STUDYING AMERICAN LEGAL CULTURE: AN ASSESSMENT OF SURVEY EVIDENCE

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This paper argues that American legal culture, specifically the complex of public attitudes toward our major legal institutions and values, is truly democratic. The most persistent, although often unexplained, theme in that complex of attitudes is the demand for equal treatment. Americans endorse the ideals of equal treatment and believe that the most glaring defect of the present legal system is its failure to provide such treatment. Yet, as de Tocqueville noted, our ideas of equality are often incomplete; the demand for equal treatment appears to be a demand for equality between oneself and those now accorded preferential treatment rather than a demand that those less favored be treated as well as oneself. Evidence in support of the argument is gathered from survey studies of public attitudes toward the police, lawyers, and courts as well as of their attitudes toward crime, punishment, and civil liberties.

INTRODUCTION

Recent years have witnessed an explosion of survey research dealing with law and legal issues. The sample survey has become an accepted and widely used device in the sociology of law. In particular, it has opened up new vistas in the study of public attitudes toward law and the legal system—phenomena I will refer to as "legal culture." By legal culture I mean "the network of values and attitudes relating to law, which determines when and why and where people turn to law or government or turn away" (Friedman, 1969:34). Legal culture has long been recognized as an important factor in explaining the character, performance, and effectiveness of law and the legal system. Just eight years ago, however, Lawrence Friedman observed that "opinion research that touches on the law is rare" (1969:40). Yet during the fifties and early sixties the work of Samuel Stouffer (1955), Rose and Prell (1955), Prothro and Grigg (1960), Cohen *et al.* (1955), Herbert McCloskey (1964), and Berkowitz and Walker (1967) made major contributions to our understanding of legal culture, and the last ten years have witnessed a rapid growth of interest in and research on the way the public thinks and feels about law and the legal system. This rapid growth resulted from the confluence of long-term intellectual and technical developments with events of more recent vintage. The former gave the empirical, survey-based study

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of legal culture its justification and methods; the latter rendered it particularly timely.

The first of these is a development in jurisprudence. If the application, enforcement, or interpretation of legal rules is a "mechanical" process, then the rules themselves provide sufficient explanation for the operation of the legal system. If, however, the law is so ambiguous and the tasks of application, enforcement, and interpretation so complex and difficult as to leave room for individual choice, then the choices, and the elements influencing them, also become important objects of study. One such element is public opinion. Legal realism advanced the latter view (Rumble, 1968: chapter 1) and thus provided the intellectual justification for research on law and public opinion.

While the realists told us why we should study public attitudes, the technology of polling has provided the primary means for carrying out such studies.[1] Scientific sampling and survey design,[2] gives researchers a useful, if expensive, way of collecting data on public attitudes. The establishment of data archives, such as the Inter-University Consortium for Political Research and the Roper Center, has preserved those data, permitting secondary analysis by scholars without the resources to conduct large-scale surveys.

In addition to these trends in the intellectual history of law and social science research, recent events have given added impetus to the study of law and public opinion. The most important is what might be called the "crisis of confidence," which first surfaced in the late sixties and has remained an important feature of contemporary political life. This multifaceted phenomenon is at once a "crisis of abuse," in which even the administration of justice has proven easily manipulable for purely personal or political ends (Quinney, 1974), a "crisis of neglect," in which the legal system appears caught up in mindless formalism at the expense of substantive justice (Shklar, 1964; Fleming, 1974)[3] and, finally, a

1. The public opinion poll is only one among many techniques for studying legal culture. Ethnographic studies or controlled experiments provide important alternatives. It is even possible, as Lawrence Friedman suggests (1975:209), to decide something about cultural values from studying the structure and substance of the written law. "A consistent structural pattern betrays and describes underlying attitudes. . . . Attitudes and structures interact. For example, the law of wills and succession may tell us a great deal about social attitudes toward property, family and death." Nevertheless, the most direct and perhaps the most reliable way in which to ascertain the state of public attitudes toward law is to ask the public directly. Polling is the mechanism for that kind of direct investigation.
2. Many books are available which discuss sampling and survey design. See, for example, Stephen and McCarthy (1958) and Moser (1969).
3. It is noteworthy that the "crisis of confidence" finds expression on both sides of the political spectrum. The left criticizes due process for being insensitive to important differences among the potential clients and

"crisis of justice and morality," in which people have come to perceive and appreciate the extent to which legal and ethical concerns are divorced and the extent to which law may be the enemy, not the servant, of justice (Fowler and Grossman, 1974). Each of these crises is marked by "the willingness to look upon democratic law as something a good deal less than sacred" (Kateb, 1974:1). Together they have dissolved the belief, once widely shared by academics and legal practitioners, that legal institutions in the United States are supported by a basic and far-reaching consensus concerning procedures and substantive goals. As a result, there has been an increased awareness not only that public attitudes make a difference in the way laws are drafted, enforced, and interpreted, but also that law and legal institutions may be a stimulus for public conflict as well as confidence, an object of suspicion as well as support. The current impetus to survey public attitudes toward law is thus a product of an awakened sense that attitudes are changing and that the nature of the change may cause difficulties for the efficient operation of the legal system.

One major concern of this essay is to employ survey studies of American legal culture to determine the extent to which our legal system is democratic in character. There are many standards that might be employed in making such a determination,[4] one of which directs attention to the nature of the legal culture, "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in society and the polity, about the proper organization and operation of a legal system and about the way law is or should be made, applied, studied, perfected and taught" (Merryman, 1969:2). In this sense, a legal system is democratic if

consumers of law; conservatives criticize it for interfering with the primary social task of preserving order with justice, defined as punishing those who break the law.

4 What does it mean to call a legal system democratic? This is a perennial question in theoretical and empirical studies of law both in the United States and abroad. It can be answered in many ways yet seems not to lend itself to a single satisfactory resolution. Among the most popular answers are the following. A democratic legal system is one in which citizens give their principled acceptance to the basic rules that govern the administration and enforcement of the law and their continuous consent to the people who hold the public office and to the laws and policies they carry out (Kateb, 1974). Or, a democratic legal system is one that provides for direct participation by the citizens in the enactment and administration of the law. It also permits at least occasional participation by the citizens in legal institutions, for instance, on juries. Participation and consent are but two ways of expressing a central idea. Citizens are accorded a special role in a democratic legal system, and its legitimacy is derived from precisely those processes through which the citizen's role is established.

A third way of understanding what makes a legal system democratic directs attention to the substantive outcomes that such a system produces. A legal system is democratic to the extent that its actions comport with such democratic principles as freedom, tolerance, and equality (Cohen, 1971).

its citizens are democrats. What the public thinks about law and the legal system helps establish its character; it would be strange, indeed, to call a legal system democratic if its procedures and operations were greatly at odds with the values, preferences, or desires of the citizens over a long period of time. As Blum and Kalven put it, in a democratic legal system

> the sense and sentiment of the community are indisputably relevant. . . . The legislator has always, as a principal feature of his job, kept closely in touch with the views of his constituents. A traditional function of the jury has been its role in bringing community feelings and values into the formal legal system. The judge, although more restricted, frequently has been called upon to gauge public opinion in deciding great constitutional issues, in altering common law rules and in applying laws which explicitly incorporate community sentiment as a standard. [1956:1]

In addition to its role in indicating the character of a legal system, the study of legal culture is useful in explaining and evaluating the performance of such a system. Insofar as legal institutions are "reactive" they depend for the input of cases and problems on the willingness of private individuals and groups to make legal claims. As Donald Black argues (1973:142), "Each citizen determines for himself what within his private world is the law's business and what is not; each becomes a kind of legislator beneath the formal surface of legal life." The decision of an individual to invoke the legal system is influenced by his perception and evaluation of the law and his prior experience with it. As Friedman suggests:

> Pure legal behavior obviously depends on feelings and attitudes; these are also important in determining whether subjects of the law will form groups, exert pressure on the law for change, act as enemy deviants and the like. Hence, what we call the legal culture must always be taken into account. . . . [S]ocial force, i.e., power, influence, presses upon the legal system and evokes legal acts, when legal culture converts interests into demands or permits this conversion. [1975:193]

Public attitudes toward law and the legal system also help determine the "effectiveness" of law in its regulatory or social control capacity. People who value the fundamental principles on which the legal system is founded, who express support for legal institutions, and who are satisfied with what those institutions do, should more readily comply with the law. If one measure of law's effectiveness is its ability to regulate conduct with as little coercion as possible, then the characteristics of the legal culture contribute to an explanation of why particular institutions or legal policies are or are not effective.

Survey research on American legal culture thus may make important contributions to an understanding of our legal system. Nevertheless, such research has yet to overcome two substantial

difficulties. The first of these is both conceptual and operational; too little attention has been paid to the proper meaning and measurement of legal attitudes and values. Survey studies of legal culture, when read as a body, are a conceptual tangle. Some define and operationalize public attitudes and values by asking simply whether people subject to legal regulations like or dislike those regulations and the structures responsible for enacting them; some are interested in the problem of legitimacy, some in the concept of support, and some never specify their precise focus.[5] At best, a common concern overlays great methodological and terminological diversity.

A second difficulty is theoretical: how shall we understand the influence of attitudes and opinions on the structure and substance of the legal system. As I have argued, survey studies of legal culture are important for what they may tell us about the character, performance, and effectiveness of the legal system. In order to fulfill this promise, they need to demonstrate and explain *how* public attitudes and values impinge on it. The most popular strategy derives from studies of compliance with law. Most studies of compliance assume that legal officials will be limited in what they can and will do by popular attitudes as to what is right and proper and by the public's willingness to go along with official decisions. Thus. the relationship of legal culture and legal rules is primarily a negative one: popular values set the limits of acceptable policy, but not the agenda for positive action. However, even this negative linkage has not been demonstrated. In order to do so with respect to the Supreme Court, for example, it would be necessary to determine whether the level of public compliance with or reaction to Court decisions feeds back and affects either the overall stability of the institution or its decision-making behavior. No survey study of law and public opinion comes close to being able to demonstrate such an impact.[6] More attention needs to be paid to the similarity and dissimilarity between the way citizens and legal officials think about the law (Luttbeg, 1974), the relationship between the "popular culture" and the "internal culture" of the legal system.

In a sense I have begun at the conclusion, that is, I have characterized a body of research in a general way before presenting the data on which these views are based. It is the purpose

5. A recent attempt to employ various measures of these evaluative orientations (e.g., approval, trust, support, and legitimacy) suggests that they may be empirically indistinguishable (Shanks and Citrin, 1975). Nevertheless, they are conceptually distinct and distinguishable.
6. Perhaps the linkage of the cultural, structural, and substantive components of the legal system cannot be demonstrated empirically. More attention needs to be paid to developing indicators and to identifying forms that such a relationship might take.

of this paper to present such data, to describe and assess the current state of knowledge about American legal culture,[7] and to determine whether those findings permit judgments about the character, performance, and effectiveness of the legal system. My major focus is on the sample survey. Some think such surveys are of limited value (e.g., Ehrmann, 1976:9), while others believe they are important tools for studying legal culture (e.g., Wheeler, 1974:10). Although there are surely other ways to analyze the values and attitudes that underlie and support legal institutions, survey research has become a sufficiently integral part of the sociology of law to merit particular attention.

This paper is divided into two major sections. In the first, attention will be focused on some of the major institutions involved in the administration of the law[8] and on some of the policy issues raised by their activities. The second will discuss two aspects of the relation between the citizen and the legal system: mobilizing law and complying with it. In each section four general questions will be addressed:

1. What are American attitudes toward the processes, objects, and activities that comprise the legal system?
2. What factors are important in shaping these attitudes, in altering them or in explaining how they vary?
3. What impact does knowledge of and experience with the legal system have on attitudes toward it?
4. What impact do these attitudes have on individual behavior and system performance?

I. LEGAL INSTITUTIONS AND POLICIES

Are Americans supportive of and loyal to their legal system? The largest group of recent studies of law and public opinion deals with attitudes toward specific officials, institutions, legal policies

7. Limiting myself to American legal culture is not an arbitrary choice. In the first place there is much more survey literature in the United States though there have been significant studies in other countries, e.g., Podgórecki *et al.* (1973). Abel-Smith *et al.* (1973). More importantly the very idea of legal culture seems to suggest that each country or society has its own (Friedman, 1975:199), and close attention must be paid to internal variation within individual countries. A comparison of American legal culture with those of other nations is not manageable in the context of this paper. My strategy has been to take a broad look at several aspects of one legal culture rather than to focus on specific themes in such a way as to make comparison feasible. For a contrasting strategy see Ehrmann (1976).
8. My choice of subjects is, to some extent, dictated by the available evidence. At the same time, I have limited myself to institutions and actors primarily involved in the enforcement or administration of binding social rules intended to regulate social behavior. I have omitted attitudes toward legislative institutions in order to preserve whatever remains of the distinction between political, or law-making processes, and the legal processes of enforcement, administration, and adjudication.

or decisions. Most of this research treats a single set of officials or a single institution. It tends to ignore any interconnectedness that may exist in the way people think about different officials, institutions, and policies. Furthermore, it employs a diverse and confusing array of conceptual strategies which complicates attempts to understand the relationships among these studies and hinders attempts to generalize about their findings.

A. Police

Perhaps the most extensively studied of all our legal institutions is the police (see Table 1, Appendix). Attitudes toward the police appear to develop very early in the lives of Americans (Easton and Dennis, 1969). Several studies report that children, as early as age five, have some understanding of what the police do and, at the same time, display a highly idealized view of police activities (Easton and Dennis, 1969; Hess and Torney, 1967; Greenberg, 1970). The police are typically viewed as powerful, benevolent, and helpful. Attitudes toward police develop alongside attitudes toward the President as the earliest manifestation of the emergence of a "legal consciousness" among children. What this means is that most Americans acquire their first and most lasting view of the law from a conception of one of its enforcement mechanisms. This is not surprising since the police are far more visible and important to children than are lawyers, courts, or other legal institutions. But it helps to explain why most adults, as well as most children, more easily understand and appreciate the law's regulative aspect than they do its facilitative function of providing rights (Scheingold, 1974: chapter 5).

Early views of the police are not immutable; as children mature, their attitudes generally become more negative (Bouma, 1969; Easton and Dennis, 1969; Greenberg, 1970). Most studies indicate that by the end of high school students are more ambivalent about the police (e.g., Rodgers and Taylor, 1971; McDowell and Hogan, 1975). And though black children share with their white peers an early positive orientation toward the police, the changes noted among white children occur more rapidly and more precipitiously among blacks (Greenberg, 1970; Engstrom, 1970). According to Greenberg (1970), Rodgers and Taylor (1971), and Partine (1966), black teenagers are almost uniformly more negative in their attitudes toward the police—more likely, for example, to believe that police are dishonest, inefficient, and corrupt. Why black children display these attitudes is not adequately explained in the literature. Some suggest that they are more likely to have contact with police in unpleasant circumstances (Bouma, 1969).

Others, noting that racial differences persist even when socioeconomic status is controlled, suggest that black children reflect anti-police attitudes prevalent among blacks generally (Greenberg, 1970).

Whatever the cause of racial differences in children's attitudes toward the police, race continues to be the most significant source of cleavage in adult attitudes as well. American adults are also ambivalent about the police, whom they view as hard-working and deserving of respect, but also as somewhat dishonest, not terribly competent or efficient and, most importantly, discriminatory—likely to treat particular categories of citizens with more respect and more attention than they accord to others (Hahn, 1969; Walker *et al.*, 1972). For example, a report of the Bureau of Social Science Research (1967) indicates that a majority of those interviewed in a sample of the District of Columbia think that the police deserve more respect from the public than they get. At the same time, a larger majority thought that wealthy people enjoy preferential treatment and that, in general, the police do not treat people equally. As will be evident throughout this paper, this perception of unequal treatment is the single most important source of popular dissatisfaction with the American legal system. According to available survey evidence, Americans believe that the ideal of equal protection, which epitomizes what they find most valuable in their legal system, is betrayed by police, lawyers, judges, and other legal officials. If there is a crisis of confidence in our legal culture, it may be traced to this issue. Survey evidence reveals that Americans expect equal treatment from the law and resent it when they do not get such treatment.

The perception that the police, in particular, treat people unequally appears to be especially strong among those who have had first-hand experience with police performance. Direct contact with the police, whether initiated by them, as in an investigation or an arrest, or by the citizen, as in a complaint or call for help, has a polarizing effect on attitudes. Contact that is police initiated and contact that produces unsatisfactory results are both associated with more negative attitudes (Jacob, 1971; Smith and Hawkins, 1973; Walker *et al.*, 1972; Bayley and Mendelsohn, 1969). This holds true for blacks as well as whites, and for all socioeconomic classes.

While contact has a significant impact on attitudes toward the police, criminal victimization alone does not. Victims of crime do not blame the police for their victimization; what matters is the way in which the police deal with them subsequently (Smith and Hawkins, 1973; McIntyre, 1967; Ennis, 1967). As Herbert Jacob

suggests, "satisfactory experiences do not elevate evaluations of the police. On the other hand, bad experiences deflate evaluations considerably" (1971:78). Jacob argues that attitudes toward the police result from a process of matching expectations about the police with perceptions of police performance. Favorable experiences merely confirm the generally high expectations which both black and white citizens have regarding the police; other kinds of contact produce disillusionment (*ibid.*).

The extent to which evaluations of the police influence the behavior of people toward the police or the operation of the police themselves is a difficult but nonetheless important problem. There is some evidence that those with negative attitudes are more reluctant to call the police when they have been victims of crime or need other kinds of help (Bayley and Mendelsohn, 1969; Bureau of Social Science Research, 1967). However, even this relationship is not very strong; the reluctance to call the police is more directly related to a sense of futility, a sense that nothing can be done to recover lost property or to apprehend the responsible party (Ennis, 1967). Insofar as police behavior is concerned, there is evidence that they react most severely against those who appear to be challenging their authority (Skolnick, 1966; LaFave, 1965; Westley, 1970; Chevigny, 1969). On the other hand, support for the police may encourage them to extend their activities and use informal techniques of crime control, which may not be in strict conformity with the law. Richard Block, for instance, reports that those who support the police are apt to favor an expansion of their role in crime prevention and to be less committed to civil rights and liberties (1970).

B. Lawyers

While public attitudes toward the police have been the object of considerable scholarly interest, attitudes toward lawyers have received comparatively little attention, at least until recently (see Table 2, Appendix). Much of the survey research on this subject has been conducted or sponsored by state or local bar associations, and typically generates data of uneven quality accompanied by little analysis. Academics, on the other hand, seem more interested in studying the frequency with which different types of people consult a lawyer than with describing the state of public attitudes. Studies of the use of legal services, valuable as they are, typically fail to provide a theoretical context or framework within which to interpret their findings. Such a framework might look to the process of dispute resolution broadly considered or to the importance

of lawyers as instruments for the assertion or protection of individual rights.[9]

Compared with attitudes toward the police, attitudes toward lawyers seem less deeply rooted, less fixed, and more frequently shaped by personal experience. The most recent, most comprehensive study of attitudes toward lawyers, a national survey conducted by the American Bar Foundation in 1973-74, found Americans to be generally positive in their attitudes. Substantial majorities feel confidence in the overall competence, integrity, and responsibility of lawyers. At the same time, doubts are expressed about the way in which lawyers deal with their clients, about their fees, and about the "evenhandedness" with which they treat rich and poor clients (Curran and Spalding, 1974). Again, the most significant negative view centers on the issue of equal treatment: 55 percent disagree, and only 37 percent agree, with the statement that lawyers "work as hard for poor clients as for clients who are rich and important" (Curran and Spalding, 1974:96). Yet such doubts about the evenhandedness of lawyers do not seem to affect overall evaluations of lawyers in quite the same way as similar beliefs influence overall evaluations of the police. To some extent this reflects a recognition and acceptance of the market as the appropriate mechanism for allocating legal services. Given a market system of allocation, inequalities in access to and in the quality of legal services seem legitimate, if not desirable. The perception of unequal treatment generates more resentment when the source is government than when the discrimination is private. This distinction between the responsibilities of the public and the private sectors lies at the heart of American attitudes toward the political and social system as a whole (Devine, 1972: chapter 7).

Data in state and local surveys (Missouri Bar-Prentice Hall, 1963; Blashfield, 1954) indicate the importance of two factors in explaining favorable and unfavorable attitudes. The first is socioeconomic status. Rockwell's study of the Boston area (1968), for example, reports that respondents in lower socioeconomic groups are generally less favorable in their attitudes toward lawyers. Poor people, at least in Boston, do not believe that lawyers can be trusted or that they deal with people in a fair and equitable manner. Similar attitudes are reported in a survey of low income workers in Shreveport, Louisiana, in which 87 percent of the

9. The willingness to use a lawyer is almost a prerequisite for the assertion or defense of rights in our legal system. As such it provides an indirect but valuable indicator of the level of rights consciousness among the American public (Carlin *et al.*, 1967). Furthermore, the interaction among past experience, present attitude, and future willingness to use legal services provides an important key to the shape and substance of American legal culture.

respondents believe that lawyers charge too much for their services and 75 percent did not believe that lawyers can be trusted (Hallauer, 1973).

The second major factor shaping attitudes toward lawyers is prior experience with them. Since this experience is generally not part of our common socialization, individual encounters become especially important. Respect for, trust in, and evaluation of lawyers are typically lower among individuals who have had experience with or occasion to use legal services (Rockwell, 1968; "What the Public Thinks of Lawyers," 1964). Yet those who have found this inverse relationship have failed to specify whether the disillusioning effect of experience is true for all contacts with lawyers or only for contacts which are perceived to be unsatisfactory. Second, some studies indicate that when other variables are controlled (e.g., education) the relationship between contacts and attitudes toward lawyers diminishes in its significance (Missouri Bar-Prentice Hall, 1963). Third, there is no research on whether repeated use of legal services reinforces or reverses the negative impact that some have associated with infrequent contact. It seems likely that the quality rather than the mere fact of experience with lawyers is more important in explaining attitudes. Further analysis of the American Bar Foundation data should help to specify the relationship between attitudes and experience.

The American Bar Foundation survey found that such experience is rather widespread among the American population. Almost two-thirds of those interviewed had consulted a lawyer at least once during their lifetimes (Curran and Spalding, 1974:79). At the same time, only about one-third of the respondents had consulted a lawyer more than once and only about 18 percent more than twice (*ibid*). The figures for total number of contacts reported in the ABF study are somewhat higher than those reported in surveys in Detroit (Mayhew and Reiss, 1969), Boston (Rockwell, 1968), or an unspecified midwestern urban area (Levine and Preston, 1970). Given the wide variety of rights and problems for which legal remedies exist, the range of experience with legal services reported in these surveys does not seem very great. If contact with lawyers is an indirect indicator of the willingness of Americans to assert and defend their legal rights, make claims, and participate in the legal system, then our legal culture does not seem very assertive. Furthermore, the ABF data (Curran and Spalding, 1974), as well as those of Mayhew and Reiss (1969), indicate that most contact with lawyers concerns "routine" administrative matters such as the purchase of property or the writing of a will. It may be, as Mayhew and Reiss suggest (1969), that the social or-

ganization of the bar facilitates such routine contacts and inhibits people from using lawyers in a more "creative" fashion. Or it may be that the common assertion that Americans are litigious and rights-conscious is simply not true.

C. Courts

The third major focus for research on public attitudes toward legal institutions concerns the courts, especially the Supreme Court (see Table 3, Appendix). Unlike survey studies of the police and lawyers, several major studies of attitudes toward the Supreme Court are distinguished by rather careful efforts to conceptualize and measure the state of public opinion (Murphy and Tanenhaus, 1968; Murphy *et al.*, 1973; Casey, 1974, 1976; Kessel, 1966; Dolbeare and Hammond, 1968). These studies have all attempted to differentiate among evaluations of the performance of the Court, views about particular court decisions, and more enduring attitudes toward the Court's institutional role, often employing the terminology of specific and diffuse support (Easton, 1965: Part III). But despite their greater conceptual and methodological clarity questions remain about the significance of their findings.

These studies seldom concern themselves with the consequences of public opinion for the willingness of individuals to engage in litigation or the operation of judicial institutions. The former seems a particularly obvious connection. Yet it may be that litigiousness is a widely shared cultural attribute not dependent upon attitudes toward courts (Grossman and Sarat, 1971). Some studies attempt to link public opinion and judicial behavior by suggesting that public attitudes toward the Supreme Court affect the capacity of the Court to legitimize the decisions of the other branches of government (Murphy and Tanenhaus, 1968).[10] Others have examined the relationship between support for the Supreme Court and compliance with its decisions (Johnson, 1967; Muir, 1967). But survey studies have not paid sufficient attention to these linkages or to the question of whether public opinion *ought* to influence the operation of the Supreme Court.

What they do demonstrate is that courts are not particularly visible or salient to the American people. The level of public awareness and knowledge of courts, court personnel, and court decisions is quite low. This is no less true of the Supreme Court than it is of local trial courts (Barton and Mendlovitz 1956; Walker *et al.*, 1972; Dolbeare, 1967; Kessel, 1966; Murphy and Tanenhaus,

10. The capacity of the Supreme Court to legitimize the actions of other branches of government has been the subject of a review essay by Adamany (1973). See also Daniels (1973).

1968). The low visibility of the courts means that responses to survey questions may be neither particularly reliable nor particularly stable. At the same time, if the pattern of attitudes toward the police and lawyers is a guide, the widespread public ignorance of what courts do and how they operate should enhance their support. Surveys of attitudes toward trial courts bear out this suspicion. While most report general, if not intense, support for local courts (Walker *et al.*, 1972; Barton and Mendlovitz, 1956; Missouri Bar-Prentice Hall, 1963), they also indicate that support is eroded by experience with or knowledge about them. This is especially true for those who are involved in a lawsuit, an experience that seems to disillusion both "winners" and "losers" (Walker *et al.*, 1972; Barton and Mendlovitz, 1956).

Two other factors shape attitudes toward local courts. It appears that courts, not the police, are blamed for the crime problem and that people who believe courts are too lenient in dealing with criminals tend to withdraw their support (McIntyre, 1967; Bureau of Social Science Research, 1967).[11] Second, the desire for equal treatment is again reflected in attitudes toward the courts. While the recent American Bar Foundation survey found that 73 percent of those interviewed believed that judges are generally impartial and fair in deciding cases (Curran and Spalding, 1974:95), another recent national survey reports that 79 percent of those surveyed think that courts treat rich people better than they treat poor people (Blumenthal *et al.*, 1972:60). Those holding such a belief are almost uniformly more negative in their feelings about courts (Engstrom and Giles, 1972; Skogan, 1971).

The Supreme Court also appears to benefit from widespread ignorance of its decisions. Murphy and Tanenhaus, for example, report that less than half of the respondents in each of two national surveys could name specific decisions of the Court that they liked or disliked (1968:360; see also Dolbeare, 1967; Kessel, 1966). The most visible decisions are, not surprisingly, the most controversial and unpopular. The public often becomes aware of decisions only as a result of a widespread campaign of criticism. Nevertheless, though neither knowledge nor approval for specific decisions is very high, many people, including substantial numbers of those who disapprove of specific decisions, accord the Court high levels of diffuse support; respect for the institution seems not to be based on approval of its decisions (Murphy *et al.*, 1973; Casey, 1974; Kessel, 1966).

11. Details pertaining to these studies are presented in Table 1, Appendix.

Instead, the bases of such respect appear to be found elsewhere. The first is widespread diffusion of "myths" about the way in which the Supreme Court makes decisions (Lerner, 1937:1314-15; Petrick, 1968:15-17). Casey (1974), among others, demonstrates the impressive public acceptance of myths and beliefs associated with the symbols of the Court and the Constitution. Fully 60 percent of those respondents who were able to describe what the Supreme Court does described it in "mythic" terms (Casey, 1974:393). Others (Kessel, 1966; Dolbeare, 1967) found a similarly strong adherence to the theory of "mechanical jurisprudence." They also argue that it is precisely this adherence which accounts for widespread support of the Court. Those who believe in a mythic or highly idealized version of what the Court does and how it operates are more likely to support the Court than those whose perception is more realistic (Dolbeare, 1967). But Casey shows that even those most knowledgeable about the Court believe its myths and he suggests that these myths are so embedded in our legal culture that they are not easily dispelled by inconsistent facts (1974:410).

Several other studies suggest that a source of diffuse support for the Supreme Court may lie in the attitudes that people hold toward what might be called "the governing coalition" at the federal level. That is, if they identify with the party in power (Murphy *et al.*, 1973; Dolbeare, 1967; Dolbeare and Hammond, 1968), feel trust in the federal government as a whole (Murphy *et al.*, 1973) or in the President in particular (Casey, 1975), then they are also likely to support the Supreme Court. This relationship is further reflected in the fact that more people trust Congress than the Supreme Court, and that support for Congress is an important determinant of support for the Supreme Court (Dennis, 1975). Additionally, data from the 1960s suggest that the Court benefited from its association with the prevailing liberalism of the national executive (Hirsch and Donohew, 1968). However, those most supportive of the Court during the 1960s continued to be most supportive in spite of the change in the composition of the governing coalition which took place at the end of the decade (Murphy and Tanenhaus, 1976). Such a finding seems to call for a reexamination of the governing coalition argument as an explanation of attitudes toward the Supreme Court.

Three themes recur in public attitudes toward police, lawyers, and courts. First is the persistent demand for equal treatment, the central core of a democratic legal culture. Americans expect that the law, and those responsible for administering and enforcing it, will be blind to differences among them, and this expectation

provides the standard against which Americans judge the legal system. Its violation is the most persistent source of their dissatisfaction. Yet at the same time—and this is the second theme in public attitudes toward legal institutions—most people seem satisfied with the overall performance of the police, the legal profession, and the courts. Disapproval of particular actions or aspects of legal institutions, or of the behavior of legal officials, has not produced deep-seated and widespread alienation from the legal system. People seem to be dissatisfied without being detached. Perhaps this dissonance is tolerated because people do not perceive the importance of legal institutions in their lives or, though perceiving that importance, do not feel threatened by the inadequacies of these institutions. Or perhaps it is the absence of a coherent alternative vision which allows Americans to tolerate the problems and imperfections they do perceive.

Finally, it appears that those who know law and the legal system from first-hand experience tend to be less satisfied than those to whom it remains remote. What this indicates about American legal culture is uncertain. It may be that the idealized images which most Americans acquire as children provide a precarious basis for allegiance to the legal system, but when these images are tested by contact with legal institutions or processes disillusionment sets in. Or it may be that the performance of the legal system is so unsatisfactory in an absolute sense that it disappoints even those with relatively realistic expectations. Or perhaps contacts with the police and other legal institutions, because they frequently occur in times of personal crisis, are inevitably traumatic no matter how well they are handled.[12] In any case, although de Tocqueville (1966), among others, argues that experience with the legal system educates the citizen and stimulates more responsible public opinion and greater loyalty, contemporary survey research indicates that, for the average citizen, familiarity breeds contempt.

D. Attitudes toward Civil Liberties and Social Control

Among the policies or principles that guide or result from the activities of legal institutions and officials perhaps none is as important as those that govern the legal rights of Americans and the way in which deviant behavior is controlled. They shape our legal system. Attitudes toward them lie at the heart of our legal culture. In this section we will consider attitudes toward freedom

12. This point is suggested in a study of the "psychology" of litigation. See Redmount (1959).

of speech, the rights of criminal defendants, and the appropriate means for dealing with criminal offenders.

1. *Civil Liberties*

The history of freedom demonstrates that the worst threats stem from public indifference, from the public's willingness to trade off freedom for other objectives, and from misunderstanding of the meaning and significance of civil liberties (Emerson, 1966). To the extent that our legal culture permits restrictions on freedom of belief and expression, then formal, written guarantees will not in themselves secure civil liberties. By studying the attitude of the American public toward civil liberties it is possible to gauge the extent to which abridgments or restrictions of those liberties would be acceptable to and accepted by them. Attitudes toward civil liberties also provide a standard by which a citizen may evaluate the behavior of others as well as his own, and offer an orientation toward the legal system as a whole and toward particular decisions.

Three major survey studies stand out as landmark efforts to chart the character of American attitudes toward civil liberties (see Table 4, Appendix). The first, by Samuel Stouffer (1955), was particularly concerned with the way in which Americans felt about Communists, atheists, and socialists during the McCarthy period of the early fifties. Stouffer's study was based upon interviews with approximately 5,000 members of the general public and 1,500 "community leaders." Each respondent was asked about extending particular civil liberties to the three "deviant" groups, that is, whether members of each group should be allowed to speak in public, or teach in high school or college, and whether books written by such persons should be available in a public library. Stouffer reported low levels of tolerance among the mass public (1955:31).[13]

Stouffer found that 66 percent of his sample would remove a book written by a Communist from the public library, 60 percent would do so in the case of an atheist, and 35 percent in the case of a socialist. Sixty-eight percent would stop a Communist from speaking in public, 60 percent would stop an atheist, and 35 percent a socialist. Finally, 89 percent would prevent a Communist from teaching in college, 84, percent would bar an atheist, and 54

13. Blum and Kalven suggest that what Stouffer really measured was permissiveness not tolerance. Tolerance, they argue, is a quality of judgment in which a problem is approached in an open-minded manner and with a willingness to consider all relevant evidence. If they are correct, the proper measure of an individual's tolerance lies in "what he would want to know before he makes up his mind," not what conclusions he reaches (1956:28).

percent a socialist (1955: chapter 2). On each of these items, as well as in the overall measure of tolerance, Stouffer found that the community leaders were more supportive of the libertarian position, as were those with a higher level of education, and those who did not believe Communism to be a serious threat (1955: chapter 2 and chapter 8). It has recently been suggested (Jackman, 1972) that education accounts for all of these differences and that community leaders are no different in their attitudes toward civil liberties than other well-educated members of the mass public.

Two other major studies of attitudes toward civil liberties were carried out in the late 1950s. Prothro and Grigg (1960) examined civil liberties attitudes on two levels in two cities. At a highly abstract level there was almost complete agreement that, for example, "the minority should be free to criticize major decisions" and that "people in the minority should be free to try to win majority support for their opinions" (1960:282). But on concrete issues support for civil liberties was substantially reduced. Asked about the right to make public speeches, 44 percent would grant it to Communists, 63 percent to atheists, and 79 percent to socialists (1960:285). These percentages (except for those pertaining to Communists) are much higher than those reported by Stouffer. Both studies fail to disclose whether those respondents willing to restrict civil liberties are aware that this is what their attitudes imply. It may be that some respondents believed that they would be protecting civil liberties by restricting rights of groups who threaten the very values on which those liberties seem to rest. If this is true then such people would be neither simply inconsistent nor simply antilibertarian.[14]

A third study, based on surveys of the general population and of the delegates to the 1956 political party conventions, also elicited attitudes on two levels. Like Prothro and Grigg, Herbert McCloskey (1964) found between 80 and 90 percent of both populations willing to endorse freedom of speech in the abstract. For example, 88 percent of those interviewed indicated that they believed in "free speech for all no matter what their views might be." Yet more than a third also stated that "a man oughtn't to be allowed to speak if he does not know what he is talking about" (1964:365). The precise items which McCloskey employs make it difficult to compare his results with those obtained by Stouffer, and Prothro and Grigg. However, their general conclusions are similar.

14. When people are made aware of the inconsistency in their attitudes toward civil liberties they tend to resolve it by greater support for their abstract commitment to libertarian principles (Westie, 1965).

First, support for civil liberties among the American public is as shallow as it is broad. Second, this shallowness seems to stem from both a failure of understanding [15] and a willingness to allow other considerations (e.g., fear of Communism) to override the commitment to civil liberties. If they are correct, Americans do not perceive the interrelatedness of their own freedom and the freedom of others; they value their own freedom but not the freedom of others. In this sense it may be that the commitment to equal treatment, which I believe is at the center of American legal culture, really means that most Americans want to be treated as well as anyone else, but do not mind if others are treated less well than they are. This kind of commitment reflects a long-standing American ambivalence about privilege and disadvantage.

Several recent survey studies have attempted to update, challenge or explain these conclusions. Reviewing the findings of the 1972, 1973, and 1974 National Opinion Research Center surveys, Erskine and Siegel (1975) report that there has been a sharp increase in the willingness of people to extend civil liberties to Communists, atheists, and socialists.[16] They attribute this to a marked decline in the belief that such groups threaten the American way of life and to a general increased willingness to question conventional social norms, rather than to a stronger commitment to civil libertarian principles (1975:28). Lawrence (1976), using questions about protests and demonstrations instead of speech, found a widespread willingness to tolerate such behavior even by groups thought to be dangerous and foreign. Substantial majorities of those interviewed supported the rights of radical students and black militants to protest and demonstrate, as well as those of a "group of neighbors" (1976:99). Since the groups, issues (pollution, open housing, and crime), and activities (protest and demonstration) that Lawrence examined are all substantially different from those examined in earlier studies it is difficult to make comparisons. Nevertheless the virtue of the Lawrence study is that he has explicitly taken into account attitudes toward both specific groups and specific issues in describing public commitment to civil liberties.

None of these studies has paid sufficient attention to the process of reasoning by which people make decisions about the

15. Stouffer (1955) and McCloskey (1964) argue that leaders are more supportive of civil liberties owing to their day-to-day experience with and understanding of the problems of maintaining a free society. There is, in other words, a distinctive occupational socialization attached to political leadership roles.

16. Zellman, in a separate analysis of the same results, reports that only 39 percent of those who thought Communism to be the worst form of government would allow a Communist to speak, compared with 74 percent of those who thought that Communism is bad but no worse than some other forms of government (1975:43).

scope and limits of civil liberties. In order to do so survey studies must employ extensive open-ended questioning. The importance of using such a methodology is highlighted in a survey by Lipsitz (1972), who found that his understanding of the attitudes of his respondents varied significantly depending on whether forced choice or open-ended questions were employed. The latter, he suggests, are more reliable since they allow respondents to define for themselves the range of acceptable options and to explain and qualify responses that, at first glance, appear antilibertarian.

Finally, a survey study by Zellman and Sears (1971) indicates that civil liberties attitudes develop by age 11 in most children and closely resemble those that characterize American adults. "Among children, as among adults, the overwhelming majority of those with opinions endorsed the abstract principle of free speech for all and similarly impressive majorities refused to grant free expression to dissenting political groups in concrete situations" (1971:117). Zellman and Sears suggest—and I think that their suggestion is important in understanding the place of civil liberties in our legal culture—that the belief in freedom of expression is embraced only as a slogan. Most people do not understand freedom of speech as a generalizeable principle; in failing to apply it in concrete situations, in tolerating restrictions on civil liberties, most people are revealing a failure of understanding rather than an attitude of hostility to civil liberties in general or to free speech in particular.

2. *Social Control*

The law is not only a protector of liberty, it is also responsible for regulating those who engage in "deviant" behavior. Some suggest that the only proper and just way to carry out this function is to ensure the swift, certain, and severe application of punishment (Van den Haag, 1975); others express extreme skepticism about both the utility and justification of all types of punishment (Menninger, 1966). If survey evidence is an accurate guide, a clear majority of Americans believe that punishment is, indeed, a just and effective way of dealing with criminals (Sarat and Vidmar, 1976; Erskine, 1974c; California Assembly on Criminal Procedure, 1968). Most studies of attitudes toward social control have attempted to assess the kind of punishment that individuals think appropriate for various kinds of crime and to determine if the general public is more or less punitive than the law. In addition, some attention has been devoted to assessing attitudes toward defendants' rights and to determining whether Americans think

that the provision of those rights helps or hinders the administration of justice (see Table 5, Appendix).

Building on the earlier research of Sellin and Wolfgang (1964), Peter Rossi *et al.* recently found evidence of a consensus on the seriousness of various criminal offenses in a survey of Baltimore residents (1974:237; see also Thomas *et al.*, 1976). Crimes against persons and drug selling were regarded as much more serious than crimes against property. Yet even if people agree in their appraisal of the seriousness, that does not mean they will also agree about the appropriate way to deal with those who commit criminal offenses.

Judgments about the appropriateness of punishment in general, and of particular penalties, are complex judgments which vary with the personal predispositions of the "judge" and knowledge of the circumstances in which an offense occurred. And, as Berkowitz and Walker (1967) have demonstrated, moral judgments are influenced by knowledge of what the law prescribes, so that it is difficult to say whether they antedate or follow from such knowledge. Unfortunately, most studies of attitudes toward crime and punishment pay little attention to the personal predispositions, particulars of the offense or offender, or legal knowledge, all of which inevitably affect moral judgments about punishments, but simply present respondents with an offense and ask what punishment ought to be applied (but see Rose and Prell, 1955).

Survey evidence indicates that the majority of Americans are, in fact, more punitive than both the law and those who administer it. Surveys of adults in California (Gibbons, 1969), New Jersey (Carratura and Hartjen, 1974) and Minnesota (Rose and Prell, 1955)[17] report that there is general agreement about the kinds of punishment that ought to be imposed for different offenses, that citizens are typically more severe than the relevant statutory provisions, and that variation in severity is a function of age, education, and particular psychological traits. The Rose and Prell study also provides further confirmation of American insistence upon equality of treatment. Its results demonstrate widespread endorsement of the principle that equal sentences should be imposed for similar offenses regardless of the characteristics of the offender. Nevertheless, a majority of those interviewed were markedly more severe in the penalties which they would inflict upon wealthy offenders (1955). It would seem that individuals who are socially

17. Citizens in Belgium and Holland (Van Houtte and Vinke, 1973) and West Germany (Kaupen, 1973) are also somewhat more punitive than their legal systems. Makela (1966), however, reports a high correlation between the severity of legal punishment in Finland and the penalties that its citizens think appropriate.

advantaged are held to stricter standards of upright behavior. This is additional evidence that American legal culture is not evenhanded in any simple sense. Distinctions based on personal circumstances can be the basis for public judgments supporting differential treatment, but such distinctions are not symmetrical; those surveyed do not seem to think that the law should be more lenient with the disadvantaged even though they are more severe with the privileged.

One type of punishment, capital punishment, has received considerable attention in surveys of public opinion. Since these studies have recently been reviewed and criticized (Vidmar and Ellsworth, 1974) I will note but a couple of points relevant to the general themes of this essay. In the past decade, there has been a dramatic shift in the number of Americans who favor capital punishment (Erskine, 1970a), which roughly parallels the decline in its incidence.[18] Today, approximately 60 percent of the American public supports capital punishment (Harris, 1973). Two general arguments have been offered to account for the distribution of capital punishment attitudes.

Some argue that the willingness to endorse capital punishment is a utilitarian response to a perceived rise in the crime rate and a growing fear of criminal victimization (Thomas and Foster, 1975), a widespread belief that the death penalty is a useful deterrent to crime. Others, however, have suggested that attitudes toward the death penalty are part of a broader pattern of responses to moral problems and that many people would continue to favor the death penalty even if it could be proven to have no deterrent value (Vidmar, 1974). People endorse the death penalty because it satisfies what they believe to be a legitimate desire for retribution and is the only punishment commensurate with the gravity of the offenses for which it is imposed (Kohlberg and Elfenbein, 1975; Sarat and Vidmar, 1976). It is probably true, however, that support for the death penalty is the complex result of utilitarian and retributive motives, both of which the law recognizes and seeks to satisfy.

The punitiveness of American legal culture helps to explain another aspect of public reaction to the criminal process. Although relatively few surveys have examined attitudes toward defendants' rights, there is evidence to suggest that many people are, at best, ambivalent about the nature and extent of legal rights that ought to be accorded to a suspected criminal (Thomas, 1974; Mon-

18. Justice Marshall, in *Furman* v. *Georgia*, 408 U.S. 238, 362 n.145 (1972) suggests that this is no coincidence. Support for capital punishment has increased, according to Marshall, because people have forgotten the "horrors" that it entails.

tero, 1975). Many people see a trade-off between according substantial rights to criminal defendants and achieving effective law enforcement (McDowell and Hogan, 1975). A majority of the respondents in at least two studies believe that suspects ought to have the right to remain silent, that they ought to have counsel and that even the "obviously guilty" deserve trials (Erskine, 1974c; Montero, 1975). Yet another study reports that most respondents believe that "legal technicalities" should not be allowed to stand in the way of an efficient determination of guilt and that evidence that proves someone is guilty ought to be used no matter how it was obtained (Thomas, 1974). Individuals who unequivocally support defendants' rights are typically least concerned about crime (Block, 1970). In American legal culture there is a keen appreciation of the costs of recognizing the rights of criminal defendants and considerable hesitancy about whether those costs ought to be incurred. Here again we see the American concern for equal treatment tempered by ambivalence about the likely beneficiaries of such treatment.

In the areas of civil liberties and social control there appear to be considerable gaps between public opinion and legal policy. The law does not march hand in hand with public attitudes, nor should it. Yet the student of American legal culture cannot and should not ignore the gaps that do exist. They are important indicators of the responsiveness of the legal system. Yet they may be equally important as indicators of the failures of that system to educate the public about what a truly democratic legal system requires. For the law can educate, it can change opinions (Muir, 1967; Colombotos, 1969), although not on every matter of importance. American attitudes toward civil liberties and social control do not seem unequivocally democratic. Americans seem too willing to tolerate restrictions on the rights of those who are strange, different, or threatening even as they profess devotion to the principles from which those rights derive.

II. RIGHTS AND OBLIGATIONS

In one of the best known recent surveys of public attitudes toward politics and government, Gabriel Almond and Sidney Verba argued that in the political culture of the United States the role of participant is highly developed. However, this role is tempered by widespread attachment to and faith in the prevailing system of government (1965:313-14). According to this argument, Americans typically support and are satisfied with their political institutions, are active participants in the political process and are willing to abide by decisions resulting from that process. Perhaps this de-

scription applies to the political but not to the legal system? Perhaps it no longer applies to the former? Yet the issues that Almond and Verba raise in their description of American political culture, especially those concerning the balance of participation and passivity, are important in any analysis of our legal system and legal culture.

In this section we will consider the extent to which Americans are willing and able to take part in the process of administering and enforcing the law. I have already discussed some of the available survey evidence on the extent of participation in the legal system (see section I B, *supra*, and Table 6, Appendix). But measuring participation in terms of contacts with lawyers, use of the courts, or calls to the police is very inexact; such measures fail to take account of the fact that many such experiences are involuntary, and occur in response to the initiatives or actions of others. When Almond and Verba talk about participation they are talking about assertive not reactive behavior. This is not to say that reactive behavior is unimportant. Surely there is a significant difference between a legal culture in which citizens feel free to use legal processes to defend themselves and one in which they do not feel free to participate even defensively. However, to get a strict sense of the rights consciousness and participation of citizens in the legal system it is more useful to focus, at least initially, on initiative rather than defense. In this I borrow from Carlin, Howard, and Messinger's concept of "legal competence" (1967:62).

Participation in the legal system, according to Carlin *et al.*, is a by-product of legal competence. In order to assert his legal rights a participant must

> see the law as a *resource* for developing, furthering and protecting his interests. This is partly a matter of knowledge. The competent subject will be aware of the relation between the realization of his interests and the machinery of law making and administration. He will know how to use this machinery and when to use it. Moreover, he will see assertion of his interests through legal channels as desirable and appropriate. . . . The legally competent person has a sense of himself as a possessor of rights and he sees the legal system as a resource for validation of those rights. He knows when and how to seek validation. [1967:62-63]

This description specifies three prerequisites for participation: knowledge, "rights consciousness," and a belief that it is appropriate and effective to assert one's rights through legal processes.

If Almond and Verba's description is applicable to American legal culture, we ought to expect a mix of rights-conscious legal participation and a more passive willingness to accept legal decisions, a balance between rights and obligations in which the law is appreciated in both its facilitative and directive roles. How is this balance maintained? I believe it is maintained through the devel-

opment of a critical stance toward law and legal authority, a willingness to judge the law against standards of reason, fairness, and justice external to the law itself. To some extent this stance is embodied in constitutional legality; its most important element is a separation of law and justice. To the extent that people do not automatically equate law and right then their willingness to obey the law will be contingent upon the law's adherence to standards of reason and fairness that mark a democratic legal culture.

The distribution of legal competence among Americans has not been the subject of any major survey research. This fact is partly attributable to the difficulty of defining and operationalizing one element of legal competence, namely rights consciousness. Lawrence Friedman suggests that a right is "a claim exerted against or through public authorities: which, by definition, "*has* to be granted" (1971:193-94). Rights consciousness then refers to the extent to which individuals see themselves as possessing such mandatory claims, claims which may be as general as the right to speak freely or which may arise in specific situations, such as the right to recover for breach of contract. The fact that rights can be either general or situational is part of the explanation for why rights consciousness is so hard to study in sample surveys. This definitional difficulty is compounded by the difficulty of isolating rights consciousness from knowledge of the law, and from the belief in the appropriateness of legal processes as a way of vindicating rights. Finally, part of the difficulty of studying rights consciousness flows from the debasement of the language of rights in contemporary America. The language of rights has become common currency in so many social situations that its meaning has become clouded and possibly lost (Ehrlich, 1976). Thus, for example, recent history has been marked by a confusion of rights and privileges. Social welfare benefits, once viewed as a privilege extended to the unfortunate by a compassionate social order, are now frequently claimed as an irrevocable right of citizenship (Reich, 1964). Such a transformation creates the opportunity for an interesting survey of the way in which Americans define the idea of rights. At the same time, the very pervasiveness and imprecision of the language of rights means that such a study faces considerable methodological difficulty.

The other two elements of legal competence and a participatory legal culture have received some attention in surveys of public opinion. Several studies indicate that knowledge of the law and knowledge of legal rights are quite low (Sarat, 1975; *Michigan Law Review*, 1973; Williams and Hall, 1972; Albrecht, 1974). Measurement of knowledge of the law is always problematic. Most

surveys use abstract questions or statements about the substance of the law. Yet the content of legal rules is not determinable in the abstract but only in specific situations; thus knowledge of the law can never be precise since legal rights are always at the mercy of events. Despite the problem of measurement, it is worth noting that each of the major surveys indicates that knowledge of the law is substantially greater with respect to criminal than civil matters (Sarat, 1975; *Michigan Law Review*, 1973; Williams and Hall, 1972; Albrecht, 1974; Cortese, 1966). Citizens typically know more about what they are entitled to expect of and demand from public authority and less about what the law sanctions in their relations with other private individuals. This is to some extent a function of the emphasis on crime and criminal law in mass culture, but it also marks a significant element in the legal culture, the dominant view that the proper scope and value of law is to regulate the exercise of government authority.

In spite of the rather widespread ignorance of the law there is some evidence of an equally widespread belief in the appropriateness of using law and legal processes as problem-solving devices. This is not to say, however, that law is a preferred means for dealing with problems. We know that relatively few of society's disputes are handled by the legal system. To some extent this reflects an awareness of the costs of mobilizing the law (Friedman, 1967). But it is still true that "the reluctance of citizens to mobilize the law is so widespread . . . that it may be appropriate to view legal inaction as the dominant pattern of empirical legal life" (Black, 1973:133). Yet resort to law is not considered to be deviant behavior. The American Bar Foundation's recent national survey of legal needs asked, for example, whether "a person should not call upon a lawyer until he has exhausted every other possible way of solving his problem." Forty-two percent of those interviewed agreed, 55 percent disagreed (Curran and Spalding, 1974:94). Furthermore, Jacob's four-city study in Wisconsin reports that slightly less than half of those without experience in court displayed a high level of "judicial efficacy," that is, they believed that courts are appropriate mechanisms for dealing with their personal problems (1969:119).

Because most people do not know the full range of their legal rights and because of the high cost of using the law, participation in its administration or enforcement is not widespread. Such participation is generally concentrated among those social groups who are regularly able to avail themselves of expert help, afford the costs of mobilizing the law, and aggressively use the law to further their interests and goals (Galanter, 1974). Most individual

citizens possess neither the expertise nor the resources necessary to do so (Wanner, 1974; Galanter, 1975).[19] Yet citizens are not wholly incompetent or unable to participate. Aggrieved individuals generally first seek less costly nonlegal remedies (Sarat, 1976), but feel no "moral" inhibitions about using the law. The pattern of participation is typically sporadic and somewhat reluctant, but the legal system is, nonetheless, open. Americans seem to possess enough knowledge, a sufficiently well developed sense of their rights and sufficient confidence in the law to participate in a defensive manner, to use the law to remedy past grievances if not to create new opportunities. In this sense, our legal culture reflects and shapes our legal institutions; it is reactive but not quiescent.

What about the problem of obedience to law? If Americans do not turn to law readily and actively to solve problems, how do they respond to its directions? Are they more enthusiastic as subjects than they are as participants? Like attitudes toward the police, the disposition to obey law and to recognize the law's obligatory character develops early in childhood (Koeppen, 1972; Torney, 1971). Research on the development of those ideas has frequently taken the form of a general inquiry into the development of legal reasoning, the processes through which individuals interpret, define, and make decisions about the roles, rules, rights and responsibilities offered or imposed by the legal system (Tapp and Levine, 1974:19). Furthermore, many studies of legal thought accept the assumptions of developmental psychology that there are distinctive, organized structures of reasoning which are stable across situations and across cultures, that these develop in an invariant sequence of age-related stages, and that the process of development is self-regulated but not immune to environmental influences (Tapp and Levine, 1974:15; Kohlberg and Kramer, 1969). Whether or not one accepts the extravagant claims of developmental psychology, the research that it has inspired provides a significant basis for understanding the emergence of attitudes toward law and law abidingness.

For the young child, law is first associated with rules not rights. Rules and laws are viewed as essential to the maintenance of social order and as a vital defense against social chaos (Tapp and Kohlberg, 1971:73-79). They are perceived to be immutable, imperative and fair (Adelson *et al.*, 1969; Torney, 1971). Young children associate law with obedience by reason of their fear of

19. Galanter (1975) reviews studies of the characteristics of litigants in trial courts and finds that individuals acting outside of a business or professional capacity are more often involved as defendants than as plaintiffs. Organizations and government agencies comprise the largest group of plaintiffs.

punishment and extreme deference to authority (Tapp and Kohlberg, 1971:74). Law is external to the will and therefore participation is a relatively meaningless concept.

As most children mature their thoughts about law become more complex. Gradually, the perceived immutability of the law is replaced by an awareness of adaptation, change, and control. Similarly, both the sense of obligation and the reasons for obedience are altered (Brown, 1971; Torney, 1971; Tapp and Kohlberg, 1971). Obligation begins to take on a contingent quality and the importance of fear of punishment as a reason for law abidingness diminishes. As Stuart Scheingold puts it: "Age brings an enhanced respect for individual freedom and a tendency to associate the protection of individual freedom with legal and constitutional rights—suggesting, of course, that particular laws may contravene individual rights, thus encouraging the emergence of a conditional concept of obedience" (1974:64). It is only in late adolescence that people are able to understand and appreciate instrumental notions of law (Gallatin and Adelson, 1971), and begin to think of themselves as able to participate in the legal system and to use the law for their own purposes. What we see is an age-related growth in the capacity for criticism, a recognition that not all laws are fair or just, and the development of a "constitutional conscience" (Tapp and Levine, 1974). This capacity for criticism is itself the basis for the emergence of participant orientations in which law is viewed as a human construct reflecting the consensual participation of some segments of the citizenry (Rodgers and Taylor, 1971).

The trends thus described are general and abstract. They characterize the prototypical development of legal reasoning and provide an important key to the structure of American legal culture. However, these trends are not equally applicable to all social groups. Black children, for example, display a more rapid and somewhat earlier growth of a critical consciousness (Engstrom, 1970; Rodgers and Taylor, 1971). At the same time, the equation of law with punishment and of punishment with obedience remains strong among most black children even as they mature. Furthermore, their criticism of the law results in neither a mature concept of fairness, with its implications for the legal system, nor a well developed sense of rights (Tapp and Levine, 1970). Race thus appears to be an important variable in explaining the development of legal values and the balance of rights and obligations characteristic of American legal culture.

Even among white children, however, a mature concept of fairness and a consciousness of rights often does not develop. Most children of all races do not reach the "postconventional" or partic-

ipant stage (Tapp and Levine, 1974), but end their development at the "conventional" or critical level, with a sense of obligation contingent upon the law's conformity with social norms and expectations about fairness, not upon their own participation in making that law (Tapp and Kohlberg, 1971). Some surveys of adults suggest that a majority feel that obedience to law should be contingent upon situational factors (Rodgers and Hanson, 1974; Sarat, 1975). Such an attitude signals the continued existence of the healthy detachment necessary to a democratic legal system. Citizens are willing to give the benefit of the doubt to legal authority, but they do not renounce their entitlement to withhold legitimacy where laws seem objectionable.

Americans are aggressive neither in their pursuit of legal rights nor in their participation in the administration or enforcement of the law, yet they are far from being passive subjects. Most people do not link rights and obligations, or see their obedience to law as contingent upon their participation in the legal system. Furthermore, the legal system itself seems to support a defensive and critical stance toward law and legal institutions, a stance in which individuals feel free to say what they do not like and will not accept, at the same time as they recognize general and abstract obligations to law and legal authority. The balance between participant and subject roles, which seems characteristic of our legal culture, tilts in favor of the latter but still provides the room for critical thought and for the occasional mobilization of action which is necessary for the maintenance of a democratic legal system.[20]

SUMMARY AND CONCLUSION

How useful are sample surveys as devices for describing legal culture? First, there is little doubt that the accumulation of survey evidence over the past fifteen years has made an important contribution to our knowledge of the way people think about and feel toward law and the legal system. Often that evidence simply confirms what common sense would predict; occasionally it provides a surprising insight. Surveys, though expensive to administer, reach more people, more frequently, than any other single method of inquiry. This is not to say that survey studies of legal culture are without their problems. For example, in order for an opinion to be integral to the legal culture, it must represent an enduring perspective on the legal system. To talk about a legal culture is to talk

20. My argument here parallels that of Robert Dahl (1960), who contends that a political system remains democratic to the extent that it continues to provide room for occasional bursts of participation from otherwise quiescent citizens.

about a pattern of values whose basic form persists despite occasional changes in specific content (Friedman, 1975: chapter 8). Since most surveys are of the "one-shot" variety, and since there is little in the way of genuine replication, survey studies are generally unable to analyze the stability of legal attitudes except in the aggregate. In fact, there is some evidence that responses to surveys of public opinion are very unstable (Converse, 1970). This may accurately reflect the instability of public attitudes toward the kinds of questions posed or it may say something about the nature of survey research itself.

As Blum and Kalven suggested twenty years ago (1956:7), the survey is, at best, an artificial form of conversation; it does not occur spontaneously, but interrupts the daily activities of those interviewed; it is not a dialogue but an inflexible series of questions and answers; it is, or may appear to be, coercive. Respondents are frequently asked opinions on subjects to which they have given little if any attention. Each of these elements of artificiality contributes to the instability of responses to survey questions and to the danger of relying on surveys to measure stable patterns of thought about law.

A legal culture comprehends *how* people think about law, not just *what* they think. Most of the survey evidence discussed in this paper focuses exclusively on the latter. The use of forced choice questions, which typifies most surveys, may permit what appears to be a clear and unambiguous view of public opinion about a particular issue at a particular moment (Hyman, 1955), but it is of little value in describing the way in which people arrive at their opinions. Their assumptions, the conclusions they consider and reject, how intensely they feel about a particular issue—these and other "process" questions are central to an understanding of legal culture. The failure to come to grips with the *way* people think about the law can result in considerable distortion in the conclusions we reach about *what* they think. For example, if we know only that many people who endorse civil liberties in the abstract are reluctant to extend them to dissident groups we may conclude that their support for civil liberties is quite shallow and weak. However, if we were to find that this apparent inconsistency results from a fear that the groups involved would threaten civil liberties for all, then our conclusions about American attitudes would be substantially different. To the extent that most survey studies do not investigate the process of thinking about law and the legal system, their contribution to an understanding of legal culture is severely limited.

Legal culture is more than attitudes and beliefs, it is traditions, customs, and actions. Although it is unfair to criticize survey studies for failing to describe how people act, they may still be faulted for ignoring the linkage between attitudes and the behavior of citizens and institutions (Ehrlich, 1969). There is limited evidence that this connection is not strong: attitudes toward the police do not differentiate among those who do and do not call the police to report a crime (Ennis, 1967); attitudes toward lawyers are not very powerful in differentiating those who use legal services when the occasion arises (Rockwell, 1968); attitudes toward compliance and law abidingness do not do very well in predicting compliance with the law (Rodgers and Hanson, 1974). Yet the picture is not totally one-sided; some have suggested that the attitude-action relationship can be accurately understood only when it is specified in terms of such variables as the salience of the attitude in question or the situational constraints that may prevent behavior consistent with the attitude (Brown, 1971; Sarat, 1975).

The area of greatest weakness in survey studies of legal culture lies not in the linkage of individual attitudes and individual behavior but in the linkage between both and the operation of legal institutions. As I suggested in the introduction, this question has been most frequently dealt with in the area of compliance. Like David Easton (1965) most of those who have conducted survey studies seem to assume that a minimum level of support and compliance is necessary if an institution is to function effectively. Yet there are few data on what this level might be, or how it might affect the operation of legal institutions. In fact, radical critics of the legal system suggest that our legal institutions function quite as efficiently with low levels of support as with high. They argue that an undemocratic legal system is perfectly able to function in a society with a democratic legal culture (Quinney, 1974). Survey studies of legal culture provide few data with which to confirm or refute this hypothesis.

Ultimately, however, the utility of survey studies may rest on their descriptive value, on what they tell us about what Americans think and believe about law. Here their contribution is not to be minimized. If they cannot say unambiguously whether our legal culture is fully democratic, they do provide useful building blocks in any effort to determine if our legal culture is compatible with and supportive of the values and operation of a democratic legal system. Surveys of public attitudes toward civil liberties and social control, for example, indicate that there is significant public dissatisfaction with the way our legal system deals with these

subjects. Does this mean that the legal system is unresponsive and by that standard undemocratic? To some extent the answer is yes, but this is not to say that it is appropriate to judge every legal institution in terms of its responsiveness to public opinion on issues of civil liberties and social control. Dissatisfaction and unresponsiveness are but a first indicator, and a very imperfect one, of the state of a democratic legal culture.

A major source of public unhappiness with the operation of the American legal system arises from the demand for equal treatment. Dissatisfaction seems to result from the perceived failure of the legal system to live up to an important democratic norm. In this sense, it may contribute to the health of a putatively democratic legal system. Even though public attitudes toward civil liberties reflect an incomplete understanding of the norm of equal treatment, the use of that norm to judge legal institutions is significant. Dissatisfaction, no matter what its source, is not out of place in a democratic legal culture. The democratic temperament ought not to be too easily satisfied with institutions exercising significant power over the lives of citizens. Dissatisfaction arising out of an attachment to a democratic norm is even more important as an indicator of the existence of a democratic legal culture.

This democratic dissatisfaction finds support in a second set of attitudes uncovered in survey studies. To the extent that a democratic legal culture is a participant oriented culture, ours is not fully democratic. Relatively few respondents meet the requisites of legal competence, or are disposed to employ the law in an active, assertive manner. Yet Americans do not think that participating in the legal system is inappropriate. They are ready to participate, but they typically do so in a reluctant and defensive way. This is as much a consequence of the structural and material barriers which hinder access to the law as it is an indicator of prevailing public attitudes.

Alongside this reluctant participation, many survey respondents display detached commitment which supports obedience to law and allegiance to the legal system but tempers both by a refusal to be finally bound by either. Of course, law-breaking is affected by more than one's attitude toward the law, nor is every example of disobedience to be valued for what it indicates about our legal culture. Yet it may be that the willingness of most Americans to entertain the idea of breaking some kinds of laws reflects their critical stance toward legal authority. Although participation may be relatively infrequent, criticism is free flowing. A democratic temperament requires a detached commitment to obedience, a commitment embodying widespread ambivalence

toward the very idea of authority. Survey studies have repeatedly uncovered evidence of both among the American people.

Dissatisfied, "egalitarian," defensive, and critical, such is the current state of public attitudes toward the legal system. Our understanding of American legal culture has come a long way since Friedman (1969) wrote of the meager state of systematic, empirical research in this area. We are beginning to accumulate an impressive body of information on the public and the legal system. Yet there are problems to be overcome and many possibilities to be realized. The future demands that attention be devoted to replication, to the process of demonstrating the extent to which the attitudes revealed in previous survey research are persistent elements of our legal culture. Furthermore, the future demands that more attention be paid to the processes through which legal attitudes are formed. Perhaps this will involve a more widespread application of the techniques, if not the assumptions of developmental psychology. In any case, the time is rapidly approaching when the "what do you think about . . ." type of survey will have outlived its usefulness in the study of legal culture. Finally, the future ought to provide the occasion to develop a more explicit theoretical focus, a focus that takes seriously the major reason for studying legal culture—to determine the fit between it and the legal system and the extent to which each is democratic and effective.

APPENDIX

TABLE 1

MAJOR STUDIES OF ATTITUDES TOWARD THE POLICE

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Easton and Dennis (1969)	12,052 white students in grades 2-8 in urban areas of the northeast, northcentral, south and west	age, grade	Belief in police benevolence and power very strong among young children, but declines with age.
Hess and Torney (1967)	same as above	age, grade, sex, I.Q., socioeconomic status	Idealization of police is greatest among younger children, especially those from middle class families and those with higher I.Q.s, and declines most slowly among these groups. Induction into the "compliance system" occurs through early idealized views of authority figures.
Bouma (1969)	10,000 junior high students in Michigan	race, age, father's occupation, police contact	Support for the police generally high among junior high students, but declines with age. Black children are less positive in their views of the police as are those with some contact with the police.
Partine (1966)	10,000 junior high students in Cincinnati	race, age, police contact	Support for the police generally high, but it is lower among older children, blacks, and those who have had some contact with the police.

TABLE 1 (continued)

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Greenberg (1970)	980 students in grades 3, 5, 7, and 9 in Philadelphia	age, race, socioeconomic status	Respect for the police is higher in younger children and equally high among young blacks as whites, but declines more rapidly as black children age.
Rodgers and Taylor (1971)	302 students in grades 9-12 in a southern city	race, sense of political efficacy, personal trust	Attitudes toward the police appear mixed among high school students. There is some respect and some hostility. Black students have less faith in the honesty, fairness, and objectivity of the police. Students having lower senses of political efficacy and personal trust have less faith in and respect for the police.
Engstrom (1970)	288 students in grades 4-8 in Lexington, Kentucky	race	Black students are less likely than whites to believe in the benevolence of the police, and are more conscious of the power of the police.
McDowell and Hogan (1975)	164 high school students in Memphis	race	Black students are less likely than whites to think that police deserve respect and are more likely to believe that the police cannot be trusted.
Hahn (1969)	270 black residents of Detroit	———	A majority of the respondents do not believe that the police are honest or can be trusted. Most also perceive that enforcement policies are discriminatory.

Smith and Hawkins (1973)	1,407 residents of Seattle	race, age, income, criminal victimization, police contact	Victims of crime are no more positive or negative in their attitudes toward the police; they tend to be less satisfied with police services. Those whose contacts with the police have been police initiated tend to be more negative than those who have no contact or whose contact has been self initiated. Blacks are consistently more negative than whites.
Walker *et al.* (1972)	1,148 residents of North Carolina	race, age, income, police contact	A majority of respondents who have had contact with the police were satisfied with their experience; involuntary contacts tend to be less satisfactory. While blacks tend to be less satisfied than whites, only 27% of the black respondents were dissatisfied with the police. Diffuse support for the police is quite high. The nature of the contact and whether it was satisfactory are most important in determining attitudes toward the police. Blacks are more likely than whites to doubt impartiality of the police.
Jacob (1971)	224 residents of three Milwaukee neighborhoods	race, age, income, education, neighborhood, police contact	Blacks are uniformly more negative in their feelings about the police. They see the police as corrupt, unfair, tough, and unfriendly. Blacks tend to have more involuntary contacts. While unsatisfactory experiences with the police lead to a diminution in support, good experiences have no effect on attitudes. Respondents with higher incomes are more supportive of the police. The way a person feels about the police is the result of the fit between his expectations and his perceptions.

TABLE 1 (continued)

Study	Sample	Major Independent Variables	Major Findings
Block (1970, 1971)	3,787 adults, national	race, fear of crime	The greater an individual's fear of crime, the more likely he is to support the police and believe that they should be given more power. Among whites there is an inverse relationship between support for civil liberties and support for police power. Blacks, however, are likely to support both civil liberties and police power.
McIntyre (1967)	secondary analysis of Gallup, Harris, and NORC surveys	race, criminal victimization	There appears to be no relationship between victimization and police attitudes. Most respondents do not hold the police responsible for increase in crime. Blacks are more likely than whites to think that police do not treat people equally.
Boggs and Galliher (1975)	176 residentially stable blacks and 117 black transients in a midwestern city	residential stability, education, income, age	Black transients are more likely to experience police initiated contacts than are residentially stable blacks. Transients have a lower opinion of police services, but over 33% of residentially stable blacks are also dissatisfied. Among both groups, those who have had police initiated contacts tend to be less satisfied with the police.
Bayley and Mendelsohn (1969)	806 residents of Denver	race/ethnicity, income, age, police contact	Minority group members tend to be more critical of the police. Those who have some contact with the police tend to be either more supportive or more critical than those who have had no contact with them. Minorities are less likely to think that

			police treat everyone equally or fairly. Minorities typically have less satisfactory experiences with police. Race/ethnicity is the most important predictor of attitudes toward the police.
Bureau of Social Science Research (1967)	511 adults in Washington, D.C.	race, anxiety about crime, victimization	A majority of the respondents think that police deserve respect, but a majority also think that police treat rich people better. Blacks tend to be less supportive of the police. Those who are anxious about crime are less supportive even though actual experience as a victim has no significant effect on attitudes toward the police.
Conklin (1971)	138 suburban and 128 urban residents in Boston area	neighborhood	Residents of high crime areas tend to be more critical of the police than residents of "crime free" neighborhoods.
Ennis (1967)	10,000 adults, national	race, income, victimization	Blacks tend to be more critical of the police. People with higher incomes tend to view the police more favorably. Victimization has no significant effect on attitudes toward the police.

TABLE 2

MAJOR STUDIES OF ATTITUDES TOWARD LAWYERS

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Curran and Spalding (1974)	2,064 adults, national	(preliminary report—no data analysis completed)	81% think that lawyers can be trusted; 76% think lawyers try to understand their clients. Less than half think lawyers' fees are fair: 75% think that there are many things lawyers handle that could be handled better by other professionals. Only 37% believe that lawyers will work as hard for poor clients as they do for wealthy ones. 67% report having consulted a lawyer at least once in their lives; most had only one lawyer contact.
Levine and Preston (1970)	140 low income people in a large midwestern city	race, age, income	Approximately 50% have ever consulted a lawyer. Blacks and young people are least likely to have consulted a lawyer.
Rockwell (1968)	795 adults in Boston and Cambridge	race, age, income, occupation, education, lawyer contact	Income is directly related to support for lawyers. Blacks tend to have less favorable attitudes. The willingness to use lawyers varies directly with income, education, and attitudes toward lawyers. Attitudes vary inversely with frequency of contact.
Mayhew and Reiss (1969)	780 adults in Detroit	race, income, property ownership	40% have consulted a lawyer during their lifetimes. Family income and property ownership are the best predictors of contact. When each is controlled racial differences become insignificant.

Blashfield (1954)	review of surveys conducted by bar associations in Iowa, Texas, and California	———	Approximately 20% of those interviewed in the surveys reviewed like nothing whatever about lawyers. About 50% have never consulted a lawyer. Those who have consulted lawyers generally are not totally negative in their opinions.
Missouri Bar-Prentice Hall (1963)	350 depth interviews in two Missouri counties, 2,524 closed-ended interviews throughout Missouri	education, occupation, contact with lawyers	Attitudes toward lawyers vary directly with educational attainment and occupational status. Contact with lawyers tends to diminish respect.
"What the Public Thinks of Lawyers" (1964)	same as above	contact with lawyers	Those who have consulted a lawyer tend to have lower esteem for lawyers in general than do those who have never consulted a lawyer.
Hallauer (1973)	301 union members in Shreveport, Louisiana	property ownership, contact with lawyers	Property ownership is highly correlated with lifetime lawyer usage. A majority of those interviewed think lawyers charge too much. Most do not trust lawyers. Contact has no significant effect on attitudes.

TABLE 3

MAJOR STUDIES OF ATTITUDES TOWARD COURTS

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Blumenthal *et al.* (1972)	1,374 males, national	race, education	79% think courts treat rich people better than poor people; 86% of the black respondents feel this way. 40% of the total sample think whites are treated better; 66% of the blacks feel that whites are treated better. 80% of the sample think that they would be treated the same as others; 66% of the black respondents feel this way.
Barton and Mendlovitz (1956)	102 adults in one midwestern county	occupation, experience in court	50% have had some experience in court during their lifetimes; 23% have been a party to a case. Few know much about the courts. Those who have had some experience in court generally feel less confidence in the way courts operate than those who have no experience.
Walker *et al.* (1972)	1,148 adults in North Carolina	race, age, income, experience in court	64% have had some experience in court, 17% as a party to a lawsuit. Experience in court varies directly with income. A majority of the respondents who have had some experience in court are satisfied with that experience. Those who have had satisfactory experience are more supportive of the courts than those with no experience or those who have had unsatisfactory experiences.
Skogan (1971)	342 students at the University of Wisconsin, Milwaukee	knowledge about courts	50% did not believe that the "rule of law protects us from the rule of men." 64% disagree with the statement that judges are impartial. Those who

			know more about the courts are less positive in their evaluations.
Missouri Bar-Prentice Hall (1963)	350 depth interviews in two Missouri counties; 2,524 closed-ended interviews throughout Missouri	experience in court, knowledge about courts	33% do not think they would get a fair trial if accused of a crime. Respondents who have had some experience in court or who have knowledge of how courts operate are less positive in their evaluation of courts.
Engstrom and Giles (1972)	165 9th-grade students in Lexington, Kentucky	perceived procedural fairness of courts	50% do not believe that courts always use fair procedures. Support for courts is positively related to the belief in the procedural fairness of courts.
Hirsch and Donohew (1968)	secondary analysis of national sample of 1,558 adults	race and education	Black respondents are generally more supportive of the Supreme Court than white. This racial difference persists when education and income are controlled.
Giles (1973)	157 lawyers, 222 law students, 169 laymen in two Kentucky counties	———	Law students are much more positive in their evaluations of the Supreme Court than either lawyers or laymen.
Kessel (1966)	356 adults in Seattle	party identification, agreement with Supreme Court decisions, knowledge about the Court, age	A majority think the Supreme Court is doing a good job. Its preferred role is interpreter of the Constitution. Democrats and younger people tend to be more supportive of the Court. Agreement with Court decisions is less important than party identification as an influence on general evaluations of the Court.
Dolbeare (1967)	627 adults in Wisconsin	party identification, knowledge about the Su-	Knowledge of Supreme Court decisions is quite low. 52% thought that the Court was doing a good

TABLE 3 (continued)

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
		preme Court, belief in "myth of mechanical jurisprudence"	job. Those who know more about the Court like it less. Democrats are more supportive of the Court. Those who believe in the "myth of mechanical jurisprudence" are more supportive.
Dolbeare and Hammond (1968)	comparison of results of Gallup, SRC, and Berkeley surveys with each other and with 627 Wisconsin adults	party identification, approval of the President	National surveys from 1937-1966 found widespread approval of the Supreme Court. Approval of the Court is highest among those who think that the President is doing a good job. Few Court decisions are so well known or so disliked as to change opinions about the Court itself.
Casey (1975)	866 adults in Missouri	trust in the President	Those who have more trust in the President have more trust in the Court regardless of their party identification.
Murphy and Tanenhaus (1968)	915 from a 1964 national sample; 1,063 from a 1966 national sample	party identification, political involvement, attitudes toward federal power, education	Knowledge of Supreme Court decisions is generally low. In order for the Supreme Court to be able to legitimize actions of other branches people must know about Supreme Court decisions and think that the Supreme Court should be the final arbiter of the Constitution. Few fulfill these prerequisites. Those who are better educated and politically involved tend to know more about the Supreme Court. Among people who know something about Supreme Court decisions approval of those decisions tends to be low. Yet diffuse support for the Court is high. Those who endorse fed-

			eral power display greater diffuse support for the Court.
Murphy, *et al.* (1973)	same as above	knowledge about the Supreme Court, political ideology	63% think that the Supreme Court does a good job; 69% think that it is generally fair in its decisions; 51% do not think it is too political. Those who approve of specific Court decisions display higher levels of support for the institution itself. Liberals also display higher diffuse support. Knowledge about the Court is unrelated to supprt for it.
Murphy and Tanenhaus (1976)	381 adults interviewed in 1966 and again in 1975	party identification, liberalism, attitudes toward civil rights, alienation from government	Diffuse support for the Supreme Court declined slightly from 1966 to 1975. Support for the Court is highest among liberals. Civil rights decisions were less popular in 1975. Party identification does not explain changes in diffuse support.
Casey (1974)	866 adults in Missouri	education, social status, politicization	Myth holding, e.g. belief in mechanical jurisprudence, is quite widespread. Higher education and higher social status are associated with greater awareness of the Supreme Court and with myth holding. Only the Court's most controversial decisions are even reasonably well known. Those who know more about the Court believe in myths about the way it operates. Clarity of perceptions about the Court does not undermine myth holding.
Dennis (1975)	Wisconsin, 1970, 619 adults; 1972, 841 adults; 1974, 916 adults	approval of President, time	A majority feel confidence in the Supreme Court and want to preserve it as it is. A majority also feel that the Court is too much involved in politics. When people know something about Court decisions they generally dislike them. No association between approval of the President and support for the Court.

TABLE 4

MAJOR STUDIES OF ATTITUDES TOWARD CIVIL LIBERTIES

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Stouffer (1955)	4,933 adults nationally, 1,500 community leaders	community leaders/mass, age, education	Support for the civil liberties of unpopular groups, e.g., Communists, socialists, atheists, is generally low among the general population and somewhat higher among community leaders.
Prothro and Grigg (1960)	244 adults in Ann Arbor, Michigan, and Tallahassee, Florida	education, income	Almost all of those interviewed support civil liberties and freedom of speech in the abstract. However, fewer than half are willing to accord civil liberties to Communists. Support for civil liberties is directly related to education.
McCloskey (1964)	1,500 adults, nationally; 3,000 "political activists"	education, political activity	There is widespread consensus among both mass public and political activists on abstract statements about civil liberties. However, almost 40% of the mass public do not think an individual ought to be allowed to speak if he does not know what he is talking about. Support for civil liberties is higher among activists.
Lipsitz (1972)	82 low income residents of Durham, North Carolina	race	55% believe that people should be allowed to criticize the government freely. Black respondents are somewhat more supportive of civil liberties than whites.

Lawrence (1976)	national sample, size unspecified	education, attitudes toward social groups, attitudes toward social issues	Tolerance for picketing and demonstrations is issue related. Also sympathy with the goals of the group involved leads to greater tolerance; however, commitment to civil liberties is more important than issue orientations in determining responses in specific situations. Higher education is associated with greater tolerance.
Zellman and Sears (1971)	1,384 children aged 9-14 and 320 parents in Sacramento, California	age, I.Q., politicization	55% of the children believe in "free speech for all," but only 17% believe that Communists should be allowed to advocate Communism. Only 12% think that Nazis should be allowed to hold meetings. 27% believe that a man should be allowed to make a speech in support of the Vietcong. Age, I.Q., and politicization have no significant effect on tolerance in specific situations.
Gallatin and Adelson (1971)	120 American, 120 British, 90 German children aged 11-18	age, nationality	Younger children in all three nations are less supportive of legal guarantees of freedom of speech than older children. Americans are uniformly more supportive at every age level.
Erskine (1970b)	review of findings of 8 major national polling organizations	age, income, education	In 1954, 56% of those interviewed by NORC believed that "in peacetime, people in this country should be allowed to say anything they want in a public speech." In 1970, 42% of those included in a CBS News poll agreed that "everyone should have the right to criticize the government even if such criticism is damaging to our nation's interests." In a 1938 Gallup poll about 35% thought Communists and Fascists ought to be allowed to express their views freely. Younger, wealthier and better educated people tend to be more libertarian.

TABLE 4 (continued)

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Erskine and Siegel (1975)	review of findings of 1972, 1973, and 1974 NORC surveys	———	Support for civil liberties of Communists, atheists, and socialists was much higher in 1972, 1973, and 1974 than in earlier polls. For example, while in 1954 only 27% supported freedom of speech for Communists, 58% supported it in 1974. Increased tolerance for these groups reflects a decline in the feeling that they pose a threat.
Wilson (1975)	2,486 adults, nationally	age, sex, education, political ideology	Only 33% believe that people should be allowed to make speeches against God or that people should be allowed to publish books which attack our system of government. Males, younger people, more highly educated people and those who call themselves liberal are more supportive of civil liberties.
Zalkind *et al.* (1975)	733 in metropolitan New York area in 1968; 254 in 1970	personality traits, demographic variables	Measures of flexibility, independence, and self-reliance correlate positively with support for civil liberties. The association remains significant when demographics are controlled.

TABLE 5

Major Studies of Attitudes toward Social Control

Study	Sample	Major Independent Variables	Major Findings
Rossi *et al.* (1974)	200 adults in Baltimore	race, sex, education	Very high degree of agreement as to the relative seriousness of different kinds of offenses exists among the people interviewed. Agreement extends across demographic lines.
California Assembly Committee on Criminal Procedure (1968)	1,567 adults in California	education, age	Knowledge of the statutory penalties for most crimes is quite low. The public generally tends to underestimate the penalties. At the same time, a majority favor stiffer penalties as a way of lowering crime rates. Older, less well educated people favor the stiffest penalties.
Newman (1957)	178 adults, location not specified	age, income, education	78% favored more severe penalties than those currently imposed for violations of FDA regulations.
Gibbons (1969)	320 adults in San Francisco	———	A majority are more severe than the courts would be in their judgments about appropriate penalties for most offenses, especially for crimes against persons.
Rose and Prell (1955)	364 University of Minnesota students	rural/urban, socioeconomic status	There is no relationship between the severity of punishment actually imposed in a sample of criminal offenses and the judgment of those surveyed as to the severity of the various offenses.

TABLE 5 (continued)

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
			Higher SES and rural respondents tend to favor more severe penalties. Most respondents are more severe in evaluating the crime committed by higher SES offenders.
McIntyre (1967)	secondary analysis of Gallup, Harris and NORC surveys	race and criminal victimization	A majority of those surveyed think that courts are too lenient with criminals, but blacks are less likely to think so. Victims are more likely than nonvictims to think that courts are too lenient.
Conklin (1971)	138 suburban and 128 urban residents in the Boston area	neighborhood	Respondents living in high crime areas are more likely to favor punishment, even if it has no deterrent effect, than are those living in low crime areas.
Carratura and Hartjen (1974)	New Jersey	sex, socioeconomic status	There is a high level of agreement on the nature of appropriate penalties for most crimes. When there is a discrepancy between public opinion and what the law provides in the way of penalties, the public is generally more severe.
Thomas *et al.* (1976)	3,334 residents of a southeastern city	race, sex, socioeconomic status, age	There is a high degree of consistency in the ranking of the seriousness of criminal offenses across all social groups.
Erskine (1974b)	review of the findings of 5 major national polling or-	———	A majority in all recent national polls think that the leniency of sentences and Supreme Court deci-

	ganizations		sions on the rights of defendants are important causes of crime, and that courts are too lenient. Most respondents think that law enforcement should be "tougher" on criminals.
Thomas and Foster (1975)	839 adults in Volusia County, Florida	perception of crime rate, fear of victimization	A substantial majority favor the death penalty. Support varies directly with the perception that the crime rate is rising and with fear of victimization.
Kohlberg and Elfenbein (1975)	50 working and middle class males in Chicago. First interviewed in 1955 and 3-year intervals since	level of moral development	Support for the death penalty varies inversely with the level of moral development of an individual. Those who believe in retribution are most likely to support the death penalty.
Sarat and Vidmar (1976)	181 adults in Amherst, Massachusetts	information about the death penalty, retributiveness	Informed opinion about the death penalty is significantly less supportive of it than uninformed opinion. However, retributiveness is more important than information as a determinant of attitudes toward the death penalty.
Vidmar and Ellsworth (1974)	review of survey studies of attitudes toward the death penalty	———	Support for the death penalty has increased in recent years, and is higher among older, less well educated, and among white respondents.
Block (1970)	1,787 adults nationally	race, region, urban/rural	Support for defendants' rights inversely related to support for police power. Blacks tend to support both defendants' rights and police power.
Casey (1976)	866 adults in Missouri	education, political ideology	Fewer than half know that the Supreme Court has made decisions dealing with defendants' rights. Conservatives are less likely than liberals to approve of Court decisions on defendants' rights.

TABLE 5 (continued)

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Lipsitz (1972)	82 low income residents of Durham, North Carolina	race	Large majorities of both black and white respondents support defendants' rights and believe that government ought to appoint counsel for indigents.
Thomas (1974)	839 adults in Volusia County, Florida	——	54% do not believe that criminals and law-abiding people should have the same rights. At the same time, 76% think that even those who are "obviously guilty" deserve a trial. 65% believe that the government should eliminate all "legal technicalities" that allow guilty people to go free. 53% believe that if evidence proves someone guilty it ought to be used no matter how it was obtained.
McDowell and Hogan (1975)	164 high school students in Memphis	race	Black children are more likely than whites to think that defendants' rights keep the criminal justice system from working effectively.
Montero (1975)	214 members of a high school graduating class in a California city	experience in college	81% of those with, and 56% of those without, college experience do not believe that police are "justified in holding a man with previous narcotics convictions until they have secured enough evidence to convict him." Similar differences are noted in support of the Fifth Amendment and in support of restricting the police to arrests on the basis of probable cause. 55% of those with, and 44% of those without, college experience believe

			that police should have to obtain a search warrant if it will impede the apprehension of a criminal. Less than half of either group believes in the prohibition against double jeopardy.
Erskine (1974c)	review of the findings of 5 major national polling organizations	education, party identification	A majority of those interviewed in a 1970 CBS News poll support the Fifth Amendment and do not believe that government should have the right to hold secret trials. Most, however, believe that if a man is found innocent and new evidence is obtained he should be tried again. A majority are against warrantless searches but favor preventive detention. Most also think that recent Supreme Court decisions have given too much attention to the rights of defendants. Those with more education typically are more supportive of defendants' rights.

TABLE 6

MAJOR STUDIES OF ATTITUDES TOWARD LEGAL RIGHTS AND OBLIGATIONS

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Williams and Hall (1972)	300 adults in Austin, Texas	ethnicity, socioeconomic status	A majority see the purpose of law as the protection of social order. Minority group members are less likely than whites to know what to do if deprived of a right. Only among high SES whites do a majority think that they could successfully change an unjust law. Members of other social groups did not think that they could do so. Knowledge of laws pertaining to civil or political rights is generally low, lowest among members of minority groups.
Albrecht (1974)	398 adults in an unspecified Rocky Mountain state	education, income, race	Knowledge of the law is generally quite low among a majority of those interviewed. Knowledge of the criminal law tends to be higher than knowledge of civil law. Knowledge varies directly with income and education.
Michigan Law Review (1973)	600 adults in Ann Arbor, Saginaw, Ludington, and Scottville, Michigan	education, income, occupation	Knowledge of the law is generally quite low among a majority of the respondents. Knowledge of consumer law is lower than knowledge of criminal law. Higher education is directly related to knowledge of criminal, but not consumer law.

Cortese (1966)	74 welfare recipients in Denver	none reported	Less than half of those interviewed know that they do not have to answer any questions after arrest. 90% know they have a right to counsel. Less than half know about bankruptcy. Less than 10% know that a store does not have automatic repossession rights. Less than half know about implied warranty rights.
Sarat (1975)	220 adults in Madison, Wisconsin	knowledge of the law, support for the legal system	Less than half know that an arrested person cannot be made to answer questions. 73% know that a suspect does not have to prove his innocence. Over 90% know that the police have to inform suspects of their rights. Almost two-thirds know that wages can be attached for failure to pay debts. The more an individual knows about the law the less likely he is to be satisfied with the performance of the legal system. Support for the legal system is positively correlated with compliance with law.
Rockwell (1968)	795 adults in Boston and Cambridge	race, age, income, occupation, education, lawyer contact	A majority of the low income people in the sample do not see the legal system as providing facilities for protection or assertion of rights. In only 3 of 11 legally actionable situations do a majority think legal action appropriate. Income is directly related to willingness to assert rights.
Jacob (1969)	392 debtors, 76 nondebtors, in four Wisconsin cities	experience in court, education, income, occupation	Less than half of the nondebtors are high in their level of judicial efficacy (believe they can use the courts to deal with personal problems). Those without court experience are higher in their level of judicial efficacy than those with court experience. This difference persists when demographics are controlled.

TABLE 6 (continued)

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
Rodgers and Lewis (1974)	651 10th to 12th graders in a rural southern county	race	Most think that the law should always be obeyed, but most acknowledge that they do not always obey. The general commitment to law abidingness is not a good predictor of compliance in specific situations. Diffuse support for the political system does not correlate well with the desire to see law enforced in specific situations.
Brown (1971, 1974)	261 7th, 8th, 10th, and 12th graders in Racine, Wisconsin	age, sex, race, parents' socioeconomic status	Willingness to comply with the law declines as children get older. Adolescents learn and accept norms which are restrictive of legal authorities. As children age willingness to comply becomes more clearly a function of the perceived consequences of disobedience. The relation between orientations toward law and reported frequency of noncompliance is a function of the saliency of law.
Engstrom (1970)	288 children in grades 4-8 in Lexington, Kentucky	race, age	Black children are more likely than whites to comply with the law because of the perceived power of legal authorities. The compliance of whites is more closely related to the perceived benevolence of authorities.
Adelson *et al.* (1969)	120 students aged 11, 13, 15, and 18, location unspecified	age	Younger children tend to see law solely as a source of regulation and control. Older children see law as more mutable and as a provider of positive benefits.

Gallatin and Adelson (1971)	120 American, 120 British, 90 German children aged 11-18	age, nationality	Older children are more likely to see law as a protector of rights and freedoms. Americans are more aware of positive functions of law than are children in Britain and Germany.
Tapp and Kohlberg (1971)	115 children from kindergarten to college	age	Young children see laws as a source of sanctions and control. Older children see law as achieving beneficial social consequences. They are also more likely to think that laws can be changed for reasons of social utility. The motivation for compliance typically changes from fear of punishment to the value of conformity to agreement with the law. Older children see the morality of circumstances as justifying noncompliance.
Tapp and Levine (1974)	add 117 adults, law students, school teachers, and prison inmates	age	
Rodgers and Hanson (1974)	289 adults in an unspecified Iowa county	general commitment to law abidingness, situational factors	For most of those interviewed, the general commitment to law abidingness is less important in explaining the desire to see the law enforced than specific circumstances, e.g., the group involved.
Rodgers and Taylor (1971)	302 students grades 9-12 in a southern city	race, attitudes toward law, grade average, age	Belief that all laws are fair declines with age. Two-thirds of those interviewed said people should always obey the law. Children with higher grade averages tend to be less commited to law abidingness. The perceived fairness of the law is more important in motivating compliance among white children than among blacks.
Tapp and Levine (1970)	124 children grades 4, 6, and 8 in an unspecified metropolitan area	age, race, sex, socioeconomic status	White children more than blacks tend to define fairness in terms of an equal distribution of things. At the same time, a large number of children, especially older ones, think that a fair rule is one formulated with the participation and agree-

TABLE 6 (continued)

STUDY	SAMPLE	MAJOR INDEPENDENT VARIABLES	MAJOR FINDINGS
			ment of the citizens. Younger children are more likely to think that rules are unbreakable.
Torney (1971)	12,052 white children in grades 2-8 in urban areas of the northeast, northcentral, south, and west	age, I.Q.	Younger children tend to see the function of law in terms of the prevention of chaos and disorder. Older children are less likely to think that all laws are fair.
Koeppen (1972)	review of studies of political socialization	———	Psychologists tend to see compliance as a product of the cognitive or moral development of an individual. Political scientists tend to see it as an outgrowth of attitudes toward political authorities.

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