

1972

## Book Reviews

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The answer to the question as to the relative risk of parole violation over time for civilly committed narcotic addicts is that the rate of suspension (here taken as a measure of the risk of parole failure) is higher during the earlier periods following release and does decline over time until the risk levels off at about the fifteenth month. However, the rate of failure using the survivor method (exhibited in Table 4) is not nearly so high in the early months as it would appear if it were estimated using either the traditional failure base method (exhibited in Table 3) or the total cohort base method (also exhibited in Table 4).

It should be noted that this study is based on narcotic addicts who, at least according to correctional and medical experts, would be expected to return to the use of narcotics as soon as they are released to the community. Thus if the theory did not hold for addicts it is unlikely that it would hold for other offender types. In this light this study casts some doubts upon the validity of the theory that the risk of parole violation is highest during the first few months following release. For the risk of failure during the first few months on outpatient status is not nearly so high in comparison to the second half of the first year as the theory would predict. In fact the largest change in the risk of failure occurs during the first half of the second year so that the risk is relatively high during the entire first year.

#### SUMMARY AND DISCUSSION

This study, utilizing several different methods of assessing the risk of failure during the early parole period, raises some question about the adequacy of a method based only on failures—which seems to be the most prevalent model today. Using an artificial data base, a comparison of the failure base method with two other methods based on cohorts followed over time revealed that each method yields sometimes radically different results. An analysis of some real data drawn from the California Civil Addict Program also revealed that the failure base method tends to exaggerate the risk factor in the first few months on parole as compared to a cohort method using survivors as its base.

In view of this evidence, both logical and empirical, it would seem necessary to re-evaluate the notion that the first few months on parole represent a "crucial" period in the career of the average parolee. Further research would seem to be needed to establish the validity of this early risk period for various classes of offenders. Further inquiry is also needed into the question of *how* these rates are generated. It may be for example that part of the phenomenon results from organizational behavior; the parole system may act in such a way that early deviance is more likely to be noted and more likely to be reacted to in a negative fashion than is deviance in later periods.

## BOOK REVIEWS

Edited by  
Bernard Cohen

SYMPOSIUM—MEDICAL JURISPRUDENCE. By *Jon R. Waltz*, and *Fred E. Inbau*. New York: The MacMillan Company, 1971. Pp. xiv, 398. \$10.95.

The authors offer this as a text for the library of the physician and medical student to keep each abreast of his responsibilities and rights under the law. In three sections, "The Physician and the Civil Law," "The Physician and the Criminal Law," and "The Physician in Court,"

this book covers a vast quantity of material well presented.

The authors are highly respected professors of Medical Jurisprudence and Forensic Science. They are aware of the problems that doctors face in their daily practice and which medical students should be prepared to face in the future.

The excellence of this book is in its detail and clarity. The authors point out to the witness or potential defendant (doctor or student) the

intricate operations of the law as it affects the medical profession. As a lawyer, I enjoyed the book. I found it an excellent and stimulating review of basic principles, as well as a provocative and challenging presentation of new ideas. Used carefully by a lawyer teaching doctors or medical students, this should be a fine teaching tool. Attempts to use it by non-lawyers as such a teaching tool might prove unsatisfactory and in my opinion should not be encouraged. The interrelationship between the medical profession and the law is complex. It sometimes is quite confusing to the lawyer inexperienced in such matters. Use of this book by a doctor or medical student without competent guidance might lead him to unreliable or dangerous conclusions. The authors present the problems carefully, they demonstrate steps taken by the attorney for a plaintiff patient in those situations in which a patient may seek recovery from a doctor. They also present with equal clarity and thoroughness problems with which the doctor defendant will be confronted. In each chapter the authors suggest practical methods to avoid or handle the problem discussed. This format contributes to the excellence of the book.

It is encouraging that a number of medical colleges in this country now have available to them, on a full or part-time basis, highly skilled and qualified lawyers to teach Medical Jurisprudence. The availability of this book should enable every medical college to enlist, from among the Bar of its community or region, an attorney willing to undertake instruction of the medical student in this field. The attorney could present a stimulating, challenging, provocative course. He might be able to explain some of the inconsistent decisions annotated in this text. Whether he could explain bizarre decisions satisfactorily to a medical student is questionable. It might be interesting to observe his attempts to do this.

The authors properly emphasize "The Physician and the Civil Law." Practically speaking, this is where the student will find his deepest involvement in problems in medical jurisprudence. A much shorter section, "The Physician and Criminal Law," presents the problems with which the non-defendant physician will be confronted. The student will realize the importance of additional training and experience which he will need to perform his role in the criminal matter. The lawyer instructor in this part of the course might obtain assistance of visiting lecturers in criminalistics. They should help the student understand

his part in the investigation, preparation and presentation of the criminal case. The forensic medicine problems set forth briefly in Chapter 23 should be expanded and clarified. Many valuable tests are cited at the end of this two-page chapter. Especially in this area, lectures by properly qualified instructors may be necessary to assist the student in understanding this aspect of his practice. Suggestions contained in "The Physician in Court" are excellent. They are simply and directly presented. In the opinion of this reviewer, this section is worthy of reprinting and mailing to every physician in this country as a valuable public service by some organization. Extensive use of and experience with this book should encourage the authors to up-date it constantly. While designed for the medical student, it might be an equally valuable tool in law schools. It should be studied by those charged with development and improvement of law school curricula. The law student as well as the medical student should profit from study of this book.

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Many books have been published on the general subject of law as it applies to the practice of medicine. This book is another to add to that long list. But it is a valuable book and should not be lost to the medical profession. Indeed, it has much to recommend it to the medical profession particularly in this critical time when malpractice suits are so prevalent against the physician. In the first chapter, The Meaning of "Law," the authors quote Ludwig Boerne, the German author's comment "If nature had as many laws as the State, God himself could not reign over it." Reading this quote very early in the book, and recalling it as one reads the full text, it becomes obvious that the authors have related to the reader the core of knowledge which is necessary to understand our system of jurisprudence. As an example, the explanation of the adversary process and all of the procedural ramifications of an action at law is one of the clearest and most succinct which I have ever had the pleasure of reading. There is little doubt that the authors are well qualified and have written in clear and succinct language their interpretation of medical jurisprudence.

Fortunately, the authors have not included in

the text abstracts or quotes from court decisions and thus cluttered up a book with a vast amount of material printed in fine print. Likewise, as is so common in legal texts, entire articles (probably originating in a law review publication) are offered in lieu of originality by the authors. Instead, the authors have adequately documented their explanation of the law. At the end of each chapter, there is a bibliography quoted. This includes references to texts upon a given subject, to articles and then to notes and comments appearing in law reviews.

This text on medical jurisprudence includes many interesting and important subjects relating to the practice of medicine. While the authors are not physicians, but lawyers, they have an instinctive insight into the problems medicine has. Of particular value are those chapters on informed consent, on experimental and innovative therapy, and transplantation of tissue and organs.

The section of the book dealing with criminal law is particularly timely. Abortion statutes are now under reconsideration by many states. Drug addiction statutes too are being reevaluated in the light of our present social revolution.

The last portion of the book is one which while necessary, it is to be hoped would be of no value to the reader. It is the physician as a court room witness. Hopefully, we will find the solution to the present malpractice problem and thus no one will need to be a court room witness.

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VULNERABLE CHILDREN: THREE STUDIES OF CHILDREN IN CONFLICT: ACCIDENT INVOLVED CHILDREN, SEXUALLY ASSAULTED CHILDREN AND CHILDREN WITH ASTHMA. By *Lindy Burton*, New York: Schocken, 1968. Pp. x, 227. \$6.50.

Freud was the first scientist who applied to human behavior the principle that nothing happens without a reason. You do not forget a name by accident, but because you unconsciously wish to forget it. A girl may become pregnant because she unconsciously wishes to spite (or rival) her mother, or because she wishes to establish her adulthood. The reasons for a given action may be different for different people, but they may well come from similarities in the early life experiences of many people which cause similar inner needs, which in turn are expressed in the same way. All behavior is governed by the unconscious mind; that is, the

ultimate reasons are hidden from normal thought and are for most purposes "forgotten."

These ideas surprised the world when Freud first expressed them. By now, they have become commonplace, yet for the most part they remain speculation. Dr. Burton, whose background is Freudian psychology, has chosen to test them. To do so she has studied three populations: twenty school-age children hospitalized with a fracture, forty-one school children who had at some time in the past been sexually assaulted, and twenty-five asthmatic children from a hospital ward and clinic.

At first sight it seems inappropriate to "blame" children for misfortunes such as these. A moment's reflection will show that fractures happen preferentially to children who behave recklessly. The element of victim-precipitation in sexual assaults on children is well recognized. And physicians have long been familiar with the importance of psychological factors in precipitating and relieving asthmatic attacks. It is a commonplace among physicians that children in severe asthmatic attacks often improve dramatically as soon as they are separated from their families and admitted to the hospital. The question is not whom to blame; it is what psychologic traits predispose certain children to such harmful events as fractures, assault, and illness. Mal-adaptive as these traits may become, we may assume that they originate in psychologic needs and in the child's unconscious attempts to meet such needs.

Dr. Burton has studied the psychology of her subjects by comparing them to normal children. For each of the three populations she selected a matched control group, and used objective psychological tests to compare the children and their mothers with the control group children and their mothers. Each of the three sections of her book reviews the literature, proposes hypotheses, tests these hypotheses and records the psychological differences between one set of subjects and its control group. There is no section comparing the three groups, and in fact no section drawing general conclusions.

The retrospective nature of the studies in fact limits her possible conclusions. For example, if it is found (as it was of asthmatic children) that they are the products of pregnancies more difficult than those of the control series, we can only conclude that a mother who has struggled with the care of an ill child for many years now remembers that her pregnancy was difficult. This tells something about her present feelings, but does not neces-

sarily prove anything about her pregnancy. The limitation applies to all retrospective studies, and is pointed out by Dr. Burton. On the other hand, the objective nature of the tests used to characterize the children is a strength of the study. Personality traits are difficult to describe, but can be measured with appropriate tests; moreover, projective techniques can be used to reveal many unconscious concerns and needs of subjects.

The study findings are a composite of the results of several tests. The children who had been involved in accidents proved to be more assertive and unsettled than control children. They were described as impatient, demanding, often with temper tantrums, easily distracted, attention seeking, and more hostile.

Children who had been assaulted sexually showed a greater need for affection than did the control children. This need appeared in both of two testing sessions a year apart, and the author believes that the assault most probably was a result of this aspect of the child's behavior. She attributes the need to a lack of maternal affection, and she finds no long-range detrimental effects of the assault on subsequent personality development.

Asthmatic children are described as unsettled, as are the accident involved children, but in contrast are unforthcoming, nervous, moody, stubborn, and insubordinate. The mothers of asthmatic children are seen as more rejecting of the child than the mothers of control children. They tended to have had unplanned difficult pregnancies, and to handle their infants more rigidly.

It is perhaps unfair to criticize this book for what is not in it rather than for what is. Dr. Burton's study was carried out impeccably, and her conclusions never go beyond what she has actually demonstrated.

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THE SILVERLAKE EXPERIMENT: TESTING DELINQUENCY THEORY AND COMMUNITY INTERVENTION, By *LaMar T. Empey* and *Steven G. Lubeck*. Chicago: Aldine Publishing Company, 1971. Pp. x, 354. \$12.50.

Although the Boys' Republic in California, dating to 1907, was a "total institution" stressing citizenship, education, work and discipline, it

wished to develop community-based programs. The Youth Studies Center at the University of Southern California, sensing an opportunity to weld delinquency theory and a "field experimental model" method into an analysis of a correctional segment of the juvenile justice system, contracted the translation of theory into intervention principles for an "experiment" and its evaluation. The experiment was a three-year residential treatment center using 140 randomly assigned 16 and 17 year old boys at Silverlake, a sprawling home previously used as a small orphanage in a quiet neighborhood in Los Angeles, compared to 121 controls attending the Boys' Republic.

A review of delinquency "theory" from Thrasher (1927) to Empey (1967) was developed into "basic postulates" from which "theorems" were deduced, producing an "axiomatic theory": lower class boys' lack of achievement creates strain (in the context of a middle-class success-oriented society) leading to almost exclusive association with peers, in turn generating delinquent "sub-cultures" which provide status, recognition, and a sense of belonging. The delinquent peer-identification causes stigma, resulting in more strain, and so on around the circle. Delinquency is thus "an emergent form of adjustment involving cumulative series of experiences and relationships."

"As a means of assisting in the task of testing causation theory many of these input data were collected from eighty-five non-delinquent high school students. . . similar to the delinquent population." The authors do not make clear which of the three groups (experimental, control, and "non-delinquent") contributed which data before, during, and after the experiment. The "before" data were gathered by questionnaires which were "Guttman scaled," producing five offense scale types, five commitment to peers scales, and six background measures. The Jesness Personality Inventory was also used to describe the boys' characteristics. Program "outcome" was assessed by official recidivism rates for a period of one year after all boys had been released.

Goodman and Kruskal's Gamma was used to measure the correlation between social class, achievement, strain, peer identification and delinquency in a fourteen-variable matrix representing the "postulates" and "theorems." The authors found that "social class was of little explanatory value . . . decreased achievement was associated with increased strain . . . increased strain was

related rather strongly to identification with delinquent peers. . . . the relationship of strain to delinquency received the greatest support of any proposition. . . . and . . . the relationship between peer identification and delinquency was also strong." (p. 133).

From this theoretical orientation, intervention principles emerged: the delinquent group is the target and later the vehicle of change. As it reduces strain, "guided group interaction," freed from institutional constraints and interacting with with external systems (*i.e.*, legal, neighborhood, school and family), provides legitimate achievement eventuating into non-delinquency. Most of the evaluation of Silverlake focused on "whether the programs actually operated the way they were described on paper." A special social systems questionnaire, critical incident analysis, sociograms, impact of programs on runaways and analysis of "boys who failed," comprised the description of the three-year process. The results indicated: "better mechanisms for quality control could have been developed . . . a serious problem developed relative to the feedback of research information to the action staff regarding implementation of the intervention strategy. . . . Chapters Seven and Eight, where it was shown that the implementation of program design was less than ideal." (p. 318). Silverlake was "overly concerned with control, overly constricted, and overly punitive," thereby making "achievement" difficult, with a consequent effect upon "strain."

The outcome of the experiment appears to be two-fold. Silverlake was unable to reduce the basic problems defined in the intervention theory. Moreover, it may have increased them since only "46 per cent of the experimental subjects (as contrasted to 50 per cent of the controls) successfully completed the program. The remainder were runaways or in-program terminees." 40% of the experimentals recidivated compared to 44% of the controls, but of those successfully completing the programs, 27% of the experimentals and only 19% of the controls had one or more offenses.

Empey's and Lubeck's work represents a tremendous integration of delinquency theory, research method, statistical sophistication, simulation, model building, typology construction, measurement techniques, action program design and correctional management analysis. These bridges between correctional theory and practice and between research and action make their book

required reading for researchers, methodology instructors, and correctional managers. It is unfortunate that the book's organization makes it hard to read. With better editing, the story would have unfolded in a more agreeable sequence. Chapter summaries and a better index would have been helpful.

Beyond the fact that the experiment was a "failure," despite the authors' labored attempts to salvage it by introducing criteria which were irrelevant to the original design (*i.e.*, dollar costs, degree of recidivistic seriousness, and simulated types in simulated situations), the Silverlake project symbolizes what is wrong with delinquency research today. I suppose the "Alice in Wonderland" conceptualization could be defended on the pragmatic grounds that such words as "adjudicated delinquent," "official recidivism rates," "achievement," "strain," "identification" and "social class" can be quantified, but the use of the elastic bandages of behavioral explanations on psychic wounds stretches axiomatics into metaphysics.

On a philosophical level, I am appalled by the confusion of procedure with substance. The assumption that innovating intervention upon delinquent children is legitimate confuses service with value. Someday, sociologists and others may recognize their contribution to the degradation of people into treatment objects.

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THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL. By *Norval Morris* and *Gordon Hawkins*. Chicago: The University of Chicago Press, 1970. Pp. xi, 271. \$5.95.

Holding that "it is perverse to pretend that we do not know how to deal with crime much more effectively than we do," and that "it is inertia far more than ignorance or inadequate resources" which keeps us from achieving significant success in reducing crime, the authors of this book present some fifty-odd recommendations pertaining to criminal law, victim compensation, police, offender rehabilitation, juvenile delinquency, the insanity plea, organized crime and research. Each recommendation is defended more or less at length.

To relieve police, courts, and correctional agencies of a vast burden of needless clutter inappropriate to their services and capacities, certain victimless crimes should be declared no

longer criminal or should be greatly abridged in their criminal definitions and handled instead by other agencies. Included here drunkenness, narcotics possession or use, gambling, disorderly conduct and vagrancy, abortion by qualified physicians, most consensual sexual behavior (including statutory rape and bigamy) and juvenile acts which are not criminal when committed by adults. Freed of a futile demand that the criminal law regulate personal morals, official attention could be then directed toward the more serious problems of crime in the streets.

Possibly reflecting the European's dismay at our American proclivity for private gun ownership, the authors (both British-born) take a hard line on weapons, which they see as facilitating our numerous robberies, homicides, and assaults. They advise outlawing virtually all handguns and the imposition of up to five years' imprisonment for having a firearm in one's possession during the commission of *any* crime. Given the attitudes of this country's gun-owning millions, however, the likelihood of wide-spread adoption of such legislation by the states and of successful enforcement seems dim indeed.

Just as dim is the prospect that the insanity defense will be replaced with a mere determination whether a defendant had the *mens rea* requisite to a criminal conviction, and if subsequently convicted and found to be insane on presentence investigation, hospitalized. I find quite reasonable the authors' opinion that we cannot morally distinguish the insane "from others who may be convicted though suffering deficiencies of intelligence, adversities of social circumstances, indeed all the ills to which the flesh and life of man is prey," and that to make a "special exculpatory case of one rare and unusual criminogenic process" accords badly with the total role of the criminal law in society. But given the classical psychological basis upon which our law firmly rests, the insanity defense is an inescapable "exculpatory case": the law cannot ignore the "insane" defendant's lack of responsibility or make allowances for the sources of evil intent in sane offenders without undermining its own Benthamite foundations.

Morris and Hawkins critically examine the evidence that national organized crime exists, find it unconvincing, and offer the intriguing hypothesis that belief in the Mafia's existence is, in nature and function, analogous to belief in a Supreme Being. Proof of either entity is seen as largely dogmatic and based on "argument from

appearances." The authors consequently recommend that all organized crime units at the federal and state levels be disbanded, for if there are no witches there need be no Inquisitors.

The message of the final chapter is that our long-inadequate funding of research in crime and criminal justice has helped perpetuate an ignorance which vitiates our preventive and correctional efforts at all levels; we are "guided by an extraordinary amalgam of blind prejudice, random benevolence, and naive surmise" as we "launch into extemporaneous improvisations."

For all the stimulation I found in this interesting book, I have two reservations about the authors' thinking. One is its unstated premise that our society can, by the application of legalistic and operational measures, rectify inefficiencies in our enforcement and justice operations and significantly reduce the impact of personal and property crime. Such thinking smacks uncomfortably of eighteenth-century legal and political theory, which assumed that law-abidance within societies is largely a function of the extent to which the State applies rational principles to its administration of justice. My second reservation is that many of the authors' recommendations lack the empirical support that Morris and Hawkins insist should underlie measures taken to combat crime. One question, for example, the causal allegations inherent in their suggestions that thirty-five cases become the average load per probation officer, that "fixed periods" of one to five years' parole for all released felons should be established, and that youth service bureaus be used as alternatives to juvenile courts in handling certain troublesome youths. I know of no convincing data showing these to be more effective in gaining the ends of correction than procedures and standards now used, although the authors seem to feel that such data do exist.

*The Honest Politician's Guide* is well-written, thoughtful, provocative and considerably harder-headed than most prescriptive books on crime. The authors' omission of virtually all citations to their many sources might annoy scholarly readers, but the book is not really addressed to them.

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THE EFFECTIVENESS OF PUNISHMENT ESPECIALLY IN RELATION TO TRAFFIC OFFENSES (New York University Comparative Criminal Law Project, Volume 5). By *Wolf Middendorff*. S. Hackensac,

N.J.: Fred B. Rothman & Co., 1968. Pp. xii, 129. \$8.50.

The present volume continues the pioneering effort of Dr. Wolf Middendorff to establish a criminology of traffic offenses. An earlier article by Middendorff appearing in *Federal Probation* (September, 1963), entitled "A Criminology of Traffic Offenses," concentrated upon the following issues: a classification of traffic offenses; the role of alcohol in traffic offenses; traditional criminality and traffic misconduct; causal factors in traffic offenses; and new developments in dealing with traffic violations. The present volume affords the author an opportunity to expand upon his earlier article. The task should have been made easier by the fact that it was based on a report to the Council of Europe, which commissioned Middendorff to report on the effectiveness of punishment and other measures against traffic offenders.

Unfortunately, the contribution afforded by the 1963 article was merely restated in both the council of Europe report (*Fourth European Conference of Directors of Criminological Research Institutes, November 1966, Volume I—Criminological Aspects of Road Traffic Offenses, Report 7711-05.2/56.32*) and the present volume. *The Effectiveness of Punishment*, however, does provide the reader with the formation previously gathered by Middendorff in his work focusing upon traffic offenses. It is correct, of course, to include one's earlier work in a more recent volume, especially since the Council of Europe report is not easily available to many American readers. Middendorff also affords the criminologist a succinct report on the efficacy of various methods of punishment for traffic offenders in the paper prepared for the 1966 conference dealing with the criminological aspects of traffic offenses. However, the Council of Europe report offers a number of significant statements by other conference participants (such as Cornil and Ferracuti) which might well have been incorporated into Middendorff's *The Effectiveness of Punishment*. This would have permitted his most recent volume to build upon his earlier writings in the quest for a criminology of traffic offenses.

The current volume reviews the field of criminology and corrections and might serve as supplementary reading for those instructors in law enforcement who teach an introductory criminology or corrections course. The introductory chapter entitled "Results of Criminological Research" provides adequate coverage for the following topics: the causes of crime; the personality of the offender; the history of crime and correction; differences in sentencing; the personality of judges; and sentencing and public opinion. This chapter is followed by one dealing with "The Aims of Justice" which familiarizes the student with the meaning of retribution, deterrence, reformation and the goals of criminal procedure. The chapter entitled "The Effectiveness of Punishment" concentrates upon probation, parole, fines and long-term and short-term sentences.

Middendorff is familiar with historical and contemporary criminology as well as correctional theory and practice. This is evident in the first three chapters of the book. He illustrates the field of practice (especially the courts and corrections) with descriptive material which acquaints the reader with the activities directed toward the handling of traffic offenders in various countries. The final chapter suggests conclusions and recommendations for improving the disposition of traffic cases in the criminal justice system. I do wish Middendorff would offer more innovative measures for the control of traffic problems in the urban community at this time than he has done in his concluding chapter, though.

I would conclude by saying that this book lacks the spirit and vision found in Paul Cornil's paper, "Criminological Aspects of Road Traffic Offenses," which was presented with Middendorff's paper at the Conference of Directors of Criminological Research Institutes in 1966. However, one cannot overlook Middendorff's pioneering studies and we should pay heed to his plea that we focus more attention on the study of the traffic offender and his behavior.

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