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and victim of doubletalk,"[34] his position is located between worker and management. He owes allegiance to both but can fully maintain the identity of neither. Effective foremanship depends upon the foreman's ability to manipulate a situation structurally similar to that of the synthetic officer. The difference between the positions is the privilege, which the officer enjoys, of defining his own criteria of conduct, while the foreman's criteria are dictated and evaluated by others.

Goffman cites baseball umpire Babe Pinelli's vision of his task as the product of the rules of the game, the player's enthusiasm and the benevolent impartiality with which they must be reconciled. Pinelli states:

> It is easy for any umpire to thumb a man out of the game. It is often a much more difficult job to keep him in the game—to understand and anticipate his claim so that a nasty rhubarb cannot develop.[35]

In contrast, however, the umpire's rules are closely supervised and his performance is both public and evaluable.

A closer parallel to the triadic case relationship and its place in a manipulable rule structure is the drama staged regularly in many large automobile sales agencies. The plot begins with the customer's decision on a car about which to negotiate a price. The customer is then led to a room where he waits, while the salesman leaves to "find out what he can do." He invariably returns with an offer, the generosity of which he punctuates in many ways. If the customer cannot be convinced, this exit and consultation with a higher authority may be repeated. Various *leitmotifs* intervene as the climax approaches. The climax occurs when the source of authority or an available substitute appears. His performance either closes the deal or terminates the negotiations. The customer never comes into direct conflict with the salesman, nor is the salesman's performance anything but accommodating.

While the similarities to the case supervision pattern we have sketched are clear in this last example, we do not wish to suggest that the intent of the case supervision drama is as crassly motivated nor as interpersonally impoverished. There is a difference, which ought not be minimized, between an artificial performance designed to increase commissions and a crescive drama based upon a genuine interest in the welfare of a client. Whether or not that drama can survive its disenchantment, remains a central problem of the social psychology of probation.

[34] Roethlisberger, *The Foreman: Master and Victim of Doubletalk*, 23 HARV. BUS. REV. 283 (1945).
[35] E. GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE 98 (1959).

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THE RIGHT TO BE DIFFERENT: DEVIANCE AND ENFORCED THERAPY. By *Nicholas N. Kittrie*. Maryland: The John Hopkins Press, 1971. Pp. xxii, 443. $15.00.

The case of Eric Edward Wills illustrates the problem dealt with in Nicholas Kittrie's *The Right to Be Different*. Mr. Wills was a 21-year old ice cream salesman in England who was charged with larceny and obtaining property under false pretenses. He was sent for observation to a mental hospital whose medical staff recommended a brain operation in hopes that the leucotomy would cure him of his compulsions to gambling. The magistrate was duly deferential to the considered opinions of the experts and ordered the operation under the 1959 Mental Health Act. Fortunately, the press and public intervened and Mr. Wills was saved from the knife. Unfortunately, there are hundreds and thousands of Mr. Wills who are not saved from the curing scalpel or other equally depersonalizing techniques utilized by the "therapeutic state." [1]

The political area has become saturated in recent

[1] This is a term that is used throughout the book by the author to describe the coercive application of curative techniques utilized by the state against a wide variety of persons considered under some guise as "dangerous." There is some ambiguity in the meaning of the term "therapy" since the author intends to include under it even welfare programs in the socio-economic area, only indirectly related to the manipulation of personality and/or bodily integrity. *See* THE RIGHT TO BE DIFFERENT at 346.

years with books portraying the menance to ordinary freedoms with the advent of high technology, combined with the will-to-power.[2] Attention is now directed by Professor Kittrie to areas of the criminal justice system where the state has not waited for the development of controlling technology to develop a therapeutic approach to conformity. *The Right to be Different* is devoted to a documentation of the arrival of the "therapeutic state" in our midst. The progression, as the author points out, has been at the expense of certain statuses once spoken for by criminal law: juvenile offenders, drug addicts, alcoholic offenders, psychopaths, sexually dangerous offenders. As these persons were adjudged incompetent to receive the harsh justice of traditional criminal law, they were subjected to the ministrations of a program dedicated to "curing" them of their anti-social behavior by deceptively attractive, but sinister, means. Instead of punishment in a prison, they were given treatment in a hospital. The length of time might be twice as long in the hospital; the cure might be twice as painful; and its effect much more devastating than imprisonment, but the therapeutic program was not challenged because it was beneficent in purpose and controlled by "experts."

It would be difficult to argue with the facts that Professor Kittrie has amassed. He has documented the treatment of the sick and dangerous in generous detail.[3] The burden of the documentation is summed up in his structural chapters (i.e., 1, 8, and 9) which deal with the concept of the therapeutic state. It is this: that persons who are subjected to compulsory therapy because of their status or actions as offenders, but who are diverted from the criminal justice system, need procedural as well as substantive safeguards. The unfairness of allowing the therapeutic state cure the dangerous person without these safeguards is most strikingly told in a chapter dealing with sterilization and lobotomy. While both of these techniques are somewhat dated, they are still relevant since the power to sterilize, castrate, and lobotomize still rests with the state. Like the death penalty, there are indications that these techniques are not being used as much as before,[4] but the fact is that they still represent legitimate options for the experts who control the lives of many sick and dangerous persons.[5] Lobotomy, a first cousin to sterilization, is still a cure for sick people who can't control their actions, though again the experts seem less inclined to use this therapy than when it was first hailed as a "cure for crime." The scalpel in the hands of the expert seems to be more menacing to a distrustful public, but no less threatening is the use of psychotropic drugs used to control "incorrigibles" in mental and correctional institutions.

Professor Kittrie's solution to the problem is far from simple. It might seem at first reading that the problem of protection could be solved by the American standby of imposing procedural reforms on these dark processes of the law: make the expert subject to an open hearing in court and the problem of protection is solved.[6] But as the author points out incessantly, the initial premise accepted by the courts is that these procedures are civil in nature and thus escape the rigors of ordinary criminal process. But further, even after certain procedural rights have occurred, there remains the very idea of compulsory treatment for what is usually a status and not for specific acts of dangerousness. Does the state have the right to force a change in a person because he is, or *might* be, dangerous?

[2] George Orwell's *1984* is only an early and classic statement of the problem which other authors have more recently documented. *See* the very interesting Russian case history of political manipulation through psychiatry, Z. & R. MEDVEDEV, A QUESTION OF MADNESS (1971).

[3] If I were to pick at nits, I would suggest that the author update some of his material relating to mental health in chapter two. In it he seems to depend very heavily on the work of the AMERICAN BAR FOUNDATION, THE MENTALLY DISABLED AND THE LAW (Lindman & McIntyre eds. 1961). To speak only of Illinois, there have been two major revisions of the law dealing with the mental health field since that date (1963 and 1967). I would suspect that other states have experienced a similar change. While Kittrie does quote from later laws, even in Illinois, there are juxtapositions of old and new portions of the law which leave mistaken impressions. For example, Illinois law is cited as holding that sexually dangerous persons must face charges when discharged after a civil committment (p. 180), which was true in 1957, but is not true presently. *See* ILL. REV. STAT. ch. 38, §105-9 (1971). Overall, however, the basis of Kittrie's case is not substantially weakened by the recent addition of some few protective procedures in the mental health field.

[4] THE RIGHT TO BE DIFFERENT at 325-26.

[5] As Kittrie notes, the United States Supreme Court did not disestablish the right to compel sterilization in its decision in Skinner v. Oklahoma, 316 U.S. 535 (1942). It merely insisted there that criminals be treated alike and not selected on the basis of the type of crime they had committed.

[6] The implication of such decisions as Specht v. Patterson, 386 U.S. 605 (1967), may seem to be exactly this, but the Supreme Court has obviously adhered to a judicial philosophy of solving only one problem at a time and left the issue of substantive due process to a later date. The issue in *Specht* that demands initial attention is the procedural due process question. Challenge to the nature of the commitment and cure under the Colorado statute must wait for another day.

Kittrie's answer to this is ambivalent. He argues that insofar as the person is a welfare case,[7] therapy should be offered and made attractive, but be purely voluntary. Insofar as the person is dangerous and thus requires control, he should be subjected to whatever treatment is needed for social defense of the state. This treatment may be compulsory, but it is not to be confused with punishment and has nothing to do with either retribution or deterrence. As an internal limit to what can be done to the individual, the author suggests a test of clear and present danger, such as used in first amendment cases. But the explanation is left vague and one wonders what limits there are to social defense of the state. Indeed, the author seems convinced that the therapeutic approach is not only present as an option today, but is both clearly preferable to punishment and destined to displace all criminal law as a means of social control. It is at this juncture that I definitively part company with Kittrie's thesis. He does not, to be sure, leave the social defense detainee without protection. He elaborates some excellent constitutional principles of both substance and procedure.[8] But when pressed to make a choice, his option lies with the social defense mode of the therapeutic state, rather than with the penal mode of traditional criminal law.

The critical element in this choice is responsibility. Without this factor criminal law ceases to exercise any moral role in society. Conformity will be achieved by means of two categories only: behavior modification of those who fail to conform, and self-control through subjective and private internalization of values by those who do conform. Obviously the absence of responsibility concerns Kittrie for he attempts to fill the gap with a very brief presentation of Ferri's "social responsibility" concept.[9] Apart from the brevity of the presentation, the concept itself is basically ambiguous. If it is a responsibility in the true sense of that term, then its grounds cannot be placed solely in the relationship the individual has to the state. This position betrays the very solution to the tension between the individual and the state that one is seeking. For if a man's responsibility is defined as derivative from his relationship to society, then it is the society which alone gives meaning to the term. His freedom is solely in terms of what society demands of him.

But this cul de sac is exactly what H. L. A. Hart and others[10] have carefully avoided. Hart has devoted a series of essays, collected in *Punishment and Responsibility*,[11] to the need for responsibility in the moral sense within a system of criminal law, even though he is careful to explain the responsibility in utilitarian terms, without its retributive underpinnings.[12] Coercive sanction, whether termed punishment or treatment, must depend upon responsibility if freedom is to prevail. Freedom is expressed in the choice not to break the law.

> Our system does not interfere till harm has been done and has been proved to have been done with appropriate *mens rea*. But the risk that is here taken is not taken for nothing. It is the price we pay for general recognition that a man's fate should depend upon his choice and this is to foster the prime social virtue of self-restraint.[13]

Without self-restraint the system of conformity would come to depend upon massive fear or massive therapy.

All of this is not to deny the dilemma faced in our criminal justice system which tends to exclude (and therefore to ignore) those who are not responsible. Kittrie has done a tremendous service in bringing together the scattered pieces of the puzzle of what happens to these incompetents. The therapeutic state is not the creation of a demonic brain bent on enslaving people. Rather it

[7] The author divides the field of social control into three branches: criminal law, welfare, and therapy. The first deals with those people who are ordinary criminals. The second deals with people in need of various social services, such as the poor. The third deals with that mixed breed whose needs have dimensions in the area of crime, such as drug addicts.

[8] Kittrie builds his argument for constitutional protection on the rather uncertain ground of Griswold v. Connecticut, 381 U.S. 479 (1965). He argues that the combination of amendments 1, 3, 4, and 5 can be fruitfully joined with the amorphous ninth amendment to open the way for a "Therapeutic Bill of Rights." THE RIGHT TO BE DIFFERENT at 390–94. He proposes ten general principles to be embodied in this Bill of Rights which include such sensible propositions as: "Man's innate right to remain free of excessive forms of human modification shall remain inviolable . . . Dual interference by both the criminal and the therapeutic process is prohibited . . . An involuntary patient shall have the right to receive treatment . . . Any compulsory treatment must be the least required to reasonably protect society." *Id.* at 402–04.

[9] E. FERRI, CRIMINAL SOCIOLOGY 347, 361–62 (K. Lisle transl. 1951).

[10] *See, e.g.*, H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 65–66 (1968); Hawkins, *Punishment and Deterrence: The Educative, Moralizing, and Habituative Effects*, 1969 WIS. L. REV. 550; Hart, *The Aims of the Criminal Law*, 23 LAW & CONTEMP. PROB. 401 (1958).

[11] Oxford, 1968.

[12] *Id.* at 181–83.

[13] *Id.* at 182.

is the response of humanitarian instincts, coupled with prudent regard for the safety of society, slowly evolving as a concept through history with other movements toward social welfare.[14] But what we do to these people, no matter how beneficiently motivated, does make a difference. It says very much how we regard the power of the state and the rest of us. Despite their incompetence, we are not free to treat them without limit. I find no real limit in Kittrie's proposals. Ironically, Professor Kittrie has written a sincere book about the "right to be different," but has, at the last moment, confused this right.

PATRICK D. MCANANY
University of Illinois, Chicago Circle.

CRIME AND JUSTICE IN AMERICAN SOCIETY. Edited by *Jack D. Douglas*. Indianapolis, Indiana: The Bobbs-Merrill Company, 1971. Pp. xxi, 297. $2.95.

Academics and practitioners who share a consensus that most of the readers thrown together in the rush to publish are full of little new and much that is presently irrelevant will be pleasantly surprised at this one of the sleepers of the year. Organized as a direct response to the assumptions, positions and findings of the published reports of the President's Commission on Law Enforcement and Administration of Justice, this reader contains an introduction and eight major essays concerned with the public hysteria about crime and the reasons thereof, the political decisions within and the fallacious assumptions underlying the operations of the criminal justice system. Readings are included on crime and justice in American society; criminal justice in America; crime and its impact in an affluent society; the social reality of crime; police mandates, strategies, and appearances; drugs and drug control; the contrary objectives of crime control and the rehabilitation of criminals; and systems analysis confronts crime.

Unlike most books of readings and essays, especially those decrying the situation in the justice systems, this volume contains a number of pertinent and particular recommendations for changing the criminal justice system, with a major focus on *justice*. As such, the writers have decided not to limit their recommendations to what is politically feasible, and in so doing have managed to develop stimulating and challenging ideas and recommendations for the system. This is a major contribution of their work, and its greatest problem.

For those wishing to think analytically about the criminal justice system, this will be a *must* for second courses in criminology and criminal justice, and advanced law enforcement and social problems courses. It has wide relevancy to graduate instruction in all four areas, and academics might want to give serious consideration to adopting this inexpensive paperback book, especially for courses designed to effect advantageous changes in both our approaches to the criminal justice system and to the training of persons who have this area as their major interest.

The major weakness of the book lies in its basic thrust. The entrenched, with vested interests in maintaining the status quo, may soon find ways to challenge the legitimacy of the work of these writers and their innovative positions, for the analyses and recommendations, if implemented *in toto*, would bring extensive change in the criminal justice areas concerned.

The book could benefit from far more extensive foot-noting (some of the material is especially familiar), and the chapters are somewhat uneven in their content, relative worth, and potential contributions. This reviewer was most impressed with those essays by Douglas (on crime and justice), Manning (on police mandates and strategies), and Churchill (on systems analysis and crime). All in all, the reader is well worth the efforts of the writers and is highly recommended to practitioners, academics and other citizens concerned with changing the wide spectrum and operations of the criminal justice system.

HARRY E. ALLEN
The Ohio State University

[14] The author traces cursorily the historical origins of the therapeutic state from fourteenth century England, through Elizabethan Poor Laws, the Classical and Positivist Schools of Criminology, to the advent of applied medical technology in our present century. But as valuable as this sketch is, the concept of the therapeutic state, which quite accurately delineates our contemporary world, is still in need of a first class historical description. We can only hope that Professor Kittrie will go back and write such a history from his excellent beginning in this volume.