplaced, at least in terms of directly fighting crime” (1999: 638), and that conclusion has been quoted verbatim in many policy discussions of order maintenance policing (e.g. Harcourt 2001: 88; Fagan and Davies 2000: 475; Burnley 2009: 29). In fact, however, the SSO does not support that conclusion even if we set aside the usual problems of causal inference facing observational studies. Insofar as it tries to provide evidence about social disorder, the SSO tells us that neighborhoods with many groups of people on the sidewalks generally do not have higher crime rates than we would expect given their other measured characteristics. That conclusion tells us nothing about the impact of order maintenance policing on crime because the goal of order maintenance policing is not to eliminate groups of people from sidewalks; it is to ensure that they abide by defensible norms of order. Order is not the absence of public life. It is public sociability within bounds.

Conclusion

Reflecting on the connection between social science and social policy, Weber struggled with the moral commitments that practical engagement requires. He was understandably worried

about the potential for those commitments to undermine scientific inquiry—to blind scholars to inconvenient facts, to entangle them in intractable disputes about moral truth, and otherwise to rob their inquiries of the autonomy that rigorous science requires. Attentive to these perils of moral engagement, Weber ignored the perils of value neutrality itself.

Having considered those perils more closely, it becomes clear that Weber was too sanguine in his assessment of the potential for value neutral science to serve practical aims. A science that avoids thick ethical concepts—or adopts an arbitrary set of such concepts merely to *characterize* social phenomena without caring whether the implied moral judgment they carry provides a morally defensible *assessment*—is not morally neutral but rather assumes an existentialist or subjectivist moral posture that social actors themselves typically reject. When we study “procedural justice” and “disorder” with the scare quotes firmly in place, our findings most easily support the practical concerns of people who do not care what those concepts mean, or who are skeptical that they mean anything at all—nihilists and latter-day Machiavellis who believe that the ends justify the means anyhow. For the rest of us, the findings are at best irrelevant and at worst misleading. They tell us about the consequences of something called “disorder”, but it is not the “disorder” we originally had in mind, nor anything we would want the police to rely on when they make decisions about how to regulate public behavior. Having stripped out the moral claims implied by practical concepts in the name of science, we cannot expect to apply our findings back in the world where those claims matter without distortion.

Weber’s conclusion to the contrary rested on a dichotomy of ends and means—on the view that moral judgments about ends and technical judgments about means occupy distinct and autonomous spheres of thought. For Weber, moral judgment was autonomous because it was arbitrary—“the task of the acting, willing person” who “weighs and chooses from among the

values involved according to his own conscience and his personal view of the world” (1949: 53)—and scientific judgment was autonomous because the ideal of value freedom protects it from moral ideals. The way we describe the world has no implications for the moral positions we can sensibly take, and our moral commitments have no implications for our perceptions.

This view about human judgment was precisely what Murdoch challenged. I have tried to show that if something like her account of practical judgment is right, then the varieties of applied science that mattered so much to Selznick cannot ignore morality to the degree that Weber wanted them to. A value neutral conceptual scheme serves practice badly because it fails to join up with the picture of the world we have to rely on to make intelligent decisions in the end; the moral considerations that demand attention when we go to apply scientific findings cast a shadow back on the conceptual language in which those findings need to be expressed. In that respect, value neutral science is not an all-purpose tool for whatever moral position we might hold. In Selznick’s terms, scientific technique is not “autonomous”: It embodies moral commitments, in that any given piece of science cannot serve any moral system equally well, so good applied science ought to take care to get those commitments right.

How *can* it take care get them right? Answering that question would take, as they say, another paper (Thacher 2006 is one attempt), but it is worth stressing again that moral engagement does not require social researchers to abandon empirical research in favor of *a priori* moral philosophy. Selznick’s own goal was nearly the opposite of that: He wanted to revive a more empirical approach to moral inquiry in place of the abstract conceptual analysis that dominates contemporary ethics (1992: 37). Like John Dewey, he saw values and ethical standards as the tentative solutions that human communities have developed to cope with the challenges they have encountered in their constantly evolving world, and he thought that the best

way to refine them further is to look closely at the nature of those challenges as they actually arise in practice and consider how existing practices can be modified to meet them (Kitcher 2011). That approach to ethical reflection requires more than the rigorous conceptual analysis that traditional moral philosophy has emphasized. It also requires rich historical understanding of the ethical practices that contemporary communities have arrived at, as well as thick description of current practices and the problems they are trying to resolve (Selznick 1992: ch.1; Kitcher 2011). In my own work, for example, I have tried to clarify the purposes of order maintenance policing by taking a close, philosophically informed look at police history and contemporary conditions and then reconsider how the practices we have inherited might be elaborated and modified to best accomplish those purposes today (Thacher 2004, 2014, 2015).

The moral engagement involved in this approach to social research does not require dogmatism—to the contrary, its practitioners need to be at least as willing to revise their initial convictions as value neutral social scientists do (Anderson 2004)—but it may well involve some of the other perils that Weber and his followers worried about. Perhaps it really will prove impossible to carry out some kinds of social science using morally engaged versions of concepts as complex as “disorder” or “procedural justice”. Such concepts may admit to no consensual definitions, and even if they did it might be impossible to measure them reliably and cost-effectively. Worse, there may *be* no generalizable answer to a question like whether $\text{order}_{\text{practice}}$ reduces crime because we have taken no definitional steps to ensure that $\text{order}_{\text{practice}}$ has a stable set of causes and consequences.

Whether or not these are significant losses depends on how successful value neutral science is on its own terms. If bracketing moral concerns makes it possible to provide clear and reliable knowledge about the consequences that some practical intervention will have, then

perhaps—depending on how we reconcile those consequences with other considerations—it will be worth risking the perils of value neutrality. In other cases, value neutral social research has provided little of the guidance for policy and practice it had originally promised because the predictive power of its models has proven so weak (Rein and Winship 1998). (For example, in the order maintenance case, despite three decades of research advocates and critics of the broken windows hypothesis still disagree vigorously about the basic question of whether order maintenance has *any* effect on serious crime.) The discrepancies between scientific and practical concepts that I have stressed make matters even worse. Even if we can generate reliable scientific knowledge, it may prove difficult to apply to the messy and uncontrolled world of practice, where the things we care about and that we can manipulate do not match perfectly with the things our science comprehends (Cartwright 1999). In such cases it simply isn't possible to assess policies and practices based on their consequences; the policies and practices *have* no predictable consequences.

In cases like these, perhaps we should resist the temptation to cast the net of value neutral social science over such a wide range of practical questions. The apparent practical payoffs may dissolve on close examination, and in the meantime the enterprise risks doing real damage to our understanding of difficult but important practical ideas—either by actively distorting them or simply by displacing attention away from the hard work of moral inquiry. In such cases we need a different way of assessing policies and practices. The humanistic approach to social research that Selznick and others have advocated may provide the alternative model of applied research that morally sophisticated practice requires.

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