

Criminological Research and the Unspoken: Studying Crimes That Escape Codification

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ABSTRACT

Criminology is a science that struggles indefinitely to establish an epistemological foundation from which it has never benefited, and which it has never felt the need for. For, in truth, is it essential to know whether one approaches a crime from the point of view of social construction (a crime is socially constructed), or from a deterministic and positivist point of view (there is only one unique and legal perception of crime)? Many crimes escape their codification, whether it is their labeling as crimes by the penal code (for example, “ecological” crimes); or whether it is the inability by the criminal himself to understand the criminal scope of his acts or to accept their criminal nature

Keywords: Criminology, Crime, Epistemology, Codification,

La investigación criminológica y lo tácito: Estudiar los delitos que escapan a la codificación

RESUMEN

La criminología es una ciencia que lucha indefinidamente por establecer un fundamento epistemológico del que nunca se ha beneficiado y del que nunca ha sentido la necesidad. Porque, en verdad, ¿es imprescindible saber si se aborda un delito desde el punto de vista de la construcción social (un delito se construye socialmente), o desde un punto de vista determinista y positivista (sólo existe una percepción única y jurídica de crimen)? Muchos delitos escapan a su codificación, ya sea que el código penal los etiquete como delitos (por ejemplo, delitos “ecológicos”); o si se trata de la incapacidad del propio delincuente para comprender el alcance delictivo de sus actos o para aceptar su naturaleza delictiva.

Palabras clave: Criminología, Crimen, Epistemología, Codificación

犯罪学研究和默示：避开法典化的犯罪研究

摘要

犯罪学是一门科学，这门科学一直争取建立一个知识论基础，其从未从该基础中获益，也从未认为需要从中获益。因为从真相来看，了解一个人是否从社会建构观点（犯罪是经过社会建构的）或从决定论和实证主义观点（仅存在一种独特且合法的犯罪感知）参与犯罪，这是关键的吗？许多犯罪避开法典化，无论其是否被刑法典命名为犯罪（例如“生态”犯罪）；或者罪犯本人无法理解自身行为的犯罪类型或无法接受其犯罪性质。

关键词：犯罪学，犯罪，知识论，法典化

Introduction

Is codified, explicit, formal knowledge a better tool for solving crimes than the intuition, flair and interpersonal *skills* of the investigator? When the economist Mark Blaug (1982) describes what he conceives of as “adduction” processes, one immediately thinks of the archetypal figures of the great investigators, who, on the basis of a few clues, a few premises, imagine complex scenarios that can bring together all these extracts of reality in a coherent theory (Donnelly, 2020; Keller and Klein, 1990). This non-formal inductive leap, skipping stages of reasoning, is the product of intuition, of flair, as described by Chase and Simon (1973) in their study of the chess grandmasters: a knowledge of the tenuous link, of synoptic abstraction, unearthing the reality underlying its found traces. But is crime always the logical and irrefutable production of codified mechanisms? How does our intuition navigate between what is right and what is wrong? How does the cognitive apparatus generate moral schemas and tacit judgements? (Narvaez and Bock, 2002). Are there “non-codifiable” crimes, which could be called *tacit* crimes, whose project, implementation and execution respond to automatisms that escape the consciousness of the murderer? Could the act be a second state, a quasi-automatism, escaping not the criminal’s will, but the immediate or ex-post awareness of its *realization*?

Criminology is a science that struggles indefinitely to establish an epistemological foundation from which it has never benefited, and which it has never felt the need for. For, in truth, is it essential to know whether one approaches a crime from the point of view of social construction (a crime is socially constructed), or

from a deterministic and positivist point of view (there is only one unique and legal perception of crime)? This question is not, however, completely insignificant. Many crimes escape their codification, whether it is their labeling as crimes by the penal code (for example, “ecological” crimes); or whether it is the inability by the criminal himself to understand the criminal scope of his acts or to accept their criminal nature. We have chosen to refer to such situations as “unexpressed” crimes.

The purpose of this article is to explore the different forms and mechanisms that can create implicit or tacit crimes; whether they are deliberate, such as the gratuitous criminal act; or unconscious, such as the production of behavioral signatures related to psychic injuries in some criminals.

Georg Simmel, in his introduction to *Soziology* (1908) reminded the reader that the unspoken was not only present, but probably a key to a universal reading of human relations, whether they be of a profound or anecdotal order, of a gratuitous or transactional nature. In fact, we know more than we are *willing to express* (Detienne and Vernant, 1974; Simmel, 1906), or that we *cannot express* (Polanyi, 1958), and the whole of the unspoken is complementary, even substituting for the explicit in human relations. In 1867, Helmholtz was also interested in what was not visible in human behavior, and quickly proposed that there were many unconscious inferences to be drawn from our cognition. Helmothz reminded us that we are not always aware of what we see, nor are we aware of the inferences that process in our brain what we are not aware of seeing.

Research in criminology, in its quest to understand, explain and predict human beings and criminal phenomena, is nourished by data: statements of actors, forensic medicine, in-depth interviews, direct, participant or dormant observation, analysis of internal documents, archival studies, etc. Forensic scientists learn to be competent in their trade by accumulating “tacit knowledge” and implicit patterns of clue recognition (Doak and Assimakopoulos, 2007). Scientists work on the observable, and are afraid to deviate from it for fear of threatening the internal validity of their research. They measure the degree of generalization of their theories by proposing to their peers to replicate their experiments under the “same conditions,” to challenge their findings in another experimental set, in another natural environment. In doing so, all scientists take the same *a priori*, they all tolerate the same imprecision: that the replication of the visible is a necessary and sufficient condition for the replication of a result.

This article proposes, on the one hand, to present what—out of our sight—hides other explanations, other possibilities of comprehension and can thwart our predictions of the real—the *field of the unexpressed*—and, on the other hand, to discuss research methods that can allow us to include it in our research designs.

A Contested Theorization of Criminology

Criticisms of a criminological theory “with feet of clay” are never harsh enough. Glaser and Strauss (1967) recall how Blumer, on behalf of the Social Science Research Council in 1938, described Thomas and Znaniecki’s¹ research—on the Polish peasant in Poland and America—as a retelling whose “main conclusions are the shadows of Thomas’ earlier writings”² and stressed, worse still, that “their particular interpretations of Polish peasant life were not formed from the material they present.” “We are led to believe,” Blumer continued, “that their familiarity with Polish peasant life has come about in a wide variety of ways...”³ Continuing his critique, he emphasized that the “important question is whether the materials used adequately test the generalizations...” but “the answer is inconclusive ... the interpretation can be true or false, although it is quite plausible.”⁴

Historians are familiar with the dilemmas posed by the possibility of verifying the conclusions that support the generation of their theories. Is Foucault not to be blamed for having founded *Surveiller et punir* (1975) on regulations that were never applied? Didn’t Jacques Marseille, in applying a reading of decolonization based on economic data in *Empire colonial et capitalisme français* (1983), upset the previous conclusions of his peers? Data is at the heart of the construction of a theory, and the weakness of Thomas and Znaniecki’s *Polish Peasant* undoubtedly lies in what they called “human documents: letters, agency data, biographies and court data”: data that are merely the explanation made by others of a phenomenon they did not observe.

Glaser and Strauss wrote that Blumer had raised “the question of constructing theories from data rather than from an armchair” (Glaser, Strauss, 1967, p. 14). This intimacy with data that Thomas and Znaniecki lacked thus encouraged Blumer to publish an article a year later in which he wrote that “developing a rich and intimate familiarity with the type of conduct being studied and employing any relevant imagination that observers may fortunately possess” should compensate for this type of weakness, “... by improving judgment, observation, and concept ... in a long process of maturation” (Blumer, 1940, p. 718-19).

1 Thomas W.I. and Znaniecki F., *The Polish Peasant in Poland and America*, New York: Alfred A. Knopf, 1918.

2 “the major outlines are foreshadowed in the previous writings of Thomas,” cf Glaser, Strauss (1967, p. 13).

3 “their *particular* interpretations of Polish peasant life were not formed solely from the materials they present; we have to assume that the familiarity with the Polish peasant life which enabled their interpretations was made in a wide variety of ways,” Ibid.

4 “the important question is whether the materials adequately test the generalizations (regardless of their source) which are being applied to the materials...” but “the answer is inconclusive” (...) “the interpretation is either true or not, even though it is distinctly plausible” in H. Blumer, “Appraisal of Thomas and Znaniecki’s *The Polish Peasant in Europe and America*,” New York: Social Science Research Council, 1939, pp. 74-75, cité par Glaser et Strauss, *Op. Cit.*

The Fragile Relationship Between Criminal Data and Criminological Theory

Any model is a lie, because it can only reduce reality to patterns that distort and abuse it (Dedijer 1975, 1989; Ashby, 1970). Investigators are also subject to limited rationality; they seek solutions in the vicinity of the problems they detect, as Cyert and March suggested (1963). They also may be tempted to favor a measure because it is available, and not because it has received theoretical support⁵ (Barney, 1985, p. 2), or because it is commonly granted for the “most faithful” measure for the problem being treated.

There is an abundance of statistical data on criminal events. These databases have a universally accepted representative character, so that the question of the data can be summarized by a quotation from the said database. However, statistical data is versatile (Lovell, 1983). Significant correlations can be found in unrelated series, if one has some mastery of the “time” variable common to these series (Ames and Reiter, 1961). Data, in other words, is human production. Like all these, it must be approached with caution: under what historical, social and political conditions was it produced? What are the stakes associated with it? Who and why can or *may have had an* interest in shaping this data according to what intentions? During a historical work concerning Pechiney (Baumard, 1993), I realized that the labels attributed to archive boxes were sometimes imprecise, but that these “imprecisions” were not meaningless. Finally, without the “living memory” of the archive manager, who witnessed the events, I would not have been able to “orient” myself in the contents of the archives to discover ... what I was not looking for.

As archives, data signs the history of an organization; a history over which the company wishes to have some degree of control, either by omitting memos from the General Management in historical collections or by arranging its archiving to favor one reading over another. Annual reports, on the other hand, are intended to be read by public opinion, competitors and shareholders. The data they contain is therefore subject to a triple constraint: to appeal to public opinion, not to inform the competition, and to reassure the shareholder. Memos are written traces of decisions taken in the organization: they are written by people with a strong awareness that they constitute a *posteriori* “written evidence” of the value of their analysis and their decision. They are subject to a prudence constraint. The behavior of an actor who knows he is being observed—by an internal auditor as well as by a researcher—is likely to be different from the behavior of an actor who is free of any external observation.

5 Barney (1985) in his study of organizational informal networks noted that “it appears that measures of informal relationship structures are chosen because they are available, rather than because they have received inductive theoretical or even empirical support.”

The Idiosyncratic Recipes of Crime

Beyond the data understood as “human production,” there always remains a limit that we will call *philosophical* to the study of organizations in general, and to the generalization of criminal phenomena observed in predictive capacities in particular. This limit is raised by Spender (1989), who defends that industries are *idiosyncratic* because the tacit knowledge they convey is not accessible from the outside, and foreshadows a danger to be transposed to any industry, which we have observed in one. Spender speaks of “recipes” for industries, which are not imitable, because they are strong in tacit content. Less categorical, Morin (1986) only emphasizes the difficulty of knowing a world that is not very *familiar* to us because we do not belong to it. There are behaviors, knowledge that are *inherent* to a “given world.” Thus, “knowledge of physical things presupposes belonging to the physical world, knowledge of living phenomena presupposes biological belonging, knowledge of cultural phenomena presupposes belonging to a culture” (Morin, 1986, p. 205). We do not presuppose here an insurmountable idiosyncrasy, but simply that “the subject who wants to know must, in some way, distance himself from himself in order to become his own object of knowledge” (Morin, 1986, p. 206). Simons and Burt (2011) drew similar conclusions when they tried to explain how criminals “learn to be bad” and how it could be a predictor of crime. They fail to discover any stable predictive model that would predict a criminal behavior from codified determinants. When criminals learn from others, they develop an expertise, a know-how, a “savoir-faire”, which is as much tacit and “uncodifiable” as the implicit and tacit investigative knowledge of police investigators (Keller and Klein, 1990; Morgan, 2017; Nordin et al, 2009).

Implicit Learning of Criminal Behavior

Becoming one’s own object of knowledge is not an easy task. People are “ignorant of their own mental states and are reluctant to recognize them, thus deceiving themselves about their own desires, motivations, and emotions” (Dilman, 1972: 316). This phenomenon, more studied in psychology or philosophy than in the criminal sciences, is commonly referred to as “lying to oneself” (Demos, 1960). Thus, “the easiest person to deceive is still oneself” (Bulwer Lytton, 1803-1873, *Complete Works*, p, 189), because we are unaware of the mental patterns prevailing in our perception (Starbuck and Milliken, 1988), because we rationalize the experience, we are experiencing against the experience that is taking place. Criminal investigators are familiar with such situations; for instance, trying to tie up loose ends that do not fit the global picture, without knowing why they are so disturbing (Staines, 2013).

Although people may become more or less aware of these patterns, notably through reflective practice (Kottkamp, 1990), people have the capacity to even-

tually become “ex liars to themselves, who finally accept their egotist nature, but whose reproaches, far from leading them to their reformation, become by a brilliant about-face the very expression of their now fully conscious egoism” (Fingarette, 1969, p. 61). What Montaigne in his *Essays* called the “beast skin on the head,” that is to say, the formidable capacity of human cowardice to find even in flight the reassuring pattern of humanity.⁶ This versatile nature of the reversal of human self-knowledge leads us to question the capacity of recommendations such as those of Bartunek and Moch (1987) which encourage organizations to operate at a “third order change” by teaching the members of the organization to be “aware” of their cognitive structures. Criminal theory, and criminal investigation practice, have rarely experimented systematic unlearning; despite a few noticeable attempts at its theorization (Morgan, 2017; Berg and al., 2008)

“The true hypocrite is the one who ceases to perceive his deception, the one who lies with sincerity” (Gide, 1955, p. 393). People do not reveal themselves easily to others, visibility being a revelation of their intentions, of their deepest *raison d'être*. It is an obstacle to the seductive relationship that is established between people (Doi, 1985). For Doi (*Ibid*), the genesis of personality is a game of hide-and-seek between the real self and the social self, one looking at the other, learning and unlearning the lessons of this duality. Thus, for Doi (*Ibid*), every social system has an *inner life*, which cannot be said to be anything other than a set of individual realities—yet it masks organizational reality.

Thus, people base their relationship on trust; this principle even extends to a transactional reading of organizations: organizations are “nodes of contracts” (Coase, 1937), each explicit contract is accompanied by a moral contract aimed at respecting the formal articulation between organizational members. The knowledge that each party in a transaction possesses about the other is thus only a *representation* of the relationship, the true nature of which cannot be summed up in its explicit expression, so much so that explicit knowledge is only “the tip of the iceberg of the whole body of knowledge” (Nonaka, 1994). Thus, the tacit, what people “know without being able to express it” (Polanyi, 1958) or without *wanting to express it* (Détienne and Vernant, 1974), is at the heart of understanding as much as of conflict, at the heart of cognition as much as of conceptualization.

For Doi (1985), this trust—this common acceptance of a reality signaled to the other, or “heard” without having to be signaled—lies in the ability to create intimacy with the other, while respecting his mystery. Reality, once revealed, becomes anodyne, because it is schematic and reproducible. Here we come back to the conception of a reality simulating itself (Rosset, 1976), insignificant because “captured simultaneously as necessity and chance” (Rosset, 1977, p. 32). In such a duality, people project “an imaginary meaning,” which they “superimpose on the perceived thing without even (feeling) the need to establish some kind of causal

6 Montaigne then Mayor of Bordeaux had refused to go to the city affected by the plague.

link between the perceived thing and the meaning he infers from it" (Rosset, 1977, p. 35). The lack of safeguards in the gift of knowledge to the other leads to the schematic, ritual, signifier-placebo: "The more two people in a relationship get to know each other, the more their mutual secrets are revealed, and the more likely it is that the relationship will become something cold and insipid" (Doi, 1985, p. 125). The investigator's intrusion into the "domain"—affective, cognitive, conative, sensory, imaginary—of the person of interest may push the latter to express only what he or she conceives is "expressible" with regard to a belief in *who the* other is, and in *what* the other wants.

Tacit Crime for Fear of Authority

“**W**hile the complexity of social organization in any system one can think of increases, its components—even in the most totalitarian systems—tend to develop what I would call a social slack, which expresses a certain degree of freedom to act on their own” (Dedijer, 1975). In fact, people act and express themselves according to criteria on which they feel judged, while trying to preserve their non-negotiable zone of freedom (Crozier and Hedberg, 1977). Most people quite deliberately throw themselves in an agentic state, “by which is meant the condition of the individual who considers himself to be the executive agent of a foreign will, as opposed to the autonomous state in which he considers himself to be the author of his acts” (Milgram, 1982, p. 167). This obedience is not necessarily, and therefore not always detectable by an investigator, because it “responds to an internalized motivation and not to an external cause” (Milgram, 1982, p. 176). Moreover, it accompanies the formation of the actor's identity in social organization, whose “establishment (...) necessarily presupposes a potential for obedience among those who want to benefit from it” (Milgram, 1982, p. 157).

Criminal Blindness: Unperceived Crimes

Because people need a stable representation of their environment, they “attempt to include a large number of complex and related functions in a single representative image” (Donovan, 1986, p. 22). In doing so, they perceive what they want to perceive, or simply fail to perceive the essential, or even distort, in their attempt to give meaning to the perceived, all the stimuli that may have, more or less, reached them (Starbuck and Milliken, 1988). Unexpressed because not perceived is not only a tautology: people are subject to “dormant patterns,” which are “forces that compel an awakening at the margins of consciousness” (Goleman, 1985, p. 25). The question for the investigator becomes: “If we can delude ourselves into such a subtle sleep, how can we be awakened?” (Goleman, *Ibid*). The whole paradox of the complex and unequal system of human consciousness is

summarized in Laing's *Nodes of R.D.*: "The extent of what we think and do / is limited by what we fail to notice / and because we fail to notice / *that we fail to notice / there is* little we can do / to change / unless we notice / how much failure to notice / shapes our thoughts and deed"⁷ (Goleman, 1985, p. 25).

The Instrumentalization of Implicit Crimes

Sometimes people cannot express certain things because they are "vital lies" (Goleman, 1985, p. 16). Of these *vital lies*, they are half-conscious, half-unconscious. "If the force of the facts is too brutal to be ignored, then their meaning can be altered" (Goleman, 1985, p. 17). Thus, the unexpressed can take on a certain instrumentality: to reduce psychic discomfort with regard to events that have happened, or are happening, the true nature of which is unbearable if "the evidence is diminished, mocked, dismissed, or called by another name" (Goleman, 1985, p. 17). Semantics then play an important role in minimizing what is really happening (Goleman, 1985, p. 17). This is why the content and the container are brought together in an unspeakable inherence to the researcher, an inherence that Morin (1986) characterizes as much as biological as it is spiritual: the fact of belonging totally to a world, whether it is a construction (Berger and Luckmann, 1966), or whether it is born of a commitment (Simmel, 1992). Thus, as Simmel points out, two beings in conflict have no other outcome than to rise in a moral or spiritual reality higher than the one prior to the conflict. Because the conflict for two people who know each other has a deeper meaning than for two strangers: because these two people have reduced between them the barriers, the "lies to themselves" (Demos, 1960) that masked the unspeakable. The instrumentality of the unspoken takes the form of a tolerance formulated in the renewal of *commitment*, in the tacit understanding between two beings torn apart by a common future. We have all experienced dilemmas of this dimension at the beginning, middle or end of our lives. Why would we, as researchers, turn the organization into a kind of empty shell of *emotions*?

People in organizations also have "vital lies," things that they can no more reveal to their wives, their friends, than to an ordinary researcher, coming - he does not know for what purpose - to *question* his motivations, his behavior, and his decisions. Thus, "people tend to anesthetize themselves (...) avoid acquiring information that might cause them the slightest anxiety specific enough to force them to make a decision (...) forcing themselves to ignore the implications of the information they have agreed to receive" (Goleman, 1985, p. 19). Thus, people questioned by the researcher cannot provide him with *data that* they themselves have placed in the *blind spot* of their attention, because "what holds our attention enters the field of our consciousness; and what we avoid, disappears" (Goleman, 1985, p. 20).

7 Thomas W.I. and Znaniecki F., *The Polish Peasant in Poland and America*, New York: Alfred A. Knopf, 1918.

The Social Construction of Implicit Crime

When “the lure is mutual, and its collective methods ... no one acting in concert with another has an interest in speaking out, or producing evidence against the false belief or questionable desire that each wants to maintain” (Ruddick, 1988, pp. 380-389). Thus, collective luring becomes the best way to avoid bitterness and regret (Oksenberg Rorty, 1988, pp. 11-28). Social pressure, mimicry, inevitable adherence to a collective design under threat of no longer belonging to the community influence the actors, consciously or unconsciously, on their representation of reality. For the researcher, the questioning of several people can thus provide data which are not representative of a phenomenon, but of a collective fear of expressing the “felt” reality of it. Thus, each of us is “socially bound” to a given environment: “We tacitly and mutually encourage our lies by virtue of an unwritten social code that says we see what we are supposed to see; and what is not to be seen remains out of frame” (Goleman, 1985, p. 218). As researchers, we sometimes think we are interviewing people, when we are only interviewing representatives of such a social pattern. Sometimes, we obstinately seek to pierce this schema, because we have learned another schema that says that a counter-intuitive result is always more “beautiful” than a null hypothesis, and we throw ourselves body and soul into the “counter-schema,” into the protest schema, into the ideology, because it is more seductive, because it exudes greater explanatory force. Looking back on his life as a researcher, Starbuck writes: “Over time, I have concluded that normal experimentation is not useful. Because people are so flexible and versatile, it is rarely worth demonstrating that they are capable of *certain* behaviors. You have to show that certain behaviors happen under realistic conditions. However, one cannot approximate in a laboratory the rewards and socialization experiences that occur in the real life of organizations” (Starbuck, 1993, p. 76). In another article (Starbuck, 1988), called for “overcoming our human limitations,” to consider with humility the possibility of treating the *null hypothesis*—that of non-change—as an honest hypothesis; to accept, without complacency, the paradox in which the researcher lives.

The language in which we communicate our research is itself a social construction (Berger and Luckmann, 1966), itself a set of schemas (Goleman, 1985) that sign our belonging to a given social environment. The formulation of our discoveries is organized in a *discourse*, in a *statement* whose authorship we sign as one delimits a territory “because in our societies, ownership of discourse—understood at once as the right to speak, competence to understand, lawful and immediate access to the corpus of statements already formulated, and the capacity to invest this discourse in decisions, institutions or practices—is in fact reserved (sometimes even in a regulatory manner) for a given group of individuals” (Berger and Luckmann, 1966 ; Foucault, 1969, p. 90). This belonging to a given group cannot be explicitly stated. One does not claim to be “Judeo-Christian,” or “neo-Marxian”

or “constructivist.” One uses—one *adheres to*—a language that signifies, without stating it as such, membership of a group.

IMPLICIT LEARNING IN CRIMINOLOGY: OVERLOOKED, TAKEN FOR GRANTED

In the end, people cannot express what they have forgotten; and they have “forgotten” by retaining what they liked, rationalizing the rest, distorting the facts, “editing” their past along the editorial line of their conscience today (Bartlett, 1954; Fischhoff, 1982). But aren’t we, after all, acting in *very bad faith*? It is always History that has a blurred gaze, and “distorting glasses.” In what way can what an actor declares today be qualified as “fact?” Our memory of past action is not always the faithful account of it; and when we are asked to retrace the stages of our decisions, they still escape our memory. Because the implicit-non-rational will probably never penetrate the immediate level of consciousness, we end up justifying our actions in a way that is quite different from what they really were, without being able to speak of a willingness to disguise the facts. We were simply not aware of it. They escaped our conscious rationality, but did not systematically respond to an unconscious rationality. We sometimes proceed from implicit psychology and unintentional thinking (Wegner & Vallacher, 1977; Uleman & Bargh, 1989). Thus, our cognition is often independent of what we think is rational and what we are aware of. In other words, we perceive more than we think we perceive, and once perceived and assimilated, this knowledge that is ours is not known to us. How in such a framework can we be certain of the “present-past” dichotomy? “It is the fate of profound acts to become perceptible only when they have been committed for a long time (...) The representation of reality is generally late; but this does not mean at all that reality is perceptible only through *memory*. The access of the real to consciousness, which intervenes after the fact, does not constitute a memory for all that. It is the real that also comes to consciousness, rather than returning to it” (Rosset, 1977, p. 130). As true as “no one makes history, we don’t see it, any more than we see the grass grow,”⁸ there is not on the one hand the past of the organization, encapsulated in a coherent and compact body, and on the other hand its present, living and extending its arms towards the future. Fischhoff’s (1982) argument does not hold epistemologically, insofar as past and present are only two symbiotic components of the same reality. Thus, to say that people rationalize the past is also to say that they construct the real, because in doing so, “it is not the past that returns, but the real that appears” (Rosset, 1977, p. 130).

⁸ “the major outlines are foreshadowed in the previous writings of Thomas,” cf Glaser, Strauss (1967, p. 13).

How to Deal with Non-Codifiable Crimes?

Whether at the “project” stage, during their implementation, or when they are put into action, a very important part of the criminals’ behavioral corpus escapes sensor codification, modeling and digitization. Artificial intelligence fails to model and predict crime, because the size of this unspoken and non-codifiable corpus is in many criminal domains much larger than the totality of data that can be codified. Whether we are dealing with the *intentionally unexpressed* (lies, omission, concealment) or the *unconscious unexpressed* (luring, patterns that prevail in perception, automatism, placebo-actions, tacit knowledge), the challenge now is to be able to capture it in an experimental device, and to “gauge” to what extent we can actually “capture” it.

There is a tradition of cognitivist research on the unexpressed. This tradition fits into two “paradigms.” On the one hand, that of the grammarians, with authors such as McAndrews and Moscovitch (1985), Reber (1967-1993), or Brooks (1978). The aim here is, for example, to detect processes taking place in lexical recognition without the subjects being aware of them. The other tradition of research on the unexpressed concerns the cognitive sciences in the broad sense, with Helmholtz (1867) who uncovered “unconscious inferences” in our cognition, extended by Gibson (1969) and Gibson (1979), or Anderson (1976, 1983). These two traditions of research are carried out in the *laboratory*, as shown in Figure 1, and involve experiments whose aim is most often the recognition and/or restitution of visual or audiovisual sequences, under conditions that are more or less restrictive for the subjects who have agreed to play the game.

The second great tradition of research on the unconscious and the unexpressed, is the one we have qualified as “philosophical”: on the one hand, because we find philosophers who have questioned the representation of reality (Rosset, 1977), or Freud, incessant questioner of the relation to the unconscious, but also, because this tradition is inscribed in a will of *critical proposition that does not fundamentally rest on empirical bases*. This is the case with the study of Polanyi’s (1958) personal knowledge, or *the limits of Umberto Eco’s (1992) interpretation, the latter developing numerous analyses from literary examples (for example, using a fictional character like Sherlock Holmes to illustrate adduction processes)*. The influence of these “critical propositions” is important in other works and currents of research; Polanyi in particular is abundantly cited, both by “cognitive scientists” and by Nonaka (1994) or Spender (1993). Distinctions introduced within the framework of critical propositions such as Ryle’s (1949) “knowing how and knowing that” are found tested in research design or discussed by cognitive scientists.

The third tradition of research—if one can speak of “tradition” or “paradigm” for research that is, after all, scattered and discontinuous—concerns the study of unconscious phenomena—or the presumption of such phenomena—in

the natural environment. Thus, Hedlund and Nonaka (1993) have not really compared the dynamics of knowledge creation in Western and Japanese organizations, but have “induced” from their personal experience’s perspectives such differences.

All in all, there is little history of methodological attempts dedicated to the study of tacit or unspoken phenomena. In order to try to establish the premises of such a methodology, we will address here two problems: its detection and its validation.

Detection Strategies for Non-Codifiable Crimes

The question that must first be answered is: May a crime be “un-codifiable”, i.e. escape all attempts of categorization, and hence, escape being detected? We define “non-codifiable crimes” as criminal activities that are performed without explicit planning, intent, triggers; yet, are *ex post* realized as full-fledged crimes.

The characteristic of tacit crimes is that they may be unconscious to their perpetrators. This raises the problem of induction: if we do not know precisely what we are looking for, how can we induce or deduce its existence? The fact that we have no precise image of what we are looking for should not pose a problem, since in any case “from the moment we have chosen certain observations from among the infinite number of those that were possible, we have already formed a point of view, and that point of view itself is a theory, however crude it may be” (Blaug, 1982, p. 14). The search for the unspoken is far from being antinomic to a rigorous process, however.

If there is no formal induction, since there are no “facts” or “data” on which we can decline the stages of it, there is *adduction*: “it is a completely different type of mental orientation; adduction is the operation that does not belong to logic and makes it possible to jump from the chaos that the real world constitutes to a trial of conjecture on the effective relationship that all the relevant variables verify” (Blaug, 1982, p. 16).

The only difficulty is that this approach *reverses*, *more* or less, the investigation process, or at least requires a great deal of conceptual flexibility and frequent and *intentional* feedback from the field. The approach is in a way the opposite, because one is going to “provoke” the empirical base, until it offers a “salient” combination of relevant variables that can allow adduction.

Confrontation strategies

For example, a cross-reading of different archives can lead to a first *intuition* that there is an unexpressed part in the recapitulation of the history of the crime development. A strategy of *suspicion* here would be to consider that there is *always* an unexpressed part in the history of a crime development. The detection of an

implicit criminal dimension *then* can take place under two conditions: a) the existence of several timelines of the same historical criminal development; b) the survival at the time of the investigation of several witnesses from the period under study. The research strategy consists of comparing two or several *explicit* versions of the history of the criminal case, and listing the differences in the *explanation of* past phenomena in the two or *n* versions.

It is then a question of *confronting the* differences noted in the explanation of the phenomena with people who witnessed this period. It is quite obvious that one cannot cancel out the rationalization effect of people (Fischhoff, 1982) and biases linked to the solicitation of actors' memories after very long periods, but people have a formidable capacity to differentiate between "official history" and "unofficial history," just as they have a good capacity to remember the informal links linking people in the past, the commitments of one to another (moral debts, financial debts and subjective debts). For instance, people can be influenced by previous explanations of an organization's history. This is the case in the Pechiney group, where two works, the "Messud" and the "Gignoux," two historical works on the Company, even if one of them has not been published, are frequently cited by the interviewees. The direct strategy here consists in confronting the explanation made of the work with the witness questioned: after reading it, "Did it really happen like that?" people always tend to embellish their roles and diminish those of their colleagues. Of course, the answer given will be: "No, it didn't happen like that." But this is the process of adduction. We are not looking for proof, but an unknown *exposure to a* sufficient amount of evidence of a phenomenon as yet unknown to us, which we will discover—perhaps—by making a leap from chaos to conjecture.

Fortunately, tacitness is sometimes simply present in explicit forms: by suggestion, by difference between two texts. This is the case for Pechiney where the discovery of the 3C3 process is sometimes described as a long maturation and a success of the Company's engineers by Barrand and Gadeau,⁹ then described as the individual success of an actor who managed to deceive a North American audience to draw inspiration from the plans of the said process.¹⁰ This discovery was made by chance. That is to say that I was not trying to explain the birth of the 3C3 process in my research, nor did I particularly need to. The quest for the unexpressed, here because the engineers knew more than they *wanted to* express, can be marked by systematism in the absorption of a maximum of signals and stimuli, but is subject to the chance of obtaining "the combination causing the adduction."

9 "their *particular* interpretations of Polish peasant life were not formed solely from the materials they present; we have to assume that the familiarity with the Polish peasant life which enabled their interpretations was made in a wide variety of ways," Ibid.

10 "the important question is whether the materials adequately test the generalizations (regardless of their source) which are being applied to the materials..." but "the answer is inconclusive" (...) "the interpretation is either true or not, even though it is distinctly plausible" in H. Blumer, "Appraisal of Thomas and Znaniecki's *The Polish Peasant in Europe and America*," New York: Social Science Research Council, 1939, pp. 74-75, cité par Glaser et Strauss, *Op. Cit.*

Wear and tear strategies, the null hypothesis and the political strategy

Confrontation strategies can take on another aspect: a strategy of wear and tear, i.e., returning to the respondent (Miles and Hubermann, 1984), but here without modifying the questions, or including only slight modifications to measure the gap in responses. In such a strategy, *innocence* pays more than intelligence, for a reason mentioned above, the fear that the other—here, the researcher—may inspire when he or she intrudes into the territory of the respondent.

Because people have a propensity to believe in evolution and change, a strategy aimed at defending a null hypothesis to respondents can provoke in them a desire to *demonstrate change*, and thus express what they did not *want to express*, or what they were *unable to express* (vital lies, inhibition). The present as well as the past, both intertwined in *reality* (Rosset, 1977), are political issues, both individually and in the collective defense of a past or present that one does not wish to betray or distance from collective beliefs. In contrast to the strategy of the null hypothesis, which advocates non-change in order to make change explicit, the *political* strategy consists in advocating multiple changes, in *line with* their political meaning. We are far from a hypothetico-deductive research here. Adduction is an open and flexible approach. It has neither the principle of *tabula rasa*, nor the search for adherence to pre-existing models.

The strategy of counter-expertise

The counter-expertise strategy consists of confronting the respondent with another set of data aimed at showing signs of the existence of processes or knowledge that one *could not* or did not *want to express*. The researcher is not in a position where he or she “holds the truth,” but where he or she holds “a hypothesis” and encourages discussion and reflective practice (Osterman, 1990) by the interviewee on a representation of reality that differs from his or her own. This method can make it possible to respond to three apprehensions of the interviewee: the unexpressed out of fear of self, the constructed unexpressed, and the instrumental unexpressed, by allowing the interviewee, respectively, to distance himself from the schema “subject of knowledge,” to distance himself or herself from the schema in which he/she operates, and to discuss on neutral ground, where the instrumentality of a vital lie loses its meaning, since he is discussing a representation that is not his own.

Validation and Testing of Tacit Hypotheses

Taking a qualitative approach to detecting the unspoken does not preclude the possibility of testing the findings. The only test that we have been able to experience so far is a return to the field with the conjectures that have been established, in order to confront them with people interviewed. Certainly, the fact that people say: “Yes, that’s how it happened” is not an absolute guarantee

of the validity of the results. Indeed, faced with the whole of the unspoken now stated, people have various attitudes (Morgan, 2017). Some will not want to hear a reality other than the official reality, that of “Messud” or “Gignoux,” others, on the contrary, will validate the results, but in so doing, will modify their representation of reality in the sense understood by Rosset (1977), that is, the ever-renewed aggregation of past and present in a single unit, this time taking into account the unspoken revealed, but still containing an unspeakable part of the unspoken.

In the same way that the seeker of the unexpressed cannot seek the “truth,” because by its tacit essence, one can only approach the unconscious without ever exhausting it, he or she will aim to reduce this unexpressed unspeakable residue to a minimum, without ever being able to claim to have completely brought it to light. The redundant questions that may allow us to test the research process will then be: have I observed correctly? Did I hear correctly? Did I reproduce it correctly? And these questions, traditionally asked of fellow researchers in the interest of double coding, should also be asked of the interviewees themselves in order to reduce the element of chance in the attribution of data to observation categories that are all the more fragile because they concern phenomena or knowledge that people have not been able or have not wanted to express.

Is Implicit Learning in Criminal Sciences a New Boundary?

From the awareness of the fragility of human cognition, a new school of criminology needs to emerge, centered around the cognitive phenomena involved in the criminal sciences. The study of the unexpressed can indeed be described as a research “adventure.” As in any new field, the researcher embarks on hazardous paths and implicitly accepts to be subjected to severe criticism from his peers. The limits of his work will concern both the robustness between his data and the categories to which he has attributed them, and the internal and external validity of his work. But perhaps it is necessary here to question the notion of “validity,” and to question the *raison d’être* of the research? What does the researcher gain by moving within the finite space of existing paradigms? His imagination is impeded, and even his language ceases to belong to him/her. And this is still reflected in the nature of scientific facts, which are experienced as independent of opinions, beliefs and cultural affiliations. It is therefore possible to create a tradition and to maintain it by strict rules; this, to a certain extent, allows for success. But is it desirable to support such a tradition by rejecting any other possibility?

“Should it be given the exclusive right to process the knowledge, with the consequence that any results obtained by other methods are eliminated without appeal?” (Feyerabend, 1979, p. 16). Research on tacit knowledge is still embryonic, because it is supported, for the most part, only by critical proposals and laboratory experiments, reducing reality to a skin of sorrow of tests of visual stimuli, or to ad-

venturous manipulations of clichés about the knowledge of some, and the knowledge of others. But it calls for “an entirely new conception of the world, including a new conception of man and his capacity to know” (Feyerabend, 1979, p. 164). It calls for the development of the personality and attention of each individual, in order to protect this “need to wait and ignore huge masses of critical observations and measurements, (which) is almost never discussed in our methodologies” (Feyerabend, 1979: 164). We cannot continue to understand, explain and predict from explanations that are already understandings and explanations, and calling them “data.” On the other hand, to deny “en bloc” the validity of what already exists, and to reject the idea of progress, would be to deny scientific research. And one cannot call for preventive medicine on the one hand, without wanting to accept the existence of vaccines!

Conclusion

Research, and the researcher at the heart of it, whether we like it or not, poses a problem of faith. Faith in a “law of nature” on the one hand, for underneath the principle of generalization lies a belief in the existence of universal laws governing the behavior of men or organizations under given conditions: “Human knavery and stupidity are such commonplace phenomena that I would believe that the most extraordinary events arise from their concurrence rather than admit such a remarkable violation of the laws of nature” (Hume, 1983, p. 205). Faith in the idea of change and progress on the other hand: the idea of difference—the idea of contrast—is not only essential to the researcher, but to every thinking being, because “what the loss of differences heralds for a social group is the escalation of violence; for if all men have the same desires, they become mimetic rivals, doomed to symmetrical revenge, confronted in endless conflicts. The only way to escape the hell of chain retaliation is to answer the question: who started it?”¹¹ Thus, the *null hypothesis*, that of non-change, is rarely considered as a research proposal (Starbuck, 1988), because the idea of progress must be continually emphasized, continually illuminating a difference in results and in discovery. There is no reason to be a researcher without a vocation to understand and explain. We do not do research to conclude that “everything is false and everything is true,” but we must not make this vocation of research the pursuit of dogmas, by placing the researcher, *ex-machina*, above human *fallibility*, protected from luring, free from schemes, absolved from all error. Modern science has got rid of philosophy, which it has reclusively confined to a literary form, framing it in an exercise of form, where it fulfilled, in the scientist, this function of turning back on himself, this essential questioning of his own fallibility.

11 Mona Ozouf, article about *La violence et le sacré* by René Girard, published in *Le Nouvel Observateur*, February 12, 1973.

“*Sometimes I think, sometimes I am,*” the duality against which Hume stood, while being his humble representative, is more relevant than ever. By separating the researcher’s thought from his experience in its totality, we risk making research a cold logic that feeds on itself, making us researchers, in the most painful of paradoxes, the most resistant beings to change. Knowledge management and advanced data science have tremendously grown in the field of the criminal investigation process (Colaprete, 2004; Berg et al., 2008; Staines, 2013; Morgan, 2017). Implicit learning is a core foundation of the investigative trade: the ability of being surprised; the ability to doubt; the cultivation of skepticism; the resilience and stubbornness of the investigator’s tacit understanding of a case. We lost our wisdom in information infrastructures; our social representations to machine learning ; we need our inquisitive curiosity to continue to thrive into the tacit. *Sometimes I see; sometimes I know.*

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