Journal of Criminal Law and Criminology

Volume 57 | Issue 1 Article 11

1966

Book Reviews

ments. One may either maintain a liberal arts program or not. (2) Would-be professional practitioners in the correctional field should seek graduate training in a school of social work or in a bonafide, graduate department of corrections which includes therapeutic training.

BOOK REVIEWS

Edited by

C. R. Jeffery*

PSYCHIATRIC JUSTICE. By *Thomas S. Szasz, M.D.* New York: Macmillan Company, 1965. pp. 283. $6.95.

Tradition, judges, and lawyers generally assume two basic tenets concerning the competency of an accused to stand trial: (1) a person whose mental condit on prevents him from effectively assisting in his defiense should not be put to trial; (2) the determination of an accused's mental condition should initially be submitted to psychiatrists. Accordingly, statutes and rules exist in nearly every American jurisdiction to allow pre-trial psychiatric examinations where either the defense, the prosecution, or the court have any question as to the ability of the accused to stand trial. In *Psychiatric Justice*, Thomas S. Szasz, M.D., a professor of psychiatry at the State University of New York Upstate Medical College, furiously blasts away at this fortress of orthodoxy. When the blood and thunder of his frontal assault has subsided, the edifice, though slightly shaken, is left standing.

As far back as 1859 John Stuart Mill bemoaned the "contemptible and frightful" evidence with which a person could be judicially declared unfit to manage his affairs.[1] From Dr. Szasz's point of view, things have done nothing but deteriorate in the intervening 106 years. The characteristic terror of our times, Szasz contends, is that we are denying the constitutional right to trial by means of a sophisticated and insidious alliance between psychiatry and law. We examine a defendant, decide he is incompetent, and incarcerate him in a mental institution without ever bringing him to trial for the crime with which he was originally charged.

Where did we go wrong? With almost child-like simplicity, Szasz tells us we abandoned liberty when we let psychiatrists and psychologists have a voice in determining who is competent to stand trial. To reform, he urges us to drive the behavioral scientists out of the courthouse. All they can give us, at best, is a tenuous psychiatric diagnostic label for the person examined, i.e., sociopath, schizophrenic, paranoid. Szasz believes that "there is neither logical nor factual connection between mental illness and the ability to perform the task required of a defendant." Thus "describing a defendant whose competence to stand trial is in question as 'mentally sick' is either irrelevant (like calling him 'slightly obese'), or destructive (like calling him a 'Communist swine.')" Hence Szasz's basic objective: defrock psychiatrists as arbiters of who is competent to stand trial. His solution: replace them by experienced lawyers, unfettered by psychiatric training and jargon, who will simply talk to the defendant to see if he can assist in his defense.[2]

> Lovers and madmen have such seething
> brains,
> Such shaping fantasies, that apprehend
> More than cool reason ever comprehends.
> The lunatic, the lover, and the poet
> Are of imagination all compact;
> One sees more devils than vast hell can hold,
> That is the madman: the lover, all as frantic,
> Sees Helen's beauty in a brow of Egypt:
> The poet's eye, in a fine frenzy rolling,
> Doth glance from heaven to earth, from earth
> to heaven;

* Institute for Behavioral Research, The Washington School of Psychiatry, 1610 New Hampshire Ave., N.W., Washington 9, D. C.

[1] MILL, ON LIBERTY, Chapter 3, nt. 1.

[2] The medicine man and his herbs gave way to the psychiatrist and his analysis. Now both give way to the lawyer and his bag of common sense. This is progress, after a fashion, but in reverse.

> And as imagination bodies forth
> The forms of things unknown, the poet's pen
> Turns them to shapes and gives to airy nothing
> A local habitation and a name.
>
> —*A Midsummer Night's Dream*, Act V, Sc. 1

No madman or lover, but deadly earnest poet is Szasz. In 272 passionately and clearly written pages he furnishes several sparkling examples of metaphor run rampant. Some examples: "To be called mentally ill is like being called a Negro in Alabama or a Jew in Nazi Germany—or to be called schizophrenic in a courtroom." What is mental illness? "... [A] dirty word that is pinned on people, in order to incriminate them, to get them." The modern state is using "psychiatry as a weapon against the individual citizen." We are losing hard-earned freedoms through "stiffening psychiatric-social controls."

Does Szasz believe that the mental disorder known as schizophrenia exists? "Not otherwise than as ink marks on a piece of paper. It is a name. But that the disease exists, no, I don't believe it." To use the word beyond the privileged confines of a doctor's office—worst of all, in a courtroom—is to render "terrible social consequences" to the victim. Agreed, but what about the consequences to society attendant upon the release of mentally disabled persons?

Szasz reserves his greatest wrath and hyperbole for the idea of causing a defendant to be examined by psychiatrists prior to trial. "... [M]erely because of a 'suspicion' about the defendant's mental state, he is removed from the category of an ordinary human being, with whom judges can *converse* —and is placed in the category of the insane, who, having been demoted from person to patient, must be *examined* by psychiatrists. In this way, and at a single stroke, the whole procedure of determining competence to stand trial is rendered irrational, is debased morally, and is transformed into an instrument of violence against the defendant." The attempt of the prosecution to make this examination appear cooperative, though performed by "agents of the state", is "simply a strategic maneuver by the government to render its opponent impotent. It is a symptom of despotism—of the worst kind." What happens to the concept of the trial as an adversary proceeding when the defendant is committed as an incompetent? "No longer a rational and fair contest between two spiritually equal adversaries, it is a grotesque nightmare, in which a proud and strong man (the state) crushed a tiny and repulsive insect (the accused)."

In order to understand why Szasz wants to drive the psychiatrists and all their pomps from the halls of justice, we must recognize the cornerstone of his fundamentalist anti-psychiatric philosophy: "... involuntary mental hospitalization, civil or criminal, has no place in a civilized, free society and must be abolished." To answer this naive contention with an *ad terrorem* appeal would be easy but unnecessary. We all know, sadly enough, the harm certain mentally disabled persons would cause others and themselves were they not involuntarily hospitalized.

Dr. Szasz's fear of engaging in what he calls the psychiatric "prosecution" of persons for "mental illness" has led him to refuse to conduct pre-trial psychiatric examinations—he has made less than four in 15 years of practice. Portions of two of his testimonial encounters are set forth in *haec verba* in the book, the "Louis Perroni" and "Abraham Hoffer" cases. The names of the defendants are pseudonyms; the trials actually occurred. "Perroni," a Syracuse, New York filling station operator who fired a warning shot at men who came to place a sign on his property after it had been legally condemned for a real estate development, was found incompetent to stand trial by two court-appointed psychiatrists and sent to Matteawan State Hospital. Six years later, his writ of habeas corpus was granted and he was returned to stand trial in Syracuse. Szasz examined him, determined that he was competent, and testified at a second competency hearing after which "Peroni" was again found incompetent and returned to Matteawan. During the hearing this colloquy took place:

> Q. What do you look for, Doctor, in determining whether a man is able to stand trial, or assist his counsel in defending the charges against him on a criminal charge?
>
> A. Maybe to me psychiatry is simpler than to some people, but I just like to ascertain whether he can talk to me reasonable, like anyone else, whether he is mentally clear and rational.

This is, of course, the reason why Szasz wants to give the job of determining competency to those wonderfully gifted common sense men, the lawyers, and get it away from the mystifications and abstrusities of psychiatrists.

In Szasz's second competency hearing, the defendant Hoffer was charged with kidnapping and

sexually abusing two young girls. He had previously been discharged from the Army as a schizophrenic, and, after pre-trial psychiatric examinations was found incompetent and sent to Matteawan. Szasz testified for him in a habeas corpus proceeding, but he was re-committed. Subsequently, Hoffer was restored and pleaded guilty for time already served—a fact that, for Szasz, manifests the basic unfairness of the proceedings. Two other transcripts are presented in the book—the pre-trial competency hearing of Major General Edwin A. Walker, which ended in a finding of competency (a Mississippi federal Grand Jury later on billed Walker on charges arising out of the riots on the University of Mississippi campus when James Meredith enrolled), and the District of Columbia competency proceeding involving Frederick Lynch.[3] With some effectiveness, Szasz uses the *Lynch* case to typify the horror of the plea of not guilty by reason of insanity induced by the Government—"the single most terrible manifestation of evangelistic psychiatry riding roughshod over civil liberties and human dignity."

It is extremely important to emphasize that the scope of *Psychiatric Justice* is limited to pre-trial competency examinations *requested by the court or the prosecution.* Szasz writes: "It is unusual for a defendant to plead mental incompetence to stand trial, and for good reason: doing so would be more likely to harm him than help him. I shall therefore not discuss this situation." He contends that "in the vast majority of these cases, it is not the defendant or his agents who raise this issue, but the prosecution or the court." Szasz's experience, however, may be atypical. For example, in Cook County, Illinois, for the year 1964, 59% of the 374 defendants examined by the Behavior Clinic were examined *at the request of the defense.* Moreover, Illinois has had a number of defendants who, after trial and conviction, have claimed on appeal that the trial court erred in not conducting a pre-trial sanity hearing for them.[4] And defendants can gain from a plea of mental incompetence. Where the defense will be insanity at the time of the crime, that defense is materially aided by a temporary pre-trial commitment of the accused. When he is returned for trial, the defense may profitably argue that the disabling condition in existence at the time of the pre-trial commitment was in existence at the time of the crime.

As we all know and should never forget, psychiatry is an inexact science. Szasz's value is that he provocatively reminds us of psychiatry's diagnostic limitations, which are often severe, and he justifiably frightens us about the defendants who are wrongfully detained in a mental hospital against their will. Mistakes have been made and nothing on earth can erase the harm they bring to the victim. Yet they have been mistakes caused by the fallability of psychiatrists—a fallability shared by all other humans—and not by any demoniacal machinations. To remove psychiatrists from participating in the determination of competency to stand trial would be to throw the baby out with the bath water. The sad fact of the matter is that imperfect as psychiatrists are as arbiters of a person's competency, they are more able for the task than lawyers and judges. What psychiatrists do not know about the practicalities of assisting in the defense of a criminal case is not as significant as what lawyers and judges do not know about psychoses and neuroses.

After all, the marriage between law and psychiatry never has and never will be completely happy. It was a shotgun wedding between two frequently incompatible partners. But like all shotgun weddings, it was necessary, and, for that reason, should endure.

WILLIAM J. MARTIN
Assistant State's Attorney
Cook County (Chicago), Illinois

[3] See Lynch v. Overholser, 369 U. S. 705.

[4] See *People v. Wilson,* 29 Ill. 2d 88, 92–94; *People v. Pickett,* 28 Ill. 2d 92, 93–94; *People v. Foley,* 28 Ill. 2d 426, 427–428; *Withers v. People,* 23 Ill. 2d 131, 135.

CASES ON CRIMINAL LAW. By *Turner* and *Armitage.* Cambridge, England: Cambridge University Press, 3d ed. 1964. pp. 664. $12.00.

Messrs. Turner and Armitage have produced a second revision of their work keyed to KENNY'S OUTLINES OF CRIMINAL LAW. In this, their third edition of Professor Kenny's landmark casebook, the two Cambridge professors have continued the general approach of their earlier versions by not including any "materials" or supplementary information in their case-by-case diet of British criminal law. The validity of this practice, traditional in British casebook compilation, has been discussed in the reviews of the two earlier editions of the volume in the *Journal.** Except to say that the tie-in with KENNY'S OUTLINES in part suffices for the lack of non-judicial information,

* 44 J. CRIM. L., C.&P.S.493(1953); 50 J. CRIM. L., C.&P.S.167(1959).

further evaluation at the time would tend to be superfluous.

In addition to the usual updating and elimination of "old material," the new version of CASES ON CRIMINAL LAW differs from earlier editions in three respects. The casebook, which now constitutes the first volume of the new Cambridge Legal Case Book series, will also appear in paperback form, thereby facilitating its availability to students. In addition, all the cases dealing with the law of evidence related to criminal law have been deleted.

As was pointed out by Professor G. O. W. Mueller in his review of the first edition of this volume, the inclusion of the law of criminal evidence is much to be desired. It brings greater comprehension to the student attempting to master the discipline, and proportionately mitigates the extensive amount of material to be covered in the regular course on evidence. It is much regretted if their deletion in the present edition represents the fact that the authors have yielded in this effort.

The authors appear to have made it a point to include two decisions that were announced after their "cut-off" date of October, 1963. Since such attempts are always an inconvenience to all parties involved in the process of publication, the decisions must hold particular significance to Messrs. Turner and Armitage, and thereby justify some mention at this time.

On May 10, 1963, one Vincent King visited the home of his mother-in-law, who was alone with his five months old son. During the next two hours, his two sisters-in-law, on separate occasions, left a school bus a short distance from the house. The girls, ages eleven and twelve, the child and the mother-in-law were all killed by defendant King.

The British Homicide Act of 1957 eliminated capital punishment for almost all criminal acts. One exception to this elimination of the "ultimate penalty" is when the defendant commits murders on different occasions. Since a delivery boy had found no one at the home prior to the time the second schoolgirl left the bus, the question arose as to whether the four homicidal acts were one or more "occasions" under the statute. Judge McNair, sitting in the Kent Assizes, declared that the facts in the case did not indicate that any of the killings took place on separate occasions, as he construed the statute. Thus, for purposes of the statute, he viewed the "criminal situation" as a whole and in a manner similar to the continental civil law judges' approach to criminal cases and not under the traditional "specific act" evaluation of common law criminal jurisprudence.

One would think that the Labor Government's recent Murder (Abolition of Death Penalty) Bill, which was introduced and consistently encouraged by Mr. Sydney Silverman, M.P., would obviate the need for insuring that this case was included by the authors. For the Bill, which would eliminate the few remaining instances when capital punishment may be imposed, received an unprecedented majority of 185 votes (355—170) as well as the firm support of the Home Secretary, Mr. Henry Brooke, at its second reading in the House of Commons on December 21, 1964. Time, however, has justified the wisdom (or luck) of the authors, as the Bill received a major set-back on March 5, 1965, and has become a minor "political football". Thus the death penalty, and the validity of *Regina v. King*, remains at this writing.

The second case specifically included was before Lord Parker in the Court of Criminal Appeals. Defendant, also named King, believing himself to be divorced from wife No. 1, married wife No. 2. Upon subsequently learning that he was still married to wife No. 1 at the time of the second marriage, but that the first marriage was now dissolved, he married wife No. 3, believing that the marriage to wife No. 2 was not valid.

Mr. King's trial for bigamy resulted from the fact that his first marriage had indeed been dissolved *before* and not after he married wife No. 2. His defense was his honest belief that he was free—mistake of fact—and, therefore, lack of *mens rea*. The trial court ruled this was no defense. Lord Parker felt that this was incorrect, that honest belief *on reasonable grounds* would be a valid defense. Defendant King, however, offered no evidence to prove he had such reasonable grounds, so his conviction was upheld, much to the chagrin (or pleasure) of his many wives, past and present.

CASES ON CRIMINAL LAW remains a valuable tool to the serious scholar who wishes a quick, yet comprehensive reference to how our British cousins deal with their problems in the criminal courts.

ALLEN SULTAN

School of Law
Indiana University
Bloomington, Indiana

A PREPARATORY DRAFT FOR THE REVISED PENAL CODE OF JAPAN 1961 With an Introduction *by Juhei Kakeuchi* Guest Editor *B. J. George, Jr.* (The American Series of Foreign Penal Codes, 8, Editor-in-Chief Gerhard O. W. Mueller, Comparative Criminal Law Project, New York University, School of Law), South Hackensack, N.J., 1964

There has been considerable growth, during the last ten—fifteen years, in American interest in foreign criminal law. The series of foreign penal codes, of which the volume under review is the eighth, is both a result of this, and a factor stimulating further growth. Compared with the situation in the German and French speaking parts of the world, with the impressive *Sammlung ausserdeutscher Strafgesetzbücher*, started in 1881 and numbering 85 volumes now, and the French *Les Codes Penaux Europeens*, the American Series of Foreign Penal Codes was long overdue, and we owe a debt of gratitude to the Comparative Criminal Law Project and its director Professor Gerhard O. W. Mueller for their efforts to fill this gap, and for the speed with which they proceed.

The Draft Penal Code of Japan, completed in 1961, is not a revolutionary departure. In his Introduction, the chief draftsman, Dr. Takeuchi, Director of the Preparatory Commission for the Revision of the Penal Code, points out that "the Preparatory Draft preserves basic assumptions underlying the provisions of the Penal Code, and is merely intended to develop or refine some of them and to limit the applicability of others" (pp. 2–3).

This statement illustrates an important aspect of the institution of codification itself. Codification, one might say, is a building in which a particular branch of the law of a country is housed. With the lapse of time some rooms are not inhabited anymore, while new parts of the law are housed in temporary structures clustered around the main building. When the manager of the building (the legislator) concludes that the situation is getting out of hand and needs correcting, he will remodel his building, evict some of the tenants and assign others to new quarters, build new annexes and pull down the sheds and shanties that have mushroomed around the building. The frequency of this procedure is determined by the potentialities of the building, the arrival and departure of the tenants, and the moods of the manager. France still has its Criminal Code of 1810, while Russia had at least six major recodifications of its penal law since then (1845, 1885, 1903, 1922, 1926 and 1960).

In its basic goal-orientation the Draft is conservative. Without explicitly stating its views on the aims of punishment and penal policy, the Draft appears to embrace the principle of culpability and retribution, of repression and reformation, and of the humane character of penalties. In Japanese legal tradition, according to Dr. Takeuchi, priority is given to the principle of culpability coupled to retribution.

The retributive aspect of punishing has been the subject of harsh criticism during the last decades. It has been argued that retribution serves no useful purpose, since it does not contribute towards the rehabilitation of the offender; its deterrent effect is very questionable (with regard to the offender, as well as to the population at large); it only satisfies an instinct of social vengeance; in short—it is irrational.

There is much truth in these arguments, but not enough, I think. This review is not the most suitable place for a discussion of the principles of criminal policy, but at least I would say that it seems to me that a solution of the difficulties in this matter must not be sought in abandoning the principle of retribution, but rather in an effort to make retribution rational to a maximum extent. The other road, I am convinced, will lead to the end of criminal law, which would be replaced by some kind of correctional-administrative law. (It is worth noticing that the Soviet Union, where a system of 'measures of social defense' against 'socially dangerous actions' was in operation for some years, has long since returned to 'classic' criminal law.) What is worse, however, I believe that a development which would abandon the notions of culpability (guilt) and retribution would ultimately result in the de-humanization of the processes which are now governed, be it imperfectly, by criminal law.

The Japanese Draft seems to show us a way out of the impasse, by coupling the idea of retribution to the idea of culpability. This means that the idea of retribution must be strictly divorced from the idea of commensurateness between act and punishment. The days of an eye for an eye, a tooth for a tooth, have passed forever, although some vestiges still linger on in various jurisdictions in the institution of strict liability.

The new insights into the working of the human mind and psyche and into the social dimensions of human conduct, acquired by the modern anthropological sciences, should serve, not to throw responsibility and criminal law overboard, but to give more meaning, depth and reality to responsibility, and, consequently, to culpability.

In this light we might see Dr. Takeuchi's remark "that as scientific knowledge of the human mind advances, factors reducing blameworthiness are more likely to be found than those aggravating it. No one can be wholly blamed for his illegal acts, because his exercise of free will is always limited for a variety of reasons" (p. 4).

This, in turn, is going to lead to a decreasing severity of penal sanctions. In this respect there is great divergence in the world. In some civilized countries the law provides, and the courts impose, penalties that are considered nothing less than barbaric in other civilized countries. The question is not: who is right? (since every country has the legal system it deserves, reflecting the cultural level and the value scales of the society in which it operates), but: who represents a more advanced stage of civilization?

Gustav Radbruch remarks in his autobiography that our generation, with the advance of civilization, is becoming more sensitive to pain and suffering, and less able to bear them. Life in the Middle Ages appears impossibly harsh to a person living in this century (at least in our kind of society), but people in the fourteenth century had different ideas. To them torture, mutilation and the infliction of slow and painful death were perfectly fair and acceptable; in fact contemporary sources show that even the culprit (we would call him the victim) usually accepted his lot as a quite natural and Christian event.

At present, I think, the main task which confronts penal policy is the humanization of punishment (involving an increased individualization of penalties and, as a rule, more lenient penalties). In order to achieve this we have to make an effort to arouse society and destroy its equanimity towards inhumane forms of punishment. If this effort is not made, and had not been made in the past, we would still have torture.

The reader may forgive this excursion about the instrumentalities of progress in penal policy. It is important to be aware of the function of ideas in this process. Compared to the wide discretionary powers, and the arbitrary use thereof by the medieval judge, the emergence of strict liability (a fixed penalty for a particular offense) was a progressive development, although at present the instances of strict liability are rather to be seen as anachronisms.

The picture is not very different with regard to the principle of legality. This, to be sure, has been a most potent factor of progress during the last two centuries and in many countries it continues to be this. Nevertheless, if it is overemphasized and exaggerated, the legality principle can be an obstacle on the road towards the individualization of punishment and the humanization of penal law. It is, for instance, no coincidence that the penalties imposed by the courts in Anglo-American jurisdictions, where the procedural position of the defendant is perhaps better safeguarded than on the continent, often appear somewhat ferocious to continental lawyers.

When we begin now to look at the Draft itself, the first thing that strikes us is the absence of a statement of the principle *nullum crimen sine lege*. One may argue, of course, that this would be superfluous, the principle being firmly embodied in Japanese legal tradition, but still such a statement is a popular, and not altogether illogical, beginning of a penal code.

The first chapter is named 'Application of the Penal Code' and it regulates such questions as crimes committed abroad, crimes committed by foreigners, retroactivity of a new penal law only where it is to the advantage of the accused, etc.

Art. 4 provides that any person, whether Japanese or alien, shall be punishable for the crimes enumerated in this article (piracy, counterfeiting, opium-crimes, etc.). Art. 2 provides that the Code shall apply to Japanese nationals who outside Japan commit a crime punishable by imprisonment for a maximum term of five years or any heavier punishment. Art. 5 contains an identical rule concerning aliens who commit outside Japan a crime against the Japanese state or against a Japanese citizen (provided the act is criminal under the law of the place of the offense). I wonder whether it would not have been possible to make one provision out of these three; especially Art. 5, as it is, has the appearance of being an afterthought of Art. 4.

A provision I cannot admire very much is Art. 18 ("Acts done without a mind to commit a crime are not punishable: Provided, that this shall not apply where otherwise specially provided by law"). The heading of the provision is 'Criminal intent', so I suppose that what the article really means is "Crimes committed through negligence are punishable only in cases especially provided by law".

Arts. 19 and 20 perpetuate the traditional distinction between ignorance of law and ignorance of fact. Not denying the possibility of making the distinction, I would seriously question its usefulness in criminal law. For the criminal, at the moment he commits the crime, the existence of a law which forbids the crime is a fact he knows or does not know. Similarly, the court, in deciding on

the issues of guilt and punishment, is called upon to face and resolve a factual situation, one of the elements of which is the existence of specific rules of criminal law. The Japanese Draft has attached different consequences to the two kinds of ignorance. Ignorance of fact precludes criminal intent, "ignorance of law shall not mean the absence of intent". However, I believe that the latter rule is inconsistent with the stress placed on culpability by the Draft. Ignorance of law *does* imply the absence of intent, the rule stated by the Draft is merely a legal fiction. Of course, all but a very few mentally abnormal individuals know that murder, theft, rape, etc. are forbidden and punished in our society, although they may be ignorant of the legal definition of such offenses. But I think that in the ever-growing field of offenses of an administrative nature (e.g. against tax law) the citizen should be protected against the presumption of knowledge of the law.

My views are vindicated, it seems to me, by the following provision (Art. 21), which says: "If aggravated punishment is prescribed on the basis of the results of a crime, but it was impossible to foresee such results, such aggravated punishment cannot be imposed." This rule is a clear and commendable consequence of the culpability principle.

In Art. 22 the Draft provides (paragraph 2): "An attempt is punishable only when specifically so provided." This practice is not new (it is used, for instance, in the German Penal Code), and it results in a rather unnecessary increase in the size of the Code. There seem to be two alternatives: (a) the Code enumerates in one provision all cases of punishable attempts, and (b) the Code leaves it to the courts not to punish insignificant cases of attempts. The Japanese Draft suffers an extra increase by a great number of provisions which forbid preparation and conspiracy to commit specific crimes. I think that in this case too one might apply one of the solutions suggested above.

Punishment of attempt may be, but need not be, reduced (Art. 22 paragraph 3). The reason for this is, apparently, that an attempted crime can still show a high degree of culpability. Similarly, co-principals and instigators are treated as principals, whereas punishment for an accessory shall be reduced (Arts. 26–28). This leaves the court free to impose a penalty which will reflect the degree of involvement of the accessory.

The same principle is enunciated in the chief rule governing the imposition of punishment (Art. 47 paragraph 1): "Punishment shall be assessed commensurate with the culpability of the offender."

Where the law orders a reduction of punishment it generally means a reduction of 50%; capital punishment in such cases is commuted to a life sentence, and a life sentence to a sentence of at least seven years (Art. 53).

An increase of the maximum term of punishment is allowed in cases of recidivism (Art. 60). A person who has committed a crime punishable by imprisonment after having been sentenced before to imprisonment for six months or more, may be found an habitual recidivist by the court and be given an indeterminate sentence (Arts. 61 and 62).

The chapters X and XI of the General Part of the Draft regulate two related institutions: suspension of the execution of the sentence and suspension of the pronouncement of the sentence (to me it would seem more logical to deal with the suspended pronouncement first).

Parole is dealt with in chapter XII. It may be granted after the offender has served one third of his term, which is a very lenient arrangement.

In chapter XIV, which deals with prescription, I have been puzzled by Art. 102, which says, among other things, that the prescription of prosecution shall be tolled while the institution of prosecution is without validity because the offender has concealed himself. Why should the institution of prosecution against an absconding offender be without validity?

In the second part of the Draft Code, devoted to the specific crimes, we miss a chapter concerning crimes against the Imperial House. The present Japanese Penal Code, and most penal codes of European monarchies, contain such a chapter. Neither are there any specific rules concerning war crimes, crimes against peace and genocide.

The special part of a penal code is usually more revealing in respect to national and ethnic particularities than the more dogmatic general part. Unfamiliar with the cultural, economic and social backgrounds of Japanese criminal law, I can merely note some of the rules which appear in some way significant in this respect.

There are very elaborate provisions concerning the bribery of officials and crimes connected with public elections. There are also chapters in the special part which deal with water pollution and opium-smoking respectively. Two statutes concerning the use of explosives overlap to a great extent (Arts. 186 and 198). (This, I think, is a

thing to be avoided in a penal code, in view of the special difficulties in applying the provisions concerning accumulative crimes.) Art. 259 makes it an offense to mutilate, destroy, abandon, conceal or take possession of a corpse, of the ashes or a lock of hair of a dead person or anything placed in a coffin, or to subject a corpse to indignities.

A provision which is not quite clear to me is Art. 263, which goes under the heading 'pandering'. Its first paragraph says: "A person who for purposes of gain induces a woman not of a promiscuous character to have sexual intercourse shall be punished . . .". This provision prompts the following questions: who is supposed to gain in this case (the panderer, the woman, or both), why are women of a promiscuous character excluded, and with whom is the woman supposed to have intercourse (with the panderer or with a third person)?

The Japanese Draft forbids any kind of gambling (in chapter XXIII), including gambling itself (except for or with something without intrinsic value), opening a gambling place, organizing gambling, and the issuing, sale, transfer or receiving of lottery tickets (Arts. 265–267).

Other rules which to an outsider appear to be connected with particular Japanese conditions, the exact nature of which cannot be grasped by reading the scant statements of the Penal Code, are Art. 322 ("A person who without good reason forcibly demands an interview with . . . another . . .") and Art. 323 ("A person who . . . by subjection to embarrassment makes another perform an act which he is under no duty to perform . . .").

I have already mentioned several provisions which do not seem quite clear. For a reader (such as this reviewer) who is not familiar with the language of the original it is impossible to put the blame for vague wording on either the draftsmen or the translators (assuming that the reader's own lack of perspicacity is not to be blamed).

On another point the translators have assumed full responsibility. As they (Professor B. J. George Jr. and Mr. Yoshio Suzuki) put it in their preface: "We have tried wherever possible to avoid using terms with a technical common law meaning, for fear that they might cause the English-speaking reader to reach a hasty and erroneous conclusion as to the concept intended to be conveyed in both the original and the translation." Personally I agree with this point of view, provided the translation remains readable and understandable. On the other hand, it seems that in Great Britain there is a tendency to stress elegance rather than exactitude in a legal translation, or perhaps I should say that there is less tolerance in admitting new terms and more rigidity in adhering to the traditional legal jargon.

Nevertheless, with the growth of international relations and the concomitant rapprochement between the continental and Anglo-American legal systems (of which the Model Penal Code is an eloquent example), there is a growing need for English equivalents of continental legal terms. Until now the terminology employed by the American Series of Foreign Penal Codes has not been entirely uniform (I am referring mostly to the general parts of the codes). If the reviewer may assume the cloak of the fairy god-mother, instead of the critical neighbor's wife, and be allowed to utter a wish at the cradle of this new creature, it would be that the Comparative Criminal Law Project, which has rendered such valuable service in producing this series, would also take the lead in piloting us through the difficult waters of continental legal terminology.

Russian Research Center F. J. M. FELDBRUGGE
Cambridge, Massachusetts

CRIME, CORRECTION AND SOCIETY. By *Elmer H. Johnson*. Homewood, Illinois: The Dorsey Press, 1964, pp. xv, 792. $11.35. CRIMINOLOGY. By *Donald R. Taft* and *Ralph W. England, Jr.* The MacMillan Company, 4th ed. 1964, pp. 552. $6.95.

Both of these texts are written from a sociological perspective. They seek the explanation of criminal behavior in the characteristics of the social structure rather than in the peculiarities of the offender's personality. Johnson tends to emphasize the search for reasons why certain individuals break the law and others do not. Taft and England are more interested in the origin of patterns of criminal behavior.

The texts differ more in style and organization than in substance. The Taft and England text is an excellent book, well written, with a judicious and clear coverage of the main etiological theories and penological developments and philosophies. It leaves the reader with the feeling that he has acquired a perspective on the whole field of criminology. It should be a popular text with the students.

The Johnson text is more difficult to assess. It is in the form of a carefully organized annotated bibliography rather than a book with an inte-

grated philosophical approach. This of course is a reflection of research in a field that is multi-disciplinary and lacking in philosophical consensus. Perhaps its weakest point is its lack of selectivity. The dependence upon and lack of modification of the philosophies and varied behavioral science viewpoints of summarized studies makes for an evident eclecticism.

However, Johnson in applying the conceptualizations and theoretical insights of general sociology to the field of criminology has introduced some fresh vistas. As Johnson writes in his conclusion:

> "Criminology is in a state of unusual ferment, making our presentation the equivalent of a photograph which artificially freezes one moment of a dynamic crowd scene. The dynamism of criminological phenomena is confusing to persons seeking pat, final and simple solutions. But dynamism is characteristic of the answers revealed by scientific studies because new questions are raised in the course of determining answers to questions previously asked."

Johnson's book might be thought of as an instructor's text, because while there is reference to most standard works in the field, he has incorporated and summarized a large number of research articles from the journals of criminology and corrections not ordinarily included. Since the book was written for both college courses and in-service training "for agency personnel involved in applied criminology", the approach to the field of corrections is a practical one. It begins where current practice and assumptions are and introduces research studies that tend to modify them in the direction of the sociological approach and the new penology.

The seven hundred and sixty-nine pages and twenty-six chapters of Johnson's text are divided into five parts: Crime and the Criminal; Crime Causation; Society Reacts to Criminals; Confinement and Correction; and, the Offender and the Community. A little over a quarter of the book is devoted to crime causation and approximately similar amounts of space are assigned to both society's reaction to the criminal, dealing with the administration of justice, and to confinement and correction.

Taft and England's five hundred and thirty-five pages and twenty-nine chapters are divided into three sections: the Background of Criminal Behavior; the Explanation of Crime; and, the Treatment of Offenders. More than one third of the book is taken up with a critical discussion of the various theories purporting to explain crime. The authors go to some lengths to present fairly the research of those that do not agree with their general philosophy. The theory is presented sympathetically and then followed by conciliatory statements of possible shortcomings in the approach presented. This is particularly true in the case of the Gluecks and Kinsey. This is also shown in the burden of proof placed on the "Extremists of the 'pro-Negro' group" to prove that biological factors play no part in the behavior of Negroes. Usually the burdon of proof rests with the affirmative. A sixth of the text is devoted to the administration of justice and a slight third to the treatment of offenders.

The rest of this review will compare the two texts along the main divisional lines of the causes of crime, the administration of justice, and the treatment of offenders.

In general Taft and England cover in a comprehensive and satisfying way the accepted approach to the etiology of crime. They de-emphasize the historical schools of criminology but cover the Neo-Lombrosian approaches and emphasize the work of the Gluecks and the findings based upon the Minnesota Multiphasic Personality Inventory. They include a generally well rounded chapter on the Negro and Crime and chapters on economic influences on crime, the influences of the family in which the psycho-analytic theories are treated in some detail, the ecology of crime with a de-emphasis on regional differences, the juvenile gang, organized crime, the mass media and religion. A considerable amount of space is allocated to alcoholism, drug addiction and sex crimes, including a large section on prostitution. A chapter entitled "A Theory of Crime" concludes this section.

The preceding chapters are unusually well integrated under the thesis that crime in the United States is a normal consequence of the nature of American society and its prevalence and characteristic nature are explainable in terms of that culture. The chapter is somewhat anticlimactic, however, and points up what is perhaps the most serious flaw in the text—the lack of emphasis on the mechanisms through which criminal behavior is acquired by the individual law violator. Furthermore, the origin of particular patterns of crime in the structure and processes of American society is only vaguely suggested.

Taft and England concluded:

". . .we reviewed the principal approaches having in common the notion that crime is fundamentally symptomatic of individual peculiarities and abnormalities. In rejecting this notion we contend, as would most sociologists, that much crime—and certainly most crime for gain—is ordered social behavior, having characteristic norms, attitudes, values and techniques. The individual offender may modify these to a limited extent according to his imagination, intelligence, and the exigencies of his situation, but the general outlines of criminal ways persist over time as discernable patterns."

Turning to Johnson's treatment of the causes of crime, we read:

"Sociology treats crime as interrelated with the social and cultural systems of the total society. This is the basic assumption in our analysis of fundamental ideologies and activities of law enforcement, court and correctional agencies. Criminals are not regarded as an aggregate of abnormal individuals sharply separated from the sociocultural environment which structures the behavior of noncriminals."

After this general statement, he deals with crime causation in more detail. He devotes considerable time to the discussion of Cooley's "formalism" in institutions, Thomas and Znaniecki's theories of social disorganization and personality development and Ogburn's theory of cultural lag, with fresh, but not entirely satisfying, attempts to relate them specifically to crime.

Johnson presents a balanced discussion of Sutherland's theory of differential association. Considerable attention is given to the problem of differential response, in which differential identification, reference group behavior, neutralization of anti-criminal norms, insulation, anomie and the integration of conventional deviant values are treated seriatim as possible explanations of the fact that people do not respond in the same way to apparently similar social situations.

A chapter entitled Juvenile Gang Delinquency encompasses Cohen's theory of delinquent subcultures, Bloch and Niederhoffer's intergenerational tension, Miller's lower class culture, and the differential opportunity theories of Shaw, Cloward and Ohlin. A chapter is devoted to social institutions and crime causation. The chapter on patterns in criminal behavior deals with professional criminals, syndicated crime, white collar crime, and murder as a behavior system. Johnson's use of the term "criminal behavior system" bears only a superficial resemblance to Sutherland's "behavior system in crime". It serves as a device for discussing particular types of crime rather than being a distinctive approach to the analysis of sociological units of criminal behavior.

Johnson organizes his treatment of the administration of justice and the fields of correction and crime prevention around major ideologies labelled punitive, therapeutic, and preventive. The materials on correction are selected from the practical rather than the theoretical point of view. Existing practice rather than theoretically oriented reforms are stressed. There is almost no attention paid to the current or potential contribution of sociologists to the field of corrections or crime prevention. Mention must be made of the excellent discussion of capital punishment, however.

The treatment of these fields by Taft and England is especially well integrated and present practices are discussed within the framework of theoretical desirability. This leaves no break between the analysis of causation and treatment or prevention. Separate chapters on the criminal law, criminal and juvenile courts, the prison community as a possible socializing agency, and some progressive systems supplement the traditional treatment of these fields.

There is a tendency for sociologists to hesitate in the presentation of their point of view. Durkheim, of course, claimed that crime was normal and perhaps Sutherland has been most forthright in stating this sociological position. Behavior of law-breakers and law-abiders is explainable in the same way, by the same mechanisms and processes. It is assumed that there is no differential reaction to circumstances which is peculiar to the "criminal" as such. Of course there are "disturbed" law breakers as well as "disturbed" law-abiders, but this does not explain adequately the complex phenomena of human behavior. The way in which any individual behaves has a history and a setting. Just as the nature of the invention is determined by the cultural base rather than by the peculiar individuality of the inventor, so the criminal act may very well be more closely related to the social group and its norms than to the idiosyncrasies of the group member.

I would agree with Sutherland that personal traits and social characteristics are more important in determining particular associations than they are in determining specific types of activity.

Neither Taft and England nor Johnson take such a forthright position. The former see most crimes as patterned activity and seek the origin of these patterns within the context of American society, but they still are somewhat ambivalent about the psychiatric and psycho-analytic approaches. Johnson is concerned about the problem of differential response and while discussing the prison as a therapeutic community emphasizes the role of the social worker rather than the sociologist.

AUSTIN VAN DER SLICE
The American University

RACKETVILLE, SLUMTOWN, HAULBURG: AN EXPLORATORY STUDY OF DELINQUENT SUBCULTURES. By *Irving Spergel.* Chicago: The University of Chicago Press, 1964, pp. xxiv, 211. $5.00.

Contemporary sociological theories of deviant behavior, though widely accepted, are rarely tested. They perhaps last longer that way.

There may be other reasons for their survival, however. The theories generally are formulated so that their operationalization is discretionary for investigators. Failure of any investigation to support the theory balances in favor of the theorist; the operationalization was inadequate. But the burden of failure may not lie altogether with the investigator, burdensome though that role may be, as this study amply demonstrates.

The investigation under review is intended as a test of the Cloward-Ohlin formulation of delinquent subculture theory. The author, working under the guidance of Ohlin, sought to ". . . focus on the specific neighborhood conditions which appear to give rise to discernibly distinct delinquent subcultures." (p. xii.) The techniques of social observation and a survey of adolescents in three areas of New York City (Racketville, Slumtown, and Haulburg) provide the data for the investigation.

The Cloward-Ohlin formulation posits three ideal types of delinquent subcultures—criminal, conflict, and retreatist. Spergel maintains that evidence is lacking for a unitary normative organization as a criminal subculture. Rather he sees two rather distinct subcultures, *racket* and *theft.* In a preface, Spergel describes the racket subculture as ". . . the most sophisticated and criminal of all delinquent subcultures." (p. xii.) He views it as originating ". . . within a social context in which legitimate opportunities are limited but illegitimate opportunities are amply available." (p. xv.) The theft subculture ". . . grows out of a social condition in which there are particularly limited conventional and criminal opportunities to achieve success goals." (p. xvi.) There are then both legitimate and illegitimate opportunities for success, thereby, the author argues, eliminating the need for gang fighting and organized conflict as the means to success.

The conflict subculture is regarded as a response to social conditions that are extremely deprivational and both legitimate and illegitimate opportunities for success are generally lacking. The youth provide their own status system, in this case, through conflicts among groups that lead to the establishment of a "rep".

Spergel concludes there is no distinct retreatist subculture. Rather, drug-use is a variant of each of the three forms of delinquent subculture. Drug use, he suggests, is a late adolescent or young adult response to age-role and social class pressures when they no longer find the subculture a viable mode of satisfaction and as yet have not scaled their aspirations to those of the adult world. Drugs, he contends, in this period of transition help to ". . . sustain still unrealized and unrealizable aspirations to wealth, prestige, or power developed during the early adolescent years." (p. xviii.)

This brief summary should make clear that the investigator's primary concern is to delineate kinds of delinquent norms and show how they derive from normative and organizational differences among neighborhoods in a large city. On completing the book, the reader may want to agree with Ohlin when he says in a foreword to the volume: "As one reads this book, the conviction grows that from a sufficiently detailed picture of a neighborhood system of learning and performance opportunities and its accessibility to youth, one could successfully predict the content of the dominant youth subcultures that would emerge." (p. viii.) Or one may conclude, as has this reviewer that given the relative lack of attention to conceptual clarity, operationalization of concepts, and inferences from data, the investigation poses problems rather than answers questions. There is room here for only a brief excursion into these problems.

The general thesis of this work is that delinquent subcultures arise among the lower classes as forms of response to the integration existing in the neighborhood in which the gang is located, specifically to legitimate and illegitimate oppor-

tunities. Though the study is replete with failures in comparative design, sampling, statistical inference and even social observation, the main shortcomings probably lie in the theory itself. For the statement of the theory makes its operationalization difficult. The main concepts in the theory are delinquent subculture, neighborhood, lower class and availability of legitimate and illegitimate opportunities. These concepts create enormous problems for the investigator, problems that he never resolves.

Spergel defines "delinquent subculture" as "... a system of values, norms, and beliefs that condition the behavior of young people who seriously violate the desirable modes of conduct prescribed by official community agents and by the broader culture in which they live." (p. xiii.) The theory is not very helpful in providing explicit criteria for differentiating among the subcultures though the investigator, like Cloward and Ohlin, establishes a hierarchy of "criminal" values and establishes a criminal subculture that is by definition "most criminal". This leads to some interesting excursions in reasoning about facts.

Discussing the results for the value-norm index, the investigator finds that:

> "The delinquents from Racketville were most highly criminal in orientation.... Nevertheless, an inspection of the data on antisocial activity did not reveal a greater delinquency rate for delinquents from Racketville than for those in other areas. In other words there did not appear to be a strict correlation between criminal value orientation and general involvement in delinquent behavior. It is possible, however, that the criminal value orientation of the delinquent from the racket subculture merely made him a likely candidate for future organized criminal activity." (p. 35.)

Even lacking a criterion for a "strict correlation," it seems that the author wants to say that values rather than behavior are the measure of criminality, particularly when it is believed that persons verbalizing them live in an area where organized crime flourishes.

This same perspective of values as "criminal" and orientation toward a career in the rackets as more criminal appears in a discussion of Slumtown delinquents, though here values get fused with an organizational definition of "criminal hierarchy" and "success" in crime. "Delinquents from Slumtown were considerably less oriented to criminal or illegitimate norms and values than were delinquents from Racketville.... Delinquents from Slumtown were far less oriented to careers in the rackets than were delinquents in Racketville ... (This does not obviate the fact that there were many criminals including racketeers in the neighborhood. They were in the low echelons of the criminal hierarchy, however, and possessed relatively little power or influence.)" (p. 47.)

Spergel also observes that while drug users have to engage in almost daily criminal activity to get drugs, they are less criminal in orientation by his index and not as career-oriented toward crime.

In the Cloward-Ohlin formulation organized crime is most criminal. This may seem somewhat confusing since in Racketville gambling is one of the main forms of what they define as racketeering. Given the ambiguous normative status of gambling in American Society, it is not clear why organized gambling is more criminal than some other forms of crime. Indeed it is not clear why in American Society, sociologists persist in accepting the law enforcement definition of organized crime as most criminal. Is it because it is more systematic in its organization and therefore harder to control? Is there a recognizable hierarchy of *criminal* values so that some values are more criminal than others? Is it that crime is more profitable in the rackets? How well do values predict to behavior? Can one safely assume that the Racketville boys are more likely to undertake criminal careers as adults than the Slumtown boys on the basis of their differences in value orientations? These questions are unanswered, if not unanswerable.

The concept of neighborhood is given *no* theoretical definition. Operationally, Racketville is one, Slumtown four and Haulburg five census tracts. Are these differences in area size a function of neighborhood differences? of subculture differences? of localization of gang activity? or, of what?

Lower class likewise suffers from lack of conceptual clarity. Spergel states that "Lower class populations are neighborhood bound." And that "... each of the three neighborhoods studied contains a predominantly lower-class population ...". He then describes each of the areas in terms of their "economic and social integration." To begin with, it is apparent from the footnote in Table 12 that *all* blue collar occupations are lower

class! This raises serious questions about what is meant by occupational opportunity as well as by lower class. He goes on to tell us that "Racketville with its racket subculture, probably provided the most advantageous lower-class economic circumstances." (p. 27.) This does not square with the data from official public sources as reported in Tables 1, 2 and 3 of the book. The median family income per family was higher in all census tracts of Haulburg than it was in the census tract with the highest average income in Racketville. This is also inconsistent with occupational data reported in Table 1. What he may want to say is that Racketville provided greater economic opportunity from illegitimate means, i.e., crime may be more profitable there while Haulburg residents earn a higher average income through legitimate economic opportunities. Even that may not be so, as no data are available to check that inference and the preface cited above contradicts it. Furthermore, given separation of place of work from place of residence, it seems doubtful that economic opportunity is defined in terms of the activity in the neighborhood, though it may relate to its consumption there.

Central to the study is the concept of legitimate and illegitimate opportunities. Yet nothing in the investigation nor in the theory makes it possible to classify all neighborhoods in New York or any other city in terms of the availability of legitimate and illegitimate opportunities. Without both conceptual and operational clarification of these concepts, statements such as the following are meaningless: "The evidence was clear that delinquents from the racket subculture had most access to illegitimate and probably to legitimate means; those from the conflict subculture had very limited access to means, legitimate and illegitimate; and delinquents from the theft subculture appeared to have an intermediate range of access to means." (p. 123.)

Finally, the surprising thing about this book is that although the major concern was defined as a demonstration of how differences in delinquent subcultures arise from neighborhood differences, in Chapter IV the basic unit of analysis becomes delinquents and nondelinquents. Levels of analysis are thereby confused. Again this confusion seems to stem as much from the theory as from the analysts handling of it. While part of the theory is cast in terms of relationships among socially organized units (gangs and neighborhoods) and cultural units (subcultures), causation is formulated at the level of the psychology of individuals —individuals who experience "strains" in aspirations and expectations.

This book clearly reflects all of the shortcomings of a "theory" that makes quite general statements among classes of variables. From such a formulation it is impossible to know when the evidence goes against the theory. A good case in point is found in the data on aspirations and expectations. Nondelinquents report lower aspirations than delinquents, but higher expectations. If one takes the theory seriously and postulates that both delinquent and nondelinquent members of the lower class are equally blocked in their access to legitimate opportunity structures, then should not the nondelinquents experience the most strain? Why aren't they the delinquents?

ALBERT J. REISS, JR.
The University of Michigan

HUSTLER!—THE AUTOBIOGRAPHY OF A THIEF. By *Henry Williamson*. Edited by *R. Lincoln Keiser*. Doubleday and Company, Inc., 222 pp. $4.50.

BEHIND BARS—WHAT A CHAPLAIN SAW IN ALCATRAZ, FOLSOM, AND SAN QUENTIN. By *Julius A. Leibert* with *Emily Kingsbery*. Doubleday and Company, Inc., 223 pp. $4.50.

These books represent an interesting contrast in orientation towards problems of crime and corrections. The first is the autobiography of a thief, well adjusted and comfortable in his acceptance of a way of life meaningful in terms of his experience and socialization. The second is the reaction of a well-meaning and sensitive soul who without theoretical orientation is cast into a jungle of maximum security prisons with responsibility of ministering to the spiritual needs of individuals whose backgrounds are diverse and alien to him. One represents an attempt to understand criminal behavior as a natural outgrowth of a socialization process, and the other as sinful acts of sick individuals or violation of arbitrary man-made statutes. Both reflect reactions to tradition and authoritarian control, one by the culprit, and the other by the reformer. Neither, however, show understanding of social processes by the authors, although one is well interpreted in terms of anthropological theory.

HUSTLER, as the autobiography of a thief, should be of interest to all concerned with problems of crime and treatment. It is of special interest because it represents an attempt to utilize

anthropological knowledge and research techniques in the examination of a segment of our own culture. Anthropologists are usually pictured as people who go to remote areas seeking out preliterate societies as objects of study. Students who have been immersed in middle class values and morality frequently fail to recognize the existence of indigenous subcultures as foreign to their conception as the culture of a remote society.

This book was compiled and edited by an anthropology student who, as a caseworker for the Illinois Cook County, Department of Public Aid, encountered an alien and strange way of life in a Negro slum area. He established rapport with a parolee from the Illinois State Penitentiary who over a period of time related his life story which was taped and edited. Before the project was completed, Henry, the subject was again in the penitentiary. The bulk of the book is Henry's own life story which constitutes a case history of lower class Negro urban criminality. The book is concluded by an excellent, interpretive commentary by Dr. Paul Bohannon, professor of anthropology at Northwestern University.

This reviewer is well aware of pitfalls in gathering and interpretating case history materials. The autobiography presents special problems in the coloration supplied by the narrator, and in conscious and unconscious withholding, exaggerating and otherwise distorting of facts and events. Mr. Keiser does not reveal the controls he used in gathering and editing this material, or whether an attempt was made at verification. Despite these problems, the autobiographical approach has been a valuable tool in study of criminal subcultures, as evidenced by the work of Clifford Shaw and Sutherland's PROFESSIONAL THIEF.

This reviewer has almost daily contact with individuals like Henry in the prison setting. His story is engrossing reading and has a tone of authenticity. We are frequently told with candor equal to that of Henry that the subject has been making his way by "hustling." These activities are many and varied, but all are either outright illegal or only quasi-legal. Correctional workers may wonder why inmates revert so readily to criminal activity after they have had the benefit of such supposedly rehabilitative programs as vocational or academic training, counselling, personality orientation courses, religious services, and the like. Henry supplies the crux of the answer—this is his way of life, well established through a natural process of development in what Dr. Bohannon termed a "warrior subculture." Henry's view of jail and prison is revealing. He fit readily into inmate subculture because its values and morality was such that he was well equipped to cope with it. The incarceration experience merely reinforced criminal attitudes already well established. His response to educational opportunity was much the same as earlier evidenced in the public school. The prison school was a soft assignment, a place to avoid work. The prison environment was a setting where one could connive, subtly manipulate, and otherwise defeat the purposes of the administration and ease the pains of confinement. Henry states, however, that prison changed him. "I was evil when I got out. I just didn't care about nothin! Prison did that to me. Before I wasn't like this, but after I just didn't care."

Henry was discharged at expiration of sentence and inasmuch as incarceration had produced no favorable changes and no provision was made for reorientation into conventional areas of society, he returned as one would expect to his previous environment and pattern of life. As is pointed out in the commentary, Henry's subsociety provided no legitimate or satisfactory niche for a twenty-year old youth who was already "pushing his time in the warrior grade." He progressed in a pattern of more persistent and serious aggressive crime which culminated in serious injury and partial paralysis when he was shot in a robbery attempt and returned to prison.

The conceptualization that Henry is a natural product of a normal socialization process is compatible with recent criminological theory. Yet professional people in education, religion, law and corrections, who for the most part are middle class in background and orientation, continue to view the Henrys of our time as isolated individuals who persist in criminality through rational choice, mental quirks, ignorance, or just plain stubbornness. We often act as if we do not realize that it is just as foolish to deal with these Henrys as isolated units as it would be to try to understand fish without reference to water. The book is recommended because of insights derived from the anthropological approach and the resultant glimpse into this strange segment of our own culture.

BEHIND BARS is written by a Jewish Chaplain who for a period of time served the Federal Penitentiary at Alcatraz, and the California prisons of Folsom and San Quentin. The book is a readable compilation of anecdotes, parables, sermonettes, lay comments on crime and punishment, lamentations of a frustrated rabbi advised to

"stick to the spiritual", references to well-known inmates, such as Morton Sobell and Caryl Chessman, and arguments for abandonment of prisons. The reader should keep in mind that the author, who had served as an army chaplain, is judging on the basis of experience only within the maximum security facilities mentioned above. One might wonder whether he would view the California correctional system with quite as jaundiced an eye if his initiation had been in other segments of the California system. The only mention of contact with other facilities is in regard to occasional trips to the Deuel Vocational Institution, a medium security prison. The broad scope of the California system and its professional staffing is ignored.

Character sketches of inmates are reminiscent of Wilson's MY SIX CONVICTS. The author's conception of prison subculture is based on verbalizations from the type of "con-wise" inmate who gravitate into coveted assignments, such as that of chaplain's clerk. He does not appear to realize the extent to which he himself is "conned" and manipulated and made to view the prison from inmate bias.

The rabbi's criminological theory is equally naive. He fails to see the offender as a culturally produced phenomenon such as Henry, the "Hustler." He sets up a dichotomy of criminal acts: "malum per se", or universal evil, and "malum prohibitum", or arbitrary man-made law. "Malum per se" offenders are sick individuals, psychotics or psychopaths, and the suggested solution is psychiatric treatment in facilities other than penal. "Malum prohibitum" violators are viewed, not as criminals, but law-breakers to be handled, not by prisons, but by rehabilitation centers. "Trained Counsellors shall be in charge, not guards; brothers of mercy, not jailors; people qualified to help develop character and talent, not wardens. Guidance, not custody will be the paramount concern." The latter approach is of course compatible with trends in corrections. What to do with psychopaths not amenable to psychiatric therapy, and with persistant law breakers dangerous to life and property, if not subjected to external controls, is not indicated in this book.

This reviewer recommends this book for all who are interested in the problems and frustrations of idealistic correctional workers. The humanitarianism of the author is admirable, his empathy with inmates is commendable, his indignation with the failure and limitation of the penal approach is understandable, but his lack of scientific knowledge of dynamics of human behavior, theoretical content of criminology, and developments in corrections is lamentable. The book is revealing in many ways, but scarcely merits the jacket description of "one of the most important works of prison literature ever written."

Despite contrasts between these books, there is a basic similarity. Both are autobiographies; one of a thief, the other of a humanitarian who would rehabilitate thieves. Rabbi Leibert's life story is projected back to his childhood in a Lithuanian ghetto and to his experience and education as a member of a persecuted minority. One life story is anthropologically interpreted, the other presented without objective interpretation. Why should not the same tools of analysis be applied to the corrector as to the one to be corrected? Only in this way can we gain a wholistic picture of corrections which involves an intricate interplay of roles and personality types within an institutional setting.

HAROLD S. FRUM, PH.D.
Division of the Criminologist
Illinois Department of Public Safety

UTOPIATES: THE USE AND USERS OF LSD—25. By *Richard Blum and Associates*. New York: The Atherton Press, 1964, pp. 303, $8.00.

The main portion of the book consists of the Blums' account of their study of 92 LSD users, their comments on the use of this drug in an institutional setting, their findings with respect to the attitudes of 31 policemen toward LSD and other drugs, and their general reflections upon the advantages and, to a lesser extent, disadvantages of LSD use. Among the other contributors to this collection of papers are three psychologists, two physicians, a pharmacologist, a policeman, and a chaplain. In two chapters, the Zihuatanejo, Mexico, "Experiment in Transpersonative Living" is discussed.

The principal findings of the Blums were that LSD use is primarily confined to mental-health professionals and persons associated with these professionals as patients, students, experimental volunteers, colleagues or relatives. These users of LSD were "respected, conforming, successful persons with socially favored backgrounds and careers."

The effect of LSD upon the subjects' behavior was reported to be primarily dependent upon the social characteristics of the users and the immediate environmental conditions under which the drug was taken—whether religious, transcendental or hedonistic. Although a few subjects had adverse

behavioral reactions following use of LSD and some were displeased with its psychic effect, most users were favorably impressed with the drug, expressed an interest in taking it again and all of the regular users were proselytizers as well.

The book includes, in addition to the study findings, a considerable discussion of the "LSD Movement." The chapters written by the Blums, and the one by Leary, Alpert and Metzner, advocate the non-medical use of LSD as a partial solution for the evils of contemporary society—the world has become bureaucratic and "humility and brotherly love are gone." An answer is suggested by Richard Blum in the last page of the book: "The movement promises much—a return to paradise, a utopia of the inner life—and so LSD-25 becomes, if one may be allowed a neologism, a 'Utopiate'."

Utopiates may be appraised from a medical, philosophic or scientific point of view. Although there are important questions of medical ethics involved and the moral and philosophic questions raised are often interesting, it seems most appropriate to consider the book as an objective study of LSD users inasmuch as the editor regards the book as a research report.

In this light—with the notable exception of the chapters presented by the two physicians, the pharmacologist, and the police administrator—the book is not objective. While the Blums and their associates may well be commended for undertaking a study in which LSD users were interviewed in the community, the inadequacy (or absence) of the research design, the bias of the interviewers, and the continual intrusion of extraneous and prejudicial opinions upon the reporting and analysis of findings severely restrict the validity of the data presented. Thus, other investigators have not found it difficult to obtain interviews from drug users without being tempted to join the subject group. And it is yet to be demonstrated that the validity of a scientific experiment is determined by whether or not the investigator has subjected himself to the stimulus, as some LSD users maintain. (The content of this review may or may not be affected by whether or not the reviewer has used LSD-25.)

JOHN C. BALL

Chief, Sociology Unit
Addiction Research Center
U.S. Public Health Service Hospital
Lexington, Kentucky

PEDOPHILIA AND EXHIBITIONISM. By *J. W. Mohr, R. E. Turner and M. B. Jerry*. Toronto: University of Toronto Press, 1964, pp. xvi + 204, $8.75.

The authors have all been associated with the Forensic Clinic of the Toronto Psychiatric Hospital and with the Department of Psychiatry at the University of Toronto. Since they are a psychiatric social worker, a psychiatrist and a clinical psychologist, they constitute a true team, which is now customary in hospitals and clinics.

The authors state that their studies were "focused on the natural history of the deviations (of sex) and their consequences as expressed by the data (they) were able to collect." They also state that their orientation "was strictly empirical and the method used was that of a phenomenological enquiry." Unfortunately, the term was left undefined.

The study covers all patients referred to the Clinic by the Courts or related legal agencies (police, probation, legal counsel) from April 1956 to July 1959, who were diagnosed as pedophiles, exhibitionists or homosexuals. These amounted to 132 cases: 55 pedophiles, 54 exhibitionists, and 23 homosexuals; nine were put into two or all of the three categories. Three procedures were followed: (1) a follow-up which was mainly concerned with the criminal records before and after referral to the Clinic, (2) an analysis of case records in which "all the material accumulated on these cases was analysed," and (3) a personal follow-up which included those patients who were treated at the clinic and had finished their treatment at least one year prior to this follow-up. I have listed these procedures, practically in the authors' own language, as it seems to me that the reader ought to be aware of the type of study the authors undertook, and the rather severe limitations the authors set for themselves. After much laborious analysis of primarily statistical (not clinical) data, the authors reach such conclusions as that "exhibitionism has consistently the highest rate of recidivism among sexual offenders," a conclusion to which I have come in my practice without having made any special study. The literature which the authors have chosen is not well proportioned,—the non-psychiatric, and particularly the non-analytic, literature far outweighing the psychiatric literature (even though the authors are members of a psychiatric clinic). Freud is mentioned in the bibliography, and only once in the text. Few of the

sources stem from the fifties, hardly any from the sixties. The sociologist will have a field day with the numerous appendices, which present statistical data collected by the authors.

Especially disappointing for the beginning student as well as the experienced practitioner is the authors' failure to describe methods of treatment. Four short paragraphs are devoted to "motivation of treatment," to me one of the most important factors in treating sex deviates. If one were to make deductions as to the authors' work with these deviates, he might think that the length of treatment has little relationship to the motivation of the patients. About individual treatment the authors are content to cite other authors, almost insulting the reader's intelligence with three short paragraphs on the subject, just as group psychotherapy is treated in three paragraphs, again primarily reviewing the work of others.

There is no doubt that the paraphilias (so named by Karpman, whose work was cut short by his untimely death a few years ago) deserve more attention. Many professional workers, both inside and outside of the correctional field, would appreciate a book that described the dynamics of sexual deviations and the process of treatment in an adequate way. This book is not one of them.

HANS A. ILLING

DELINQUENCY AND DRIFT. By *David Matza*. New York: John Wiley and Sons, 1964. pp. x, 199. $4.95.

Professor Matza begins his book by contrasting the classical school of criminology, which emphasizes *crime* in relation to the legal structure, with the positive school, which looks at the criminal *actor* in an effort to discover the causes of criminal behavior. The science of behavior is based upon a principle of determinism. The classical school emphasized free will, and Professor Matza retains the element of free will and choice in his concept of "soft determinism."

The writer then reviews the current literature on the sociology of delinquency, which follows the positivistic tradition, and he concludes that "In the most influential expressions of contemporary sociological theory of delinquency, beliefs are the key independent variable". (p. 19) The sociologist "posits a set of intervening beliefs which shape the behavior of delinquents." (p. 25)

The theories of Cohen, Cloward, Ohlin, and Miller view delinquency as in opposition to conventional middle class values and norms. Professor Matza rejects the notion that alienation and opposition exist between delinquent values and conventional values. The theory of drift presented herein states that the delinquent drifts between conventional and criminalistic values and norms. The theory of drift preserves both freedom and control, since the delinquent can respond to some norms and not to others. As evidence of drift, the writer points to the fact that a person can belong to a delinquent gang and be exempted from delinquent acts because of special circumstances such as school or employment. The delinquent will rationalize his behavior according to the circumstances. The delinquent belongs to a subculture of delinquency, and not to a delinquent subculture. In the subculture of delinquency there is a balance between convention and crime, and the subcultural system is integrated with the conventional order. Delinquents are not committed to delinquency, though this misconception is fostered by the belief that delinquents are committed to criminal values.

The criminal law creates and supports neutralization behavior on the part of the delinquent. The negation of intent and blameworthiness by infancy, insanity, and self defense gives to the delinquent a value system for rationalizing his behavior. Social welfare agencies attached to juvenile courts foster a sense of injustice by telling the delinquent that he is not responsible for his act. The blame is placed upon the family, the community, gangs, and poverty.

Professor Matza has stated that to understand the delinquent we must understand the environment in which he lives and the influence of that environment upon behavior. He is critical of sociologists who use beliefs as the crucial intervening variable in explaining behavior. Neopositivistic criminology has led to the view that delinquency is caused by (or is correlated with) beliefs and attitudes. By introducing the mind into his explanation of behavior the criminologist has made mentalistic statements which are beyond empirical proof, since no one has ever seen a belief or attitude. Professor Matza makes an excellent start in refuting the positivistic notion that criminal behavior must be explained in terms of individual processes (be they sociological, psychological, or biological). However, Professor Matza becomes mentalistic and positivistic when

he explains behavior in terms of neutralization and rationalization.

Neutralization refers to verbal statements made to police officers and social workers by delinquents. Verbal behavior is behavior which is dependent upon the environment in which it occurs. A delinquent tells one story to a probation officer and another to his fellow delinquent because the consequences are different in the two situations. There is little or no evidence that the belief system of the delinquent as expressed in his verbal behavior is a cause of his delinquent behavior. A delinquent steals an automobile for one reason, he talks about his stealing behavior for other reasons. These are two different categories of behavior under the control of different environmental contingencies. The theory of neutralization presented in this book, and developed by Sykes and Matza earlier in a paper, assumes that mental processes cause or are related to behavior. "I have stressed throughout the connection between delinquent *thought* and the ideas and practices that pervade contemporary juvenile law." (Preface, emphasis added.) Professor Matza views neutralization as a mental or cognitive process, thereby translating verbal behavior into a mental process. This mind-body dualism which is basic to most sociological theorizing is open to critical examination on methodological grounds since mental processes are known or inferred from behavior.

Professor Matza has made a valuable statement in his criticism of current theorizing on delinquent behavior. However, he falls into the same methodological issues and errors as those he criticizes. He is on solid ground when he deals with the influence of community agencies on delinquent behavior. When the juvenile court excuses delinquent behavior, or a social worker blames the parents for such behavior, these agencies are rewarding the delinquent for behaving in a given way. Professor Matza could have dealt with the various ways in which social agencies shape and maintain delinquent behavior without resorting to any theory of neutralization. However, it would not be in the tradition of modern sociological thinking.

C. R. JEFFERY
Washington School of Psychiatry
Washington, D.C.

BOOK NOTE

CRIMINAL JUSTICE IN OUR TIME. By *Yale Kamisar, Fred E. Inbau,* and *Thurman Arnold.* The University of Virginia Press, Charlottesville, Va. 1965. Pp. 169. $1.75.

This is a trilogy of three essays on pressing and controversial problems raised by judicial decisions of recent years. The first essay is by Yale Kamisar, Professor of Law at the University of Michigan. It is entitled *Equal Justice in the Gatehouse and Mansions of American Criminal Procedure: From Powell to Gideon, from Escobedo to....* The second is on *Law Enforcement, The Courts, and Individual Civil Liberties* by Fred E. Inbau, Professor of Law at Northwestern University. The third is *The Criminal Trial as a Symbol of Public Morality* by Thurman Arnold of the District of Columbia Bar.