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Book Reviews

BOOK REVIEWS

Edited by
Bernard Cohen

THEORIES IN CRIMINOLOGY: PAST AND PRESENT PHILOSOPHIES OF THE CRIME PROBLEM. By *Stephen Schafer*. New York: Random House, 1969. Pp. 335. $7.95.

This is an exceptional book, written with wit, humor and erudition.

In the preface Schafer presents his *Apologia pro libro suo* for trying to cover so much ground and so many eras; as a result the book is "hardly more than hints, snatches and gaps".

Schafer starts in a tone of scepticism, joining forces with the late George Vold, in proclaiming that at the present stage of our knowledge, a comprehensive criminological frame of reference is sadly remote. This is compounded by the fact that crime is a clash between a criminal law norm and a specific type of human behavior, and it is notorious that laws and man do not often have an analytical common denominator. Schafer fully recognizes this dilemma and proceeds to analyze the phenomenological components of criminal behavior.

He first of all devotes a large section of the book to a historical survey of the development of the criminal law, its functions as postulated by various legal philosophers, its inter-relationship with ethics and its uses as a tool of social control. This brings him to the focal concept of his work, which is "responsibility," through which he tries to assess all theories in criminology.

Responsibility, in Schafer's scheme of analysis, also serves as a connecting link between the etiology of crime, its punishment and treatment. Before dealing with crime causation he rightly surveys the various typologies of crimes and criminals because *behaviorally* crime is wildly heterogeneous and the personality structure of one criminal is very rarely similar to that of another. Schafer then carries on with the conventional types of crime causation theories: biological, psychological, socio-economic and the ecclectic multiple-factor theoretical *potpourri*. He concludes his book with a brief note on punishment and correction as related to his central concept of "responsibility".

The author combines a thorough old-world classical and humanistic erudition with a new world pragmatic aplomb. The book is an excellent reference volume for the industrious undergraduate. The wealth of foot-notes and bibliography is outstanding, but as an innovation in criminological theory it is, alas, a failure. Schafer seconds Wolfgang's and Ferracuti's stressing of the interrogative needs of theoretical criminology, but his volume is a diffusive venture, and not an integrative one. He fully understands the disconnectedness between criminal law, human behavior and social control, but hardly tries to synchronize them. It is, of course, true that posing the right questions is an important step in looking for the right answers, but Schafer does not even try to indicate the directions by which criminal law and human behavior converge to form the phenomena of crime.

The author relies on Leslie Wilkin's analogy with medicine as the pragmatic trial and error inter-relationship between theory and practice. However, he does not really try to show the theoretical links between the etiology of crime and its treatment. Schafer also relies on a vast array of criminological luminaries, including Aristole, Aquinas, Nicholas of Cusa, and Sartre. No wonder his name index is eight pages long, whereas his subject index is only three pages.

This is a useful book, well written and extremely learned. Unfortunately, it lacks integration. One feels that Schafer has chewed off more than he was able to swallow and the reader to digest.

SHLOMO SHOHAM

Faculty of Law,
Tel-Aviv University

CRIME, LAW, AND THE SCHOLARS, By *Gerhard O. W. Mueller*, Seattle, Wash.: University of Washington Press, 1969. Pp. xvi, 302. $12.50.

In *Crime, Law, and the Scholars*, Gerhard O. W. Mueller tells the story of the impact of important American legal scholars on the development of substantive and procedural criminal law which in this country, until recently, had not been directed toward codification and systematization. He outlines the role of the university law school professors, the independent scholars, and that of the

judiciary in this area, and also attempts to evaluate American criminology up to the present time.

Professor Mueller starts his account with colonial times and dispels the almost universal belief that the English common law of crime was transplanted whole to the colonies where it thrived in an uninterrupted existence. On the contrary, most of the early settlers left England because of various kinds of dissatisfactions, some of which were directed toward the common law of England. For instance, in the Massachusetts colony the procedural safeguards included:

> ... bail, double jeopardy, the right of confrontation, the guarantee of orality of proceedings, the equal protection of the laws, appeal rights, vigorous disapproval of torture and self-incrimination, and other "due process" guarantees. In this respect, then, the settlers brought with them more than the common law.

As a matter of fact the early settlers were more familiar with simple manorial law and the Bible than with the sophisticated legalities of the English courts. Many settlers were particularly well versed in the Bible which they took literally. Lawyers were not made welcome in the colonies, and in Catholic Maryland, there was no expressed official need for law books for thirty years after the colony was founded in 1634. Mueller lists four important ingredients of America's earliest penal law:

1. Devotion to God.
2. A modicum of common-law sophistication.
3. Familiarity with the way in which the penal law of the realm was applied in the manorial courts.
4. The settler's own laws.

In the early nineteenth century criminal law was of minor concern, and there were no early meaningful successful American efforts at conceptualizing the criminal law. When the great Joseph Story was Dane Professor at Harvard Law School in 1829, he presented a brief and systematic presentation of American criminal law and exhibited a "strong Blackstonian influence, but no originality." Until the middle of the nineteenth century, although there was an expanding body of criminal law, no outstanding American law scholars developed.

Throughout the nineteenth century federal penal law was typified by a general *ad hoc* or stop gap approach which is still characteristic of the various states. Legislators have been stimulated into action by crises or by involved and interested individuals. To this day federal criminal law has not yet felt the impact of unified social theory and criminal law scholarship; there has been no systematization and codification in this legal system. The dispersal, however, of European refugee scholars in the period between the two World Wars to the United States has served to enrich and mature scholarship in the systematic analysis of criminal law in this country.

Mueller then goes into a discussion of the circumstances which led to the organization of the Model Penal Code Project after World War II. He describes the contributions of the various members, evaluates the succession of events that culminated in the writing of the Code in a common-law nation, and finally, offers a criticism of the Code.

It is not the intention of the reviewer to give a summary of the book. The first seven chapters are meticulously prepared, and evidently required a great deal of work in the investigation of sources.

In his discussion of interdisciplinary scholarship, however, Professor Mueller has omitted the contributions of many important American criminologists, most of whom happen to be sociologists. He comments that leadership in the field is being taken over by social workers and other behavioral scientists. He has overstated the case, the reviewer thinks, and has placed too much confidence in the study by F. J. Davis, *et al.*, which he cites on page 143. In addition, he should be more critical of the psychiatrists who try to dominate the field of criminology. With few exceptions psychiatrists are lacking in basic criminological knowledge, and should read the standard criminology texts and books on research methodology. They might then refrain from making global conclusions based on limited case studies. Most of the psychiatrists who claim to be experts in the field of crime would perhaps find it more palatable to read a criminology text by a fellow psychiatrist, Seymour L. Halleck, Professor of Psychiatry at the University of Wisconsin, who wrote *Psychiatry and the Dilemmas of Crime.*

Professor Mueller's book would have been enhanced by including a discussion of the writings of Sutherland, Albert K. Cohen, Reckless, and other important sociologists. Certainly he should have paid some attention to Abraham Blumberg's *Criminal Justice,* Arthur Niederhoffer's *Behind*

the Shield, and Jerome Skolnick's, *Justice Without Trial* for an understanding of the value of sociological analysis to important areas of the problem of controlling crime.

There are, of course, other weaknesses in a small book which attempts to cover in depth so wide an area. Nevertheless, the book is so valuable and makes so many important statements, particularly in the first seven chapters, that the reviewer who has been a member of the New York Bar for forty years, and has worked in probation and parole, will assign this book as required reading to his graduate classes in Criminology, Problems of Criminal Justice and Sociology of Law.

ALEXANDER B. SMITH
John Jay College of Criminal Justice.

HOMICIDAL THREATS. By *John M. MacDonald, M.D.* Springfield, Ill.: Charles Thomas, 1968, Pp. ix, 123. $6.50.

There is a growing awareness in this country that as a people we have long had an appalling tolerance for violence. Typically, intolerance for acts of violence toward the self has in many ways been greater than intolerance of acts of violence toward others. (One has only to look at some of our most cherished myths and legends.) Can it be that one sign of an increasing sense of social responsibility is the realization that homicide is a social phenomenon of at least the same order of magnitude as suicide?

Societies demonstrate their value priorities in a variety of ways. One expression is the interest shown among those whose rewards are derived from the study and modification of human behavior. Any objective appraisal of behavioral and social science interest in the question of violence reveals an overwhelming bias in the direction of suicide. Is it not possible that, like suicide itself, this interest is related to social and economic class? After all, homicide is a relatively rare occurrence in the social class to which social scientists and helping professionals belong. Suicide, on the other hand, is anything but rare. For example, among psychiatrists suicide is an uncomfortably frequent cause of death. Where the question of violence is concerned, there is little doubt that self-violence far outweighs other-violence in psychiatric teaching programs, textbooks, symposia, and the like.

All the more reason to take note of one psychiatrist's efforts to correct the violence equation. For at least the past decade, John MacDonald has been focusing on the other side of the coin; he has persisted in attempting to counter the relative indifference to homicide among his colleagues. An earlier work was a contribution to "victimology" in which he emphasized the importance of understanding the role of the murder victim in bringing about his own demise. In this book he stresses the homicidal threat as "a cry for help" or as an unclear "warning of impending tragedy."

The book is clearly not intended as a definitive work but rather as one which will stimulate interest, focus attention and perhaps inspire research. The lapses in scholarship, the brevity with which certain issues are addressed, and the repetitive recourse to anecdotal case material encompassed in the volume's 120 pages are all revelatory of a limited, but no less important, objective.

After briefly discussing the background to this inquiry and defining the homicidal threat, the author presents follow-up data on a sample of 100 hospitalized patients originally described in an article in the *American Journal of Psychiatry* (1963). The results of the 5–6 year follow up are difficult to evaluate because of limitations in the description of method and treatment of the data. However, after an effort to define those who threaten and those who are threatened, the author undertakes to assess potential predictors of homicide. It is a chapter that contains the seeds of potential accomplishment in this field and it is certain to excite considerable research interest. A chapter by Margaret Mead follows, which discusses cultural factors in the cause and prevention of "pathological homicide" reprinted from the *Menninger Clinic Bulletin*.

In a brief chapter on legal factors related to homicidal threats, the author, writing from the perspective of a hospital psychiatrist, fails to engage some crucial issues. For example, what about those who threaten but are refused admission to hospital because of lacking evidence of mental illness; or, can we deprive an individual of his freedom when he is accused of issuing a threat even if the accusation is denied and there is no evidence of psychosis or incapacitating neurosis? In these days of more strict interpretation of human and individual rights, the strictures on psychiatry as a system of social regulation (as described by Szasz, for example) are greater than ever and have a critical bearing upon action to be taken on the basis of a threat.

Since the book is intended primarily for a psy-

chiatric audience, it may have certain features which non-clinicians may find annoying. For example, such statements as "he was somewhat impulsive, but clinical examination suggested very slight danger of homicide" (p. 35) may prove puzzling. Which elements led to that decision? Since the emphasis on the development of predictive criteria for homicidal threat decision-making is central, such pithy observations add little and, if anything, only detract from the author's major objectives.

In sum, the author is to be complimented for his persistent efforts to elicit psychiatric responsiveness to the problems of homicide. For other professionals and scientists concerned with human problems, the author presents a challenge to really engage a social issue of critical importance.

MORTON BARD

The City College,
The City University of New York

CRIMES AGAINST BUREAUCRACY. Edited by *Erwin O. Smigel* and *H. Laurence Ross*. New York: Van Nostrand Reinhold Company, 1970. Pp. 142. $2.45.

There has long been a standing joke among commercial airline personnel in this country. "Never publicly expose a person discovered as a stow-away aboard an aircraft, for if you do, next time he decides to commit the same act he may select one of your competetors." Even though this person has committed which might amount to breaking and entering or grand larceny, depending upon the jurisdiction in which the "crime" took place, standard procedure is to ticket and bill him upon arrival, or, if unable to pay, return him to his original point of departure at no cost.

The answers to why the above and other crimes against large bureaucratic organizations take place in the United States without conventional recourse to criminal procedure is answered in this rather slim book of readings edited by Professors Smigel and Ross. Perhaps the most significant factor leading to the selection of only seven readings for this volume is the author's contention that scholarly research in this area has been rather limited. Bureaucracies find themselves in the unfortunate position of being victimized without the general support of a public willing to stigmatize the offender as a "criminal". The unpopularity of the large, impersonal organization is perhaps the major contributing factor. In light of this condition, among the more important reasons why crimes against bureaucracies may not come to the attention of law enforcement agencies are: low visibility (crime may not be discovered for some time, if at all), necessity of the organization to maintain good public relations and a positive public image, greater concern with reimbursement rather than retribution, and the desire to save time and money by developing internal systems of private disposition rather than relying on the public system of criminal justice.

In addition to the negative reactions many have toward the bureauracy as victim, Smigel and Ross also examine the characteristics of the offender. This offender has little in common with the stereotyped criminal we might see on the late-late show. In all probability he lacks a previous criminal record, has a high self-concept, would not resort to a more conventional crime, and is able to rationalize his actions.

For the scholar with an interest in a combination of white-collar crime, offenses against large-scale organizations, and a look at a "new" type of victim, this book offers a unique opportunity. The selection of articles provide a broad perspective of the subject matter included in an area of criminology that has been largely untapped. For an introduction to the field the book performs its function well. However, I share with the authors the opinion that to do justice to the subject matter new research must be undertaken and reported.

BRUCE J. COHEN

C.W. Post College
Long Island University

THE DELINQUENT GIRL. By *Clyde B. Vedder*, and *Dora B. Somerville*, Springfield, Illinois: Charles C. Thomas, 1970, Pp. 166. $9.00.

This is a useful book for researchers and practitioners in the field of juvenile delinquency. It presents first of all a comprehensive survey of the literature, giving the gist of the major contributions in the field. It also offers a handy accumulation of statistics which convey the magnitude of the problem. Its major contribution, however, lies in the case histories presented in the words of the juvenile delinquents themselves. These case histories are pathetic as well as instructive. They suggest the overwhelming interplay between conditions of social and psychological pathology. These girls have not the intellectual nor the emotional means to fight an adverse environment. In this

respect the reviewer received a message different from the one intended by the authors. The authors present their case material as support for their plea of multi-disciplinary intervention. They represent the frequent belief that if you brought more people together in an attempt to devise a treatment plan, more and better results were likely to result. The impression conveyed, however, is one of hopelessness rather than of optimism. To break into the chain of the malignant process in which these girls are involved would require more than team work. It would require commitment of an intervener whose own intrapsychic problems would require that the girls in his charge be helped. Bureaucratic organization is unlikely to provide such a commitment. What the book fails to see is the need to shift from a diagnosis of the client to a diagnosis of the helper. Unless his needs are met by helping a delinquent girl, the delinquent girls are unlikely to be helped. It is recommended that the case histories under the headings, "The Runaway Girl," "The Incorrigible Girl," "The Sex Delinquent Girl," and "The Probation Violator Girl" be read with this in mind.

OTTO POLLAK

University of Pennsylvania

THE LEGISLATION OF MORALITY: LAW, DRUGS, AND MORAL JUDGEMENT. By *Troy Duster*. New York: The Free Press, 1970. Pp. 263.

Whether or not and to what extent morality can be legislated has become a rather irrelevant consideration. For, as Troy Duster points out, the question is no longer whether law is a significant vehicle of social change but rather how it so functions and under what circumstances it can be expected to do so.

The central thesis of this thoughtful and competent analysis of the relationship between law and morality in the United States is that present narcotics legislation is both the result and the cause of the label of immorality that is so strongly associated with the drug addict today. The author has analyzed changes in the profile of the drug addict population with respect to alterations of societal attitudes towards those addicted. The transformation of the drug problem has been from one of a purely personal physical handicap to one with permanent moral implications, for the drug addict population has become a highly visible segment of the deviant and criminal world. Public indignation and repugnance is reserved for those drug users who are by necessity linked to the criminal sub-culture either through source of supply or eventually by their own drug-motivated crimes against person and property.

Current legislation in the area of drug abuse is, in effect, a codification of strongly held cultural attitudes reinforcing the theme of the immorality and intrinsic evil of the drug habit. It is interesting that the original legislation in this field was intended to inform an unsuspecting public of the addictive nature of opium derivatives. The moralistic attitude that so strongly characterizes public opinion today was virtually absent. The Harrison Narcotic Act of 1914 resulted in the almost overnight indentification of addicts with the criminal class, making the aforementioned shift in focus from that of a physiological problem to that of a moral one relatively easy. As a society, we believe that it is both good and right to alleviate physical pain. We do not however react in quite the same manner when confronted with emotional suffering. Thus, what we see, rightly or wrongly, as the underlying emotional causes of drug addiction (escapism, flight from responsibility, emotional immaturity, etc.) serves to label and also typify the addict as not only criminal by definition but immoral by virtue of his apparent denial of the "good," responsible, middle-class oriented way of life.

The large implications of the process of cultural labeling have been the focus of inquiry for symbolic interactionists and the comparatively new field of the sociology of deviance. The works of Garfinkel, Goffman, Kitsuse, Lemert, to name just a few contain detailed and perceptive analyses of the effects of permanent stigma upon the self-image and subsequent life-styles of deviant populations. The drug addict is indeed faced with the problem of internalizing not only social condemnation for his addiction, but in addition must manage attitudes portraying the drug user as worthless, immoral, and repulsive *as a total human being*. Although Duster mentions briefly the tendency to role-typification that occurs relevant to a deviant career, his analysis of the consequences of this typification and of the permanence of stigma upon the addicts self-image seems to lack impact. For the drug addict has a stigma he cannot loose. Reentry into the "normal" community is almost impossible once a person is so labeled and begins to see himself as not only a drug user, but as the inherently immoral person the general public has

agreed he is. Duster's work at the California Rehabilitation Center serves to emphasize the fact that an intrinsic part of the rehabilitative process includes the addicts' own estimation of his chances to reestablish normative relations with the straight world. The author's analysis of the concepts of partial and total identities reinforce his statement that the "few total characterizations held in our society tend to be in areas concerned with morality." Thus, the relevance of societal reaction to deviance becomes a far greater issue than one concerned with legislation alone. For this legislation, combined with the stigma of permanent immorality, functions to drive the drug addict further away from the society of which he once was a part—and in effect is counter to the practical intentions of those very laws designed to regulate men's behavior in this particular area.

Duster's work successfully portrays the ambiguities and contradictions that are so much a part of our cultural definitions relating to drug use. He has perceived that the "danger" often ascribed to drug use (and most Americans lump all drugs regardless of either content or effects into one category) such as LSD is the danger of altered perception of reality coupled with the strong possibility of reinterpretation of ordinary day-to-day existence as meaningless. The former may lead to confusion and anomie; the latter to the even greater threat to cultural continuity in the form of detachment and sometimes total withdrawal.

The Legislation of Morality attempts to relate the phenemonon of drug use with an analysis of those social and historical forces that create select social categories of deviant careers. Its combination of empirical research and theoretical propositions enriches the expanding scope of the problem. Some may disagree with the author's support of the legalization of the dispensing of drugs as a means of alleviating the stigma attached to drug use and as a method to break the vicious cycle of drug addiction and criminal behavior. The problem, however, can no longer be ignored. The author presents some possible solutions. A public reappraisal of the moral implications of heroin use is long overdue.

JANET HENKIN
John Jay College of Criminal Justice

STUDIES IN CRIMINOLOGY. Edited by *Israel Drapkin*. Jerusalem: The Magnes Press, The Hebrew University, 1969. Pp. 319. $7.50.

The Institute of Criminology of the Faculty of Law of the Hebrew University of Jerusalem was founded eleven years ago and is directed by Dr. Israel Drapkin. The present volume is a collection of papers by teachers and researchers of the Institute and contains "the fruits of speculative thinking and the results of empirical research" reflecting the wide variety of scientific interests fostered by the Institute.

Nine papers are included. Justice Haim Cohn of the Supreme Court of Israel writes on "Tortures and Confessions. Historical Sidelights on the Psychology of Law;" Professor Drapkin on "Criminological Aspects of Sentencing;" Professor S. Z. Feller on "The Forms of Plurality of Offences and their Punishment;" Mr. Leslie Serba, Assistant at the Institute, on "Penal Reform and Court Practice: The Case of the Suspended Sentence;" Dr. Reuven Kohen-Raz, Senior Lecturer on Educational Psychology, on "Some Additional Clinical and Criminological Aspects of Neurotic Delinquency;" Mr. Simha F. Landau, Assistant at the Institute, on "The Effect of Length of Imprisonment and Subjective Distance from Release on Future Time Perspective and Time Estimation of Prisoners; "Dr. Menachem Amir, Lecturer at the Institute, on "Personnel Recruitment in Correction;" Mr. David Reifen, Chief Judge of Juvenile Courts in Israel, on "Some Aspects Relating to Young Adult Offenders in Israel;" and Dr. Uriel O. Schmelz, Director of the Demographic and Social Divisions of the State Central Bureau of Statistics, on "Differentials in Criminality Rates between Various Groups in Israel's Population." The papers are said to be ordered in a natural sequence.

Space limitations makes it impossible to give all these papers the attention they deserve. The one by Justice Cohn is a thoughtful and instructive essay, which sketches the historical evolution of methods of ascertaining the guilt of the accused by physical or mental torture designed to elicit his confession. The author concludes that modern methods of securing pleas of guilty or confessions are not, from the point of view of judicial psychology, fundamentally different from now obsolete methods of by-gone ages. "The historical phenomenon of using torture, physical or spiritual, for the extortion of confessions has left its traces in the criminal procedure even of the present day." (p. 27).

Professor Drapkin pleads for the special training of judges, prosecutors and attorneys dealing with

criminal cases, as being essential for proper adjudication and sentencing. He discusses at length the nature and the function of presentence reports in that connection and is realistically aware of the cost involved in the production of such reports. He suggests that they should be required primarily in cases of recidivists, professional criminals, those convicted of offenses of an unusual or perverted nature, and when the court, for some reason, requests it for other offenders. One might argue, to the contrary, that the offender who should be given primary consideration is the one who faces the judge for the first time. The author's discussion of the aims of punishment to be considered by the court—retribution, deterrence, treatment—is interesting.

After a finely reasoned analysis of numerous offenses or offensive events involving constituent parts, which might be dealt with as separate crimes, Professor Feller finds that Israeli law gives no systematic guidance for the procedure in such cases, and he offers numerous suggestions for reforms to rectify the imprecisions in the legislation involved.

Judge Reifen notes that there are inadequate provisions in the law of Isreal for dealing with youthful offenders and urges the creation of special courts for the 18–21 age group. Referring to the high delinquency rates of Oriental immigrant groups, he sees the problem as chiefly one of deficient acculturation. The statistical picture of criminality in Israel, 1960–1965, given by Dr. Schmelz, demonstrates indeed that the highest crimes rates are produced by non-Jews, Jews born in Asia or Africa, and their children born in Israel. Jews of European or American extraction have the lowest rates. Data also show that, in recent years, increases have occurred in property offenses, juvenile delinquency and recidivism.

Dr. Amir's paper would be of special interest to American readers, since it deals almost exclusively with the recruitment of correctional personnel in the United States.

The bare references to the titles of the rest of the papers do not measure their quality. They are all excellent and well worth reading.

THORSTEN SELLIN

Gilmanton, New Hampshire.

SENTENCING: THE DECISION AS TO TYPE, LENGTH, AND CONDITIONS OF SENTENCE. By *Robert O. Dawson*. Boston: Little, Brown and Company, 1969. Pp. xxi, 428. $12.50.

In our schizophrenic system of the administration of criminal justice the activities taking place prior to the determination of guilt are reasonably open to public view with considerable scrutiny, both judicial and extra-judicial, of the exercise of discretion by the relevant public officials. Even such areas as police practices and guilty plea negotiations, once *terra incognito*, are now increasingly exposed in the courtrooms and in the press. After the determination of guilt, however, the entire scene changes and one enters the "dark continent" of broad discretion exercised, in the main, beyond the reach of judicial or public scrutiny. It is now over 20 years since Mr. Justice Black, speaking for the Supreme Court of the United States in *Williams v. New York*[1], gave firm constitutional support to the broad exercise of discretion untrammeled by the conventional restrictions of due process by judges in sentencing and by administrative agencies in determining the terms and conditions of punishment. Administrators of correctional agencies, probation officers, parole officers, and others concerned with the sentence and its administration have continued to exercise almost complete control over the living conditions of hundreds of thousands of human beings virtually free of external controls other than those involved in budgetary processes. Only recently has there been some evidence of judicial impatience with the process and the Supreme Court has taken one hesitant step in the direction of control with its requirement in *Mempa v. Rhay*[2] that the defendant be provided with counsel in probation revocation proceedings.

One can safely predict that the efforts to bring the sentencing and correctional system under tighter control will have increasing acceptance in the courts and in the legislatures. Whether the resultant controls accomplish their goals will depend in large part on the availability of comprehensive and sophisticated information concerning the system and its problems. Without such information new controls may become no more than additional stumbling blocks to be avoided by administrators determined to proceed down the paths well worn in serving the interests of administrative efficiency.

Professor Dawson's book is, happily, a major step in providing the kind of information needed. Utilizing data collected in field surveys (1965–67) in Kansas, Michigan, and Wisconsin as an empiri-

[1] 337 U.S. 241 (1949).
[2] 389 U.S. 128 (1967).

cal base, he examines the major decision points in the determination of sentence. Part I deals with presentence information—how it is acquired and what is done to insure its accuracy. Part II describes the probation system—the decision to grant probation, probation conditions and supervision, and revocation. Part III describes the system by which the length of incarceration is determined. It explores the relationship of the judicial sentence to the process of guilty plea bargaining and the means by which the system accommodates to legislative restrictions. The interrelated problems of individualized sentences and sentence disparity are discussed. The parole system—determination of eligibility, the information available to the decision-makers, the decision process, parole conditions and supervision, and revocation—is examined in detail. Part IV discusses the relationship between the correctional process and the legal system with emphasis upon the exercise and control of discretion.

The book makes it crystal clear that the system must be viewed as a whole if it is to be understood and if meaningful change is to be effected. Attempts to reduce the discretion of one agency may simply result in shifting the decision to another. Thus legislative attempts to restrict the use of probation or to mandate high maximum sentences for certain offenses may be defeated by guilty plea negotiations resulting in a determination by the prosecutor to reduce the charge. Decision-makers are limited by the information available to them and the time available for making the decision with the result that the crucial decisions may be made by those who do the investigating and prepare the case files. Hence a parole board hearing may be no more than a ceremonial ratification of staff judgments. Communication among the various segments is at best poor. Judges make sentencing decisions with only fragmentary information as to what will in fact happen to defendants in the correctional system while parole boards operate with little or no knowledge of what caused the judge to impose the sentence he did. In these and numerous other instances the book illustrates the interdependence of the various agencies and the inadequacy of the information necessary for them to relate sensibly to each other and for legislatures to make intelligent regulations.

The book also demonstrates with numerous examples the extent of the discretion vested in sentencing and correctional officials and the minimal nature of the controls available to limit abuse of that discretion. It also shows how the high workload of the system often prevents implementation of the goals which led to the granting of the discretion. In *Williams v. New York* the Supreme Court justified the wide discretion given to agencies involved in the determination of sentence as necessary to the individualization of sentence in a system in which reformation and rehabilitation have largely replaced retribution as goals of the process. It stated that the increase in discretion has not made the lot of offenders harder but has been based on the belief "that by careful study of the lives and personalities of convicted offenders many could be less severely punished and restored sooner to complete freedom and useful citizenship."[3] Professor Dawson's description of the system casts doubt on the validity of these judicial assumptions. As he explores the realities of decision-making in the sentencing process and the extent of the treatment and supervision in fact provided by probation and parole officers, one feels increasingly uncomfortable with the notion that the liberty of so many persons can be left within the largely unreviewable discretion of such agencies.

It is, of course, one thing to recognize the need to control discretion and quite another to determine how to do it intelligently. Professor Dawson addresses this problem in the concluding chapters of his book. He notes that legislative attempts to restrict discretion seldom work in practice and suggests that the major legislative role should be to prescribe procedures which can be enforced by the courts and to utilize financial controls so as to induce correctional agencies to develop procedures designed to reduce arbitrariness. He sees the primary role of the appellate courts as being that of reviewing procedural requirements rather than the criteria by which decisions are reached. Nor is he hopeful that progress can be made by shifting control to the trial courts. "The likelihood of extensive prehearing staff screening, the probability of heavy judicial reliance on staff recommendations, especially for critical social-medical determinations, and the infrequency with which factual disputes are likely to arise all indicate that shifting responsibility to the trial judiciary may not significantly increase the fairness of decision making."[4] He notes that attempts to control

[3] 337 U.S. at 249.
[4] P. 392.

discretion by dividing decision-making between the courts and the correctional agencies have not worked well—usually because of inadequate communications. His principal suggestions for reform are for increased public participation, which will require increased visibility of the process, and for the provision of improved internal controls, particularly in the expansion of administrative review within the correctional system.

One note of caution should be sounded for those who use this book. Like the others in the American Bar Foundation Administration of Criminal Justice Series, it speaks in the present tense of practices in Kansas, Michigan, and Wisconsin. In fact it is based on empirical observations (essentially snapshots) of the processes and practices in these states some 13 to 15 years ago. Much may have changed in the meantime in those states and the variations in practices reported suggest that even wider variations exist throughout the country as a whole. The empirical data utilized here is invaluable in providing a backdrop of actual experience as a basis for analyzing the problems and speculating upon appropriate solutions—and Professor Dawson does a magnificent job of so utilizing it. It is not, however, adequate as the basis for proposing solutions for concrete problems in particular jurisdictions. For that purpose there is no solution short of uncovering current information concerning the actual operations of the system in the particular state. In that process this book will prove to be particularly useful in suggesting the kinds of information to be sought and the dark corners in which it may reside.

EDWARD L. BARRETT, JR

School of Law
University of California
Davis, California

THE POLITICS OF LOCAL JUSTICE. Edited by *James R. Klonoski* and *Robert I. Mendelsohn*. Boston: Little, Brown and Company, 1970. Pp. xxii, 255. $3.95.

The theme of this book is that local systems of justice are integral parts of broader political systems and that, in order to understand how such legal systems operate, one must consider "non-legal" as well as legal factors. Although the book is specifically directed at stimulating the interest of political scientists in local systems of justice, it is also capable of performing the dual function of stimulating those whose primary interest is focused on systems of justice to consider the influence of political factors. It is from the latter point of view that this review is written.

Among the areas in which the influence of political factors on legal systems is discussed, three stand out: First, political conflicts are a significant source of cases in the legal system. Thus, the criminal courts must deal with acts of civil disobedience, and the civil courts must resolve disputes over such issues as zoning, taxes, and governmental powers and procedures. Second, the political process is the channel through which public funds are allocated to the legal system. Third, and most important, systems of justice are composed of individuals who are not only the products of their society but are also continually subject to societal pressures. It is in its emphasis on the latter relationship between the political and legal systems that this book can make its greatest contribution to the work of students of systems of justice.

This book consists of a collection of twenty articles, most of which have been published before, and is organized into six parts: The Idea of the Politics of Local Justice; Local Political and Legal Systems; Patterns of Allocation: Who Gets What?; Users of Power: Lawyers, Police, and Judges; Support and Supporters: Community Responses; Unresolved Questions of Politics and Justice.

The first part, which begins with an essay written by the editors, introduces the subject of the book by citing examples of the influence of politics on the judicial process and contrasting them with the traditional view of a totally independent and impartial legal system. In addition, a brief review of earlier relevant work in this area is presented; the reader may find the numerous references to be of interest.

Each of the next four parts, which form the heart of the book, consists of three or four articles assembled around the group title. Many of these are extremely interesting studies. For example, an article by Kenneth Vines presents an analysis of the decisions in race relations cases by federal district judges in the South. In this study, which was first published in 1964, the author found a fairly strong correlation (−.48) between the per cent of the decisions in a district that were favorable to blacks and the fraction of the population in the district that was black. Further, seven of the 35 judges studied were found to rule in favor of blacks in

more than 80% of their cases, while seven others did not rule in favor of blacks in any of their cases. Other articles deal with social and political pressures on lawyers, district attorneys, and police, while still others report the results of studies of bail reform and the treatment of juvenile offenders.

Unfortunately, however, the relationship between the articles in each section is often tenuous, and the introductory remarks which preface each part are insufficient to tie the articles together. Furthermore, the extremely broad scope of the topics covered has made it impossible to do justice to any of the areas encompassed. Also, in spite of the fact that the authors of the articles represent many disciplines, the editors have not followed the usual practice of citing their backgrounds. Thus, it is often difficult for the reader to set the essays in proper perspective.

In the final section of the book, several papers discuss very briefly some unresolved issues relevant to the relationship between politics and justice.

To summarize, *The Politics of Local Justice* raises a number of important issues about local systems of justice which are usually neglected (often purposefully) by researchers in the fields of law enforcement and legal systems. While the articles collected are interesting, most have been published before, and the reader should not expect to find the comprehensive treatment of the subject suggested by the titles of the major sections and of the book itself. The collection does, however, bring together some of the foundations necessary for further work.

JOHN B. JENNINGS
New York City—Rand Institute
New York, N.Y.