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BOOK REVIEWS

JUDGE, LAWYER, VICTIM, THIEF: WOMEN, GENDER ROLES AND CRIMINAL JUSTICE. Edited by *Nicole Hahn Rafter* and *Elizabeth Anne Stanko*. Boston: Northeastern University Press, 1982. Pp. 383. $22.95.

Judge, Lawyer, Victim, Thief is an ambitious, useful and diversified contribution to the growing body of literature on women and crime. It is ambitious because it breaks new ground by invoking the perspectives of offenders, victims and criminal justice practitioners in the study of gender roles and crime. It is useful because in a single anthology it provides reviews of the literature, empirical contributions and analytic discussions. It is diversified because it offers a sampling of the latest work on the gender role issue from a number of different viewpoints and levels of analysis. Taken together, these qualities make this work indispensable for those who wish to move beyond the limits of our present understanding of the relationship between women, crime and crime control in American society.

In the past, criminologists have been content either to ignore women or to examine their relationship to crime through the prism of theories and evidence developed by and for the study of men. Although a number of investigators have shown a greater sensitivity to the "female question" in recent criminological works, much of their work remains limited to analyzing women under the same microscope that has for so many years been focused on men. The problem with this approach is not simply that the microscope may have to be refocused to provide a sharper image of women and their relationships to crime, but that a microscopic perspective invariably provides a narrow, and de-contextualized image of its subject. The main virtue of this book is that it explicitly challenges the tunnel-vision produced by a blinkered view of women, in whatever relationship they stand to crime and crime control. By beginning a process through which our understanding of these relationships is broadened and systematized, *Judge, Lawyer, Victim, Thief* forces us to rethink the way we conceive of the nexus between women and crime, as well as the entire range of problems surrounding gender and social control in society.

This book is organized into four major parts: Women as Victims, Women as Offenders, Women as Defendants and Prisoners, and Women as Practitioners and Professionals. This organizational scheme, as well as the excellent introduction, helps the reader maintain a sense of continuity in spite of the centrifugal pressures created by the divergent subject matter and objectives of its authors. At certain points, the reader begins to wonder how contributions within each part relate to each other (an integrating essay at the beginning of each section would have been helpful), but for the most part the contributions are sound and compelling enough to stand on their own. In all cases, the articles can be read without any special background, although the scope, sophistication and quality of their critical insights vary greatly.

The editors state their central task as twofold: "(1) to identify assumptions about women that have distorted criminal justice research; and (2) to analyze, without relying on traditional assumptions, the behavior of women who become involved in criminal justice through various routes—as victims, offenders, and criminal justice professionals." Assumptions about women and their behavior thus provide the thread that runs through each of the fifteen contributions. Although this thread is not always as visible as it might be, most of the articles either criticize the "controlling images" of women as victims, offenders and professionals or at least imply alternative directions in recasting these images.

A number of the specific contributions focus directly on the "image problems," relating the plight of women in the criminal justice system to the dominant assumptions of patriarchal society. For example, the depiction of female victims as "liars" by the medical professions (see Mills, "One Hundred Years of Fear: Rape and the Medical Profession"), "immoral" by prosecutors (see Stanko, "Would You Believe This Woman?"), or alternatively "good" and "bad" by prison administrators (see Rafter, "Hard Times") form an important part of the mystique that the book seeks to challenge. Another contribution, that of Marsha Rosenbaum ("Work and the Addicted Prostitute"), examines how women are able, in spite of their dependence on drugs, to redefine their self-image in defiance of cultural stereotypes—a defiance which has its roots in their conception of prostitution as a casual and non-professional form of "work."

While these contributions directly examine some of the relationships between the controlling images of women and crime, the connections are far more tenuous in other cases. Some of the articles are primarily concerned with describing the disadvantages or special circumstances that women experience as offenders (see Parisi, "Exploring Female Crime Patterns" and Willbanks, "Murdered Women and Wo-

men Who Murder"), defendants and inmates (see Parisi, "Are Females Treated Differently?" and Mahoney and Fenster, "The Female Delinquents in a Suburban Court") and criminal justice practitioners (Flynn, "Women as Criminal Justice Professionals"). The value of these contributions lies more in their ability to raise questions about the methodologies used and the "facts" gathered to either distort or to submerge the significance of gender roles than in their direct consideration of the links between gender and broader social structures and processes.

The two articles that do the best job of exposing and analyzing those links are by Dorie Klein ("The Dark Side of Marriage: Battered Wives and the Domination of Women") and Nanci Koser Wilson ("Women in the Criminal Justice Professions: An Analysis of Status Conflict"). Klein brilliantly traces the historical and structural sources of wife battering as well as the ideological and political context surrounding the response to "family violence." Wilson develops a suggestive analysis of the status conflict that women experience in criminal justice professions and is able to situate that conflict in the larger occupational and organizational roles that women have come to perform.

The weakest articles in the collection are by Marguerite Warren ("Delinquency Causation in Female Offenders") and Nancy Stoller Shaw ("Female Patients and the Medical Profession in Jails and Prisons"). Warren's analysis seems strangely out of place, representing as it does a rather formalistic application of four "crime-causal theories"—none of which engage feminist issues seriously—to evidence gathered in a state correctional agency. And although Shaw raises a number of important questions about health care for women in prison, her analysis of the "quintuple jeopardy" that female prisoners experience seeking medical care is rather hackneyed and sketchy, avoiding serious consideration of the complex interplay between the five jeopardizing factors—gender, race, class background, legal status and social role as a patient.

The two articles yet to be mentioned include an historical study of a women's prison within the Federal Prison System (by Claudine Schweber) and a review of some of the specific problems and prospects faced by women working in criminal justice (Baunach and Rafter). The former is a fascinating case history of Alderson prison which exposes the sources of conflict within a prison system moving from an autonomous and individually-oriented approach to one based on centralization and "system needs." The latter paper, based on a 1979 symposium on sex-specific problems faced by criminal justice specialists, provides a useful overview of "preferential" treatment, differential performance evaluation, the "old boys network" and "woman's work." When read in conjunction with Flynn's survey, this article helps the reader to rethink the ways which women can make productive contributions to the criminal

justice field and challenge its long-standing discriminatory practices. What remains unanswered by this as well as the other articles in the section on "Women as Practitioners and Professionals" is whether women should place more emphasis on adapting to or transforming the criminal justice system. Of course, the strategy chosen will flow from deeper understanding of how both women and crime are implicated in the organization of social life—issues that this work is clearly seeking to raise rather than resolve.

Whatever its shortcomings, and they are certainly minor, this book provides an important introduction to and foundation for developing work on gender and crime. It is the only collection I know of which offers the reader an appraisal of the major issues in the field without slighting the complexity of the process through which women confront crime in our society. Because of its accessibility and scope, *Judge, Lawyer, Victim, Thief* will be a valuable centerpiece for courses on women and crime. But its utility also extends to those courses in criminology and criminal justice that have for too long tried to construct a single-sex portrait of crime and its control. The book not only fills a significant void, it also sets the stage for a far more sensitive, balanced and penetrating consideration of its subject in the years ahead.

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ORGANIZING CRIME. By *Alan A. Block* and *William J. Chambliss*. New York: Elsevier North Holland, 1981. Pp. 238. $23.95.

Unlike some earlier attempts by social scientists and journalists to depict organized crime as a national organization of closely allied families and organizations, the authors of *Organizing Crime* view organized crime as the "sum of innumberable conspiracies, most often local in scope, which are part of the social and political fabric of this nation" (p. 210). Given this viewpoint, their focus is not so much on organized crime per se, but on the processes that result in illegal activities connected with the management and coordination of racketeering and particular vices.

To accomplish this task, the authors begin with the political economy of capitalism (especially class relations) and examine the ways in which the contradictions of this system lead to conflicts which precipitate dilemmas which the people (i.e., the state) try to resolve. In applying this perspective (which they label "Marxist") to capitalism, the authors resort to the familiar view of Marxist criminology that "criminal law and criminal behavior are best understood *not* in terms of customs, norms, or value-conflict and interest-group activity, but as directly linked efforts by the state to create laws as a resolution to dilemmas created by conflicts that develop out of basic contradictions in the political economy" (p. 10).

The authors attempt to use the inherent inconsistencies of the capitalist system to explain how various types of organized crime emerge and persist in capitalist societies. They give special emphasis to narcotics, labor racketeering, organized criminal activities in Europe, and the limits and myths of reform and crime control. For example, throughout their analysis of the process by which opium and its derivatives became products capable of generating sustained and legitimized profits, the authors point to the role played by the political structure, whether it be that of the nations of Southeast Asia or of the ghettos of America.

In one sense, their analysis of opium usage seems to support their model of capitalist contradictions, but in another sense, their analysis is rife with its own inherent contradictions. At one point, for example, the authors note that opium smoking in the United States during the late nineteenth century "began a slow but steady growth throughout the working class, especially in the West, where the work was often unbelievably demanding, and where there were few families in the mines and cities" (p. 29) and later "spread to the middle and upper classes as well" (p. 30). Working class people presumably used opium to deal with social relations of the political economy that were largely negative or degrading. Why the upper and middle classes began to use opium is not

clear, although the authors provide some hint when they focus on the increasing demand for narcotics that began in the 1950's.

> The life and work conditions for many Americans created an unprecedented demand for narcotics. . . . The iron law of capitalism is that where there is a demand there will be a supplier if the profit is high enough. Suppliers emerged throughout the United States especially in the largest cities where life conditions and political forces combined to make the demand and distribution of heroin manageable.

(p. 32).

The reason for unprecedented growth in the demand for narcotics is not, however, adequately detailed. To say that the conditions of some workers led to a growth in the number of suppliers is not enough—there are alternative avenues that represent a "source of relief from the pains of living" (p. 38) such as alcohol, suicide, theft, religious participation, etc. Moreover, whether politicians view drugs as a way "to keep some of the unemployed masses happy" is open to serious debate and understates the complex cultural and social demands that guide people's lives.

The application of the model of inherent capitalist contradictions to drug usage is not without its problems. At a minimum the authors need to distinguish why some drugs which are physically addictive, like heroin, appear to be used most by those of the under-class of society, and why other drugs, such as marihuana and cocaine, cut across the entire class structure.

In addition to their analysis of the drug trade, the authors apply their model to the historical role of business in the emergence and sustenance of labor racketeering associated with several labor unions during the 1930-1950 period. Throughout their analysis, the authors argue that corruption and illegal practices are the result of the complicity between business leaders and union officials, and that the traditional focus on labor racketeers underemphasizes the "symbiosis between business and corrupt labor practices." In extending this perspective, the authors next analyze the ways in which members of the business and political communities help form a network for controlling and supplying vices in American cities and, in turn, for making possible the corruption of the legal-political bureaucracy. They also attempt to apply this perspective to illegal activities in European countries, especially Sweden.

In discussing possible solutions to stem the development and sustenance of these illegal activities, the authors are less than encouraging. In their judgment, the cities and states have had only limited successes against organized crime, and these successes have only occurred when they are part of broadly based reform movements that are aimed at changing and reforming structural abuses and problems in the political system.

At the federal level, failure is partly attributed to the persistent view of organized crime as some monolithic body planning the collapse of American society by engaging in activities that are contrary to the tenets of competitive capitalism. In analyzing the Organized Crime Control Act of 1970, Block and Chambliss argue that it was Congress who played a large part in depicting organized crime as an "alien conspiracy," thereby reaffirming the belief that the cause of the problem lies outside the mainstream of American life.

While the authors state that organized crime can only be understood within historically specific forms of political and economic organization, their analysis, for the most part, focuses on a limited range of illegal activities from the early 1900's to the early 1950's. They devote relatively little attention to the changes that have occurred in the political economy of the United States since that period and to the impact of the "contradictions" on organized illegal activities. For example, how has the rather dramatic decline in union membership affected business-labor racketeering? Who is specifically responsible for the growth in computer thefts? If we are to accept the proposition that organized criminal activities are related to the contradictions in our capitalist society, then it becomes incumbent upon the authors to move beyond broad generalizations and instead tell us when contradictions will result in violent as opposed to property crime, and under what circumstances. To claim as they do that "people in all social classes are responding to the contradictions of their historical conditions and in context are responding rationally to them [and that] rational responses may be criminal or non-criminal" is not enough. They need to explain, at least to some degree, the reasons why people choose one course of action over the other.

In keeping with their view that organized crime is mostly local in scope, the authors direct little attention to the current ethnic and racial make-up of organized crime. Although they briefly mention the important role that kinship played in the Jewish combinations involved with cocaine trade during the early twentieth century, there is little analysis of how kinship may influence the activities (especially recruitment) of organized criminal activities within particular urban areas. What, for example, is the role of newly emerging groups like the blacks and hispanics in the growing drug trade, and how have they affected the social relations of organized crime?

In this work, Block and Chambliss argue for a new criminology that focuses on class relations that are created and sustained by particular political economies. They have attempted to apply this perspective to a range of organized criminal activities in capitalist economies. There is, however, still a good deal of work to be done if they are to

move beyond the level of political ideology to a level of analysis that is supported by analytic and empirical evidence not only from the capitalist nation-states but also from the rich and poor Marxist states as well. How, for example, does the world-wide belief in self-fulfillment and individualism affect the ways in which individuals react to the contradictions of the political economy? While the authors accept the fact that contradictions and alienation can occur within any society or nation-state, they provide little information on the consequences of these contradictions relative to criminal behavior in non-capitalist nations.

Finally, I think it is important to ask what is the role of culture in the perception and conceptualization of the contradictions of the political economy? On these issues, the authors are strangely silent.

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THE MAD, THE BAD, AND THE DIFFERENT: ESSAYS IN HONOR OF SIMON DINITZ. Edited by *Israel L. Barak-Glantz* and *C. Ronald Huff*. Lexington, Massachusetts: Lexington Books, 1981. Pp. xxiv, 280. $23.95.

The Mad, the Bad, and the Different is a *festschrift* in honor of Simon Dinitz. Edited by Israel Barak-Glantz and Ronald Huff, with contributions by former students and current colleagues, the book was prepared to celebrate the thirtieth anniversary of Professor Dinitz' appointment to the faculty of Ohio State University. It is a fitting tribute to a man who has devoted his life to scholarship and teaching.

By all accounts, Professor Dinitz is the prototypical academician. Equally devoted to the research arena and the classroom, he has contributed greatly to advances in understanding criminal and deviant behavior and has also trained a substantial proportion of the current generation of sociological criminologists. His students do well to pay him tribute. And thanks to them, his colleagues benefit, both by being reminded of the scope of Professor Dinitz' contributions and by the contents of the *festschrift* itself.

In the preface we are told that "[o]ne colleague recently described Sy Dinitz' approach as 'elegant eclecticism,' that is, an informed, purposeful eclecticism, rather than a theoretical agnosticism" (p. ix). Indeed, the breadth of Professor Dinitz' scholarship is astonishing, ranging from theoretical studies of delinquency, to the landmark investigation of the treatment of schizophrenia in the community, to his more recent interests in violent and dangerous behavior. And along the way his inquisitive and fertile mind has found time to wander down myriad criminological byways. It is fitting, therefore, that *The Mad, the Bad, and the Different* follows suit and offers us a criminological potpourri.

The book is divided into five sections. The first presents four essays, each of which reviews a basic theoretical perspective in criminology. They begin with Beccaria and Bentham and end with Marx and Quinney, with essays on positivism and ethnomethodology in the middle.

The second section, entitled "Forms of Delinquent and Criminal Behavior," constitutes the heart of the book. Containing eight chapters, it reflects some of the major themes of Professor Dinitz' criminological work. It includes essays on containment theory and delinquency prevention by Dinitz' long time collaborators, Walter C. Reckless and Frank R. Scarpitti, respectively. The section also contains discussions of female crime, dangerousness and homicide, organized crime, white-collar crime and a unique investigation into the social role of pawnbrokers by Hartnett.

Two essays on punishment and corrections constitute the third, rather brief, section of the book. One deals with the state of the art in juvenile corrections and the second with the recent literature on the deterrent effects of the death penalty. The latter, by Gordon Waldo, is among the best in the book and provides a useful and easily understood review of the current econometric investigations in this area.

The fourth section covers the second major arena of Professor Dinitz' research, that of mental illness. The first two papers stem directly from Dinitz' award-winning work concerning the treatment of schizophrenia in the community. The third essay, by Franco Ferracuti and Francesco Bruno, offers an interesting psychiatric perspective on terrorism in Italy.

As is often the case in sociological investigations, the final section is something of a residual category. Although the essays in it do not fall neatly into any of the earlier sections, they are well-written and informative. Their topics concern the sociology of law, the "politics" of treatment programs and the teaching of undergraduate criminology.

All told, the book offers twenty essays in twenty different criminological topics. Therein lies both its strength and its weakness. The book admirably reflects the breadth of Professor Dinitz' scholarship, but it does not always reflect its depth. This failure is partly due to the brevity of the essays, and I cannot help but think that the book would have been improved by including somewhat fewer but longer essays. Another explanation lies in the intrinsic nature of *festschrift*. By definition, such books are written in honor of renowned figures; when the essays in the *festschrift* are compared to the research of the scholar being honored, the essays invariably suffer. Nevertheless, this book, although somewhat uneven, contains a number of first-rate pieces and all of the essays are well-written and informative. Indeed, that there is not a single "bad" essay among the twenty contributions to the *festschrift*, is high praise for Professor Dinitz' well-deserved reputation as a teacher and a scholar.

Finally, I would be remiss if I did not bring to the attention of the reader two remarkable essays. The first, "A Biography of a Colleague" by Russell Dynes and Alfred Clarke, opens the book; the second, "In Celebration of Sy Dinitz" by Gilbert Geis, closes it. Both are personal accounts of long associations with Sy Dinitz. They sparkle with warmth and affection and are the true measures of the man.

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THE SENTENCING DISPOSITIONS OF NEW YORK CITY LOWER COURT CRIMINAL JUDGES. By *James R. Davis*. Washington, D.C.: University Press of America, 1982. Pp. xv, 213. $20.50 (cloth), $10.25 (paper).

In this concise analysis of lower courts in Brooklyn, James Davis investigates factors influencing the sentencing process in misdemeanor cases. Davis uses both quantitative and qualitative data in an attempt to elucidate issues such as the role of the probation officer, the influence of legal versus nonlegal factors in sentencing, and the degree to which sentencing patterns are consistent among judges.

This research is unusual in its focus on misdemeanor offenses. As Davis points out, most sentencing research pertains to felonies, although the majority of arrests and cases brought to trial involve misdemeanor violations. Davis examines variables commonly used in studies of felony sentencing, but fails to develop an argument explaining why these variables might operate similarly or differently in misdemeanor and felony sentencing. A discussion of the possible theoretical linkages between sentencing in misdemeanor and felony cases as well as in cases involving violent versus nonviolent offenses would be useful.

Recent research strongly suggests that sentencing should be viewed as a process beginning with arrest and continuing through the final imposition of a sentence. Some researchers have argued that judges do not stand alone in bearing responsibility for sentencing and that probation officers' recommendations are frequently quite influential upon judges' final decisions. This study addresses these issues based on analyses of three samples. The first two samples compare cases involving a probation officer's recommendation against cases involving no recommendation. The third sample is based on cases in which a probation officer submits a pro-forma report (a brief report written by the probation officer but not including a recommendation). The samples based on the probation officer's recommendation and the pro-forma reports serve to clarify the formal and informal influences of the probation officer.

As a result of Davis' inclusion of numerous nonlegal variables, this study serves as a partial test of the conflict model of sentencing. It is valuable in its analysis of victim-related variables (i.e., race and ethnicity of victim and racial-ethnic combination of victim-defendant pair), data which researchers often omit due to the unavailability of such information in official records. Additionally, Davis considers potentially influential sentencing variables that are rarely addressed in the literature. These variables include: a measure of the defendant's adjustment in prior correctional programs; a variable indicating whether or not outstanding warrants exist for the defendant at the time of trial; and

"promises," a variable denoting the existence of promises made by the district attorney to the judge as a sentencing recommendation. As Davis suggests, promises, although included among legal variables, might be better classified as a quasi-legal variable.

Davis considers the influence of factors leading to the probation officer's recommendations as well as the influence of those recommendations upon disposition made by judges. Both the probation officer's recommendations and the disposition by judges (the latter a dependant variable) are conceptualized as ordinal variables ranging from the most severe disposition or recommendation (time in jail or commitment to a drug facility) to the least severe (unconditional discharge). Intermediate dispositions and recommendations include probation or split sentence, conditional discharge, and imposition of a fine. Conceptually, this classification of judges' misdemeanor disposition may be problematic. The literature suggests that felony sentencing is actually a two-step process, with the decision to impose prison versus probation being separate and distinct from the decision concerning length of sentence. Although a theoretical rationale for conceptualizing disposition in this manner within the study of misdemeanor sentencing may exist, it is not clearly stated.

The book analyzes the factors influencing disposition, and the sentencing process in general, by both path analysis (examining influences on final disposition) and discriminant analysis (delineating the most important variables which distinguish among samples). Davis compares the results of path analysis and discriminant analysis, which prove to be relatively consistent in their validation of the importance of the role of the probation officer in the sentencing process. He finds legal variables—particularly adjustment in prior correctional programs, number of arrests, pre-trial status, and seriousness of final charge—to be the most significant variables influencing sentencing. Judges appear to be quite consistent in their decision-making and follow the recommendation of probation officers in a large percentage of cases.

Additionally, Davis finds that there is no evidence of racial discrimination, and that nonlegal variables, in general, are less influential than legal variables. Thus, this study offers little support for the conflict model of sentencing. Based on the strength of the influence of actors other than the judge as well as on the regularities in sentencing patterns of judges, Davis concludes that this study holds strong support for the organizational model of courtroom functioning and sentencing.

The study is quite comprehensive methodologically and statistically, and it accounts for several important factors frequently neglected in sentencing research. Its major weaknesses lie in occasional problems with style, grammar, and typographical errors. The research is useful in that it points out the importance of variables which influence sentencing

in several varied categories of offenses, which seem to carry significant weight in both felony and misdemeanor cases, and which merit further quantitative analyses.

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DRINKING AND CRIME: PERSPECTIVES ON THE RELATIONSHIPS BETWEEN ALCOHOL CONSUMPTION AND CRIMINAL BEHAVIOR. Edited by *James J. Collins, Jr.* New York: The Guilford Press, 1981. Pp. xix, 356. $22.50.

The notion that alcohol consumption contributes to criminal behavior, and to violent or assaultive crime in particular, has received popular acceptance for quite some time. The frequency of barroom fights and the recurrent escalation of domestic disturbances into violent events due to the influence of alcohol have seemingly reinforced the perceived evils of drinking that were partly responsible for its temporary prohibition in this country. Many people continue to believe that vice and crime accompany intoxication, although few wonder just how or why.

Over the years, empirical studies to some extent have "sustaintiated" this general view. These studies have demonstrated among other things the significant presence of alcohol use among persons arrested, and the greater prevalence of alcoholism among incarcerated populations. Given the overall rate of alcohol consumption, however, it would indeed be surprising if drinking and crime did not correlate positively.

Correlation, however, does not imply causation. In *Drinking and Crime*, Collins and a group of international experts are critical of such simplistic efforts which often result in false attributions of causation. In eight original papers, they offer the most comprehensive and authoritative review of the topic available to date. According to the editor of the volume, each chapter is designed to "summarize the state of the art of research and theory for selected aspects of the alcohol-crime relationship," because "future knowledge of how alcohol consumption 'causes' criminal behavior will be served by summary statements of past work in these selected areas" (p. xiii).

In the book's first and most lengthy chapter, Kai Pernanen presents a discussion of theoretical aspects of the alcohol-crime relationship. He discusses types of data bearing on the association between alcohol and crime, as well as a typology and synopsis of theoretical models which seek to explain the association. Far more interesting are the author's ideas on the process of integrating theoretical approaches. He assumes this process is possible, even though it is inhibited both by the relative isolation of criminogenic theories from theories concerning the effects of alcohol, and by the related difficulties involved in linking individual level physiological theories with sociological and socio-structural theories of deviance. To resolve this dilemma, Pernanen introduces the concept of "explanatory accounting," under which the contribution that each theory makes to the explanation of the observed statistical associa-

tion is determined by a combination of the predictive power of the theory and the actual prevalence of the initial conditions postulated by the theory. Curiously, after persuasively arguing for explanatory accounting as a means of integrating theory, Pernanen concludes that "we are far from having the means available for a complete explanatory accounting of any societal phenomenon" (p. 47). He goes on to adopt a tentative and speculative procedure for exploring theoretical integration which left this reader somewhat disappointed.

In the next essay, Stephanie Greenberg provides a thorough and well organized critique of the literature from a methodological point of view. Dividing the subject area into three parts (the role of alcohol in the criminal situation, the prevalence of alchoholism among criminals, and the criminal history of alcoholics), the author notes how the different methodological weaknesses of various studies can partially account for the discrepant findings that have appeared. The major problems with earlier work include: the lack of formulated hypotheses, derived from theory, to guide and organize the research; multiple and imprecise definitions of alcohol use and crime; the use of biased samples; and the failure to consider relevant control variables such as previous drinking patterns, personality characteristics, contextual effects, and norms relating to the frequency and acceptability of drinking among population subgroups.

The next two chapters consider the role of situational factors in understanding the interrelationship between alcohol and criminal violence. Drawing illustratively from studies of aggression in experimental psychology and past literature reviews, Richard H. Blum establishes that situational variables do affect drinking behavior, mental states, and violence through physiological and pharmacological effects as well as through the individual's perceptions and cultural expectations. Paul M. Roman notes the absence of empirical evidence concerning the situational settings that are most conducive to the coincidence of drinking and crime. He goes on to offer a conceptual framework called "situational ecology," within which hypotheses about situational factors (particularly the structure and content of norms) could be developed as part of an organized research agenda.

Chapter Five contains a paper by Collins on criminal careers and alcohol. Reviewing works from what are two essentially unrelated areas, the author remarks that while alcohol does not *appear* to be a causal factor in the origin of criminal careers, it does *seem* to influence the occurrence of particular criminal events. Collins concludes that further explorations of drinking and criminal careers should focus on young adult males and consider both their emotional and cognitive development and their expectations and beliefs about the effects of alcohol.

Judy Roizen, in summarizing the empirical work concerning the relationship between drinking and crime among blacks, makes a case for research on special sub-populations. She notes that although arrest statistics indicate that blacks are disproportionately involved in serious crime relative to whites, "data from arrest records, prison records, and interviews do not generally support the view that Blacks are more likely than Whites to have been involved in a crime with alcohol present" (p. 221). In spite of this position, Roizen concludes on the basis of ethnographic studies of the black tavern that such places provide freedom from the norms which regulate daily life, offer settings which legitimate interpersonal confrontation and violence, and constitute fertile ground for future research. In the absence of better data, however, the author proposes that both drinking and crime are probably responses to other social variables such as poverty, family disorganization and school failure.

Claire Jo Hamilton and Collins then review the literature on the role of alcohol in family violence. Their attempt to orient the reader to theories and empirical studies of the effects of alcohol on wife beating and child abuse is both clear and exhaustive. They note that fundamental methodological problems preclude any conclusive interpretations of causality on this subject. The authors believe that, without explicit theoretical explanations of the role of alcohol, research efforts will continue to be based upon the "malevolence assumption," under which alcohol is seen as "blameworthy whenever it accompanies problematic behavior" (p. 254).

The final chapter, also by Collins, is a selective but well-written overview of the book. As such, it will be of use to those readers who have only a casual interest in the topic and to those professors who seek a concise supplementary reading. The bibliography, like the book itself, is outstanding.

Despite the quality of this volume, it is subject to several criticisms. For instance, even the superb chapter written by Pernanen is too speculative at times and uses occasional awkward phrasing. Although it is not the stated purpose of the book, some readers also may be disappointed by the lack of any new empirical results and frustrated by the repeated references to earlier works by Pernanen and by Roizen and Schneberk in lieu of explicit consideration of their findings. Moreover, given the recent public outcry against drunk driving and the consequent raising of the legal drinking age in a number of states, the inclusion of at least one chapter on traffic offenses would have seemed appropriate.

A paper particularly of interest to this reader, and requiring more serious critical comments, was that of Roizen. First, she makes a very fundamental mistake when she equates Uniform Crime Reports Index

Offense arrests with the "most serious felony crimes committed in the United States" (p. 207). Certainly they *are not* the same, if only because each and every crime committed does not result in an arrest.[1] Hence, to infer characteristics pertaining to the former population from statistics relating to the latter is at least hasty, if not fallacious, without first expressly justifying the unstated assumption (i.e., that the arrest population is essentially representative of the criminal population). Roizen gives no attention whatsoever to this problem, nor to the inherent limitations of criminal statistics generally.

Worse still, Roizen's position that "data on arrested populations (predominantly studies of homicide) show alcohol involvement to be comparable for Black and White groups" (pp. 231-32) simply is not true. Part of the reason for this mistaken judgment might lie in a misrecorded figure from Wolfgang's classic, *Patterns in Criminal Homicide*. Roizen falsely reports that alcohol was present in seventy-two percent of the white offenders and fifty-eight percent of the black offenders in Wolfgang's study, when in fact alcohol was present in *seventy-two out of 154* white offenders, for only forty-seven percent.[2] This slip would not be so alarming if it did not contribute to Roizen's conclusion that blacks are not more likely than whites "to have been involved in a crime with alcohol present" (p. 221). This conclusion depends heavily on a Justice Department survey of inmates conducted in 1974, which found less self-reported alcohol involvement among blacks, and neglects the consistent evidence of event-based studies (such as Wolfgang's), which find alcohol present in higher percentages of black arrestees than white arrestees. Wolfgang has previously preferred police statistics to prison data because of their superior validity, noting that "[d]ifferential treatment of races and sexes by the courts means that prison data . . . provide the researcher with a select group for which analyses of the total patterns . . . are necessarily invalid if not unreliable."[3]

Clearly, *Drinking and Crime* raises more questions than it answers. Nevertheless, its contribution to further study on this important topic is unparalleled, and by demonstrating the complexity of the issues it is likely to inspire more intelligent research efforts.

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[1] The clearance rate for Index offenses in 1980 was about 19%.

[2] M. WOLFGANG, PATTERNS IN CRIMINAL HOMOCIDE 138 (1958).

[3] *Id.* at 13.

RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE. By *W. Lance Bennett* and *Martha S. Feldman*. New Brunswick, New Jersey: Rutgers University Press, 1981. Pp. x, 203. $14.50.*

I. INTRODUCTION

Few people have forgotten the sensational trial of Patty Hearst, who was convicted in 1976 of robbing the Hibernia Bank. At the trial's start, it was hard to imagine that Patty would be convicted. Would a jury really not have a reasonable doubt about whether, as a kidnap victim who committed robbery, she was acting entirely on her own? Although no one knows the precise reason for the conviction, many have speculated. One attorney who specializes in criminal matters claimed that the defense attorney, the flamboyant F. Lee Bailey, failed because he adopted a strategy that distracted the jury from the simple commonsense aspects of the case, and instead focused their attention on the testimony of pseudoscientific experts who presumed to know just what was going on in Patty's mind at the moment she entered the bank. He further suggested that Bailey's failure resulted from his intent to make Patty the first defendant in American legal history to be acquitted on the ground that she was "brainwashed."[1]

A week after the trial was over, four senior members of the San Francisco bar were asked at a Press Club forum: "What was the weak point of the Hearst defense?" One of them, Vincent Hallinan, answered by suggesting that the preparation had not been as meticulous or as conscientious as it should have been. Bailey failed to find the Olmec monkey—a small distinctive momento—in Patty Hearst's properties. He failed to find out what she had to say about the man who was accused of having raped her. Bailey had not found out all that needed to be known. And with a final note, Hallinen said: "If you're going to give a client a story to tell, for Christ's sake give him one that can be believed."[2]

This comment goes to the very heart of Bennett and Feldman's book. Their purpose in writing *Reconstructing Reality in the Courtroom* was to explore how justice is done by ordinary people in criminal trials.

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1 Silvergate, *How Bailey Blew It*, The Real Paper, Mar. 31, 1976, at 8.

2 Farrell, *Bailey's Legal Circus: How Patty Landed Behind Bars*, NEW YORK, May 3, 1976, at 36, 42.

They reach the conclusion that "[t]he criminal trial is organized around storytelling" (p. 3). Why are stories significant? Bennett and Feldman assert that when people are involved in a criminal trial as jurors, they transform the evidence they see and hear into stories about the alleged criminal activities. The structural features of these stories lead people to particular interpretations of the action in a story, and these interpretations are then judged according to the law that applies to the case. The authors claim that adherence to the storytelling idea is useful because it allows us to understand how jurors actually organize and analyze the vast amounts of information they receive during a trial. As witnesses testify, one after another, a juror operates much like someone reading a detective novel containing multiple points of view, subplots, time lapses, missing information, and ambiguities.

The story perspective has another advantage as well. Most researchers of the criminal justice system treat the trial as if it were a collection of unrelated variables, each having its own statistical link to the verdict and sentences imposed. One variable might be the race of the defendant; another, the sex of the attorney; a third, the nature of the judge's instructions. But the story itself is a powerful mechanism that determines the relevance, if any, of these other factors to the particular case at bar. The story provides a basis for transforming the statistical variables into a theoretical framework.

The authors' notion of stories as frameworks of legal judgment emerged gradually from observation of more than sixty actual criminal trials. The range of case types was broad: from drunk driving and shoplifting, to kidnapping and murder. They not only watched the proceedings in the courtroom, but also often hung around the hallways eavesdropping on conversations between lawyers and their clients and between witnesses chatting among themselves.

They interviewed lawyers and judges, bailiffs and clerks. One surprise at the interview stage was the lack of insight that lawyers and judges displayed regarding the reasons for the outcomes of particular cases. One judge, for example, was interviewed after he had presided over a murder case in which there had been eyewitness testimony to a particularly brutal assault and murder. The jury acquitted, and the judge was asked why? He answered "brilliant lawyer." When pressed for more detail, he offered only a meager elaboration on his statement and said that the lawyer had the rare ability to "literally create doubts in the minds of jurors." When further pressed for his opinion on how such doubts were planted, the judge could only return to his observation about how the lawyer was brilliant. When others were asked about what it meant to be a good lawyer, some said being able to present your client to the jury in the best possible light. Others said being able to pick good

jurors. But these sorts of remarks offer no general explanation of what organizes communication and judgment in trials in general. Here is where the idea of the "story" comes in.

II. THE STORY FRAMEWORK

Suppose you have been selected to serve as a juror on a murder trial, as Bennett and Feldman invite the reader of *Reconstructing Reality in the Courtroom* to do in Chapter 3. In the state's opening statement, you learn that a woman has been killed, her body was found in bed, and her husband had informed the police that he became alarmed when his efforts to awaken his sleeping wife had failed. Poisoning was the cause of death. The motive? The husband had been named as the beneficiary in a large insurance policy taken out shortly before his wife's death.

With this sketchy story, you as juror are now in a better position to separate the central action from all peripheral action described in the forthcoming testimony. Even though the central action has not yet been specified, you know how to recognize it. It will be some behavior that could have caused the wife's death. The husband, for example, might have slipped some poison into the wife's after-dinner coffee. Thus, we see the first cognitive operation facilitated by the story: it aids the juror in locating the central action.

The prosecution now puts on its evidence in the form of witnesses whose testimony fits within the general story. First, a detective testifies that he questioned the defendant at the scene and was told that the only person who had been with the wife during the past twenty-four hours was the husband. The detective also testifies that when the subject of insurance came up in the conversation, the husband became visibly nervous. A coroner next testifies that the cause of the death was a massive dose of strychnine. Finally, an insurance agent testifies that the tell-tale insurance policy was taken out a week before the death. The state rests.

The defense might surely argue that the state's case is flimsy, that the prosecution has not shown how the woman was killed or that the husband was involved in any way. But the jurors may still be convinced by the state's evidence. They bring to the trial background knowledge and experience that they will use in evaluating what they see and hear. They understand the marriage relationship, and may assume that the intimacy of this type of relationship provides many opportunities for such a crime to be committed while husband and wife are alone together. They understand the concept of insurance, and know that beneficiaries collect money from policies upon the death of the insured. With a large policy, the beneficiary stands to gain great wealth. Thus, we see the second cognitive operation facilitated by the story: it aids the

juror in making inferences that will connect the various elements of the story.

After describing the three types of cognitive operations in a story model of legal judgment, the authors ask this important question: What are the characteristics of true stories that enable people to recognize them as true? To answer this question, their research moved out of the courtroom and into the classroom. They used the controlled classroom setting to be better able "to isolate the variables affecting judgments about stories" (p. 69). They performed a simple experiment in which people told stories about their own experiences to an audience who judged whether the stories were true or false. The investigators hypothesized that no relationship would exist between the actual truth of a story and whether people believed it to be true; but that the number of ambiguities in the story would be related to inferable truth.

The subjects were eighty-five political science students at a major university. About half of them told a true story while the other half told a false story. The investigators then selected true and false stories, which they presented to the entire audience whose job was to guess whether each story was true. Some of the stories were accounts of events of which everyone would have some knowledge, such as going to a birthday party or walking in the rain. Others were accounts of events in which some but not all of the audience might be acquainted, such as rock climbing or skiing. Finally, some stories were about events in which few members of the audience would have knowledge, for example flying a helicopter in Vietnam.

Two examples show the flavor of the length and complexity of the stories. The first was called "The Birthday Party" by its creator.

> Ummm—last night I was invited to a birthday party for a friend her name's Peggy Sweney it was her twenty-fourth birthday. At the party we had this just suuuuper spaghetti dinner—you know—just great big hunks of meat and mushrooms and what not — a nice salad. And then for dessert we had a um cherry and blueberry um cheesecake. It was really good (p. 75).

Interestingly, a majority of the listeners did not believe this true story.

A second story was called "The Helo Story" by its creator.

> I was stationed in Vietnam as a helicopter pilot and flew reconnaissance missions, and about five weeks shy of an eighteen-month tour I was approximately three miles south of the DMZ and my oil pressure went down to about 6 pounds of a normal 180 pounds, and I had to put down—an' just—a helicopter's about the safest thing to land in 'cause you have a neutral rotor and you can just coast right down like a large parachute — from the time I radioed in to the time that they picked me up just seemed

like an eternity. As it was nothing happened—I got back to the base and read the report—it was a total of six minutes (p. 80).

This comparatively long, false story was overwhelmingly believed by the audience.

What makes a story believable? Several major results emerged from this study. First, there was no relationship between the actual truth of a story and the perceived truth. In other words, people were as likely to believe a false story as a true one. Furthermore, the extent to which a story contained ambiguities determined whether it was disbelieved. As the ambiguities in the story increased, credibility decreased.

The investigators looked for other properties of the stories that might relate to believability. However, the other variables that were measured—length of the story, number of actions it contained, and the way in which it was told—did not relate to the extent to which it was believed. Only ambiguity predicted whether the story was credible or not.

It is surprising that no other variables were related to story credibility. A large psychological literature exists indicating that both nonverbal and verbal cues are associated by observers with credibility.[3] Jurors are thought to be likely to use these cues in assessing the credibility of witnesses. For example, most studies show that communicators who are extroverted and moderately relaxed are perceived as more credible. Greater credibility has been associated with more eye contact, more gestures, and more facial activity. In terms of vocal cues alone, most of the studies have suggested that greater honesty is associated with a conversational delivery, few disruptions of speech, and a moderate to slightly rapid speaking rate.

In a trial setting, judgments of witness demeanor are central to the trial process. People do appear to judge the credibility of testimony by taking into account a variety of aspects of that testimony, and the importance of these features should not be overlooked. Why did these other features not reveal themselves in the classroom study? It is difficult to say. As Bennett and Feldman note, many differences exist between the classroom and the courtroom that caution against generalizing from one setting to the other. In a trial, for example, there are multiple story tellers to construct a single story; in the classroom experiment, there were not. Furthermore, the gravity of the courtroom situation and the consequences of the verdict must have some impact on the way jurors, as opposed to students, listen to the information that they hear. Nonetheless, the simple classroom experiment does provide

[3] Miller & Burgoon, *Factors Affecting Assessments of Witness Credibility*, in THE PSYCHOLOGY OF THE COURTROOM 169 (N. Kerr & R. Bray eds. 1982).

suggestive evidence for a crucial aspect of witness testimony, namely the extent to which it is structurally ambiguous when certain aspects of testimony may be in conflict with other aspects in that same testimony.

In certain judgment situations, the structural properties of stories may be especially important. For example, they become crucial in cases in which a collection of facts or evidence is subject to competing interpretations. Ambiguity of this sort occurred in a recent case in Gaithersburg, Maryland in which Charles Day Terry was accused of having stabbed Louise Pickering with a piece of a smashed Grand Marnier bottle. Blood was found on Terry's shirt. He accounted for the blood by claiming that he had been mugged while buying marijuana in Annapolis on the night of the murder. After a long struggle, the jury acquitted. The last juror to switch to "not guilty" was a twenty-five year-old student who said he did not believe the story about the mugging. Several other jurors convinced him that a reasonable doubt existed, since the small amount of blood on the shirt would be surprising given the extent of the victim's wounds. In cases like these, the evidence per se may sway the jurors less than does the interpretation that jurors place on that evidence. The interpretation that provides the best fit for the evidence is the one that will hold the day.[4]

III. WHAT THE STORY FRAMEWORK OFFERS

A. DEFENDING AND PROSECUTING

In a recent conversation with a prosecutor about a rape case he had just lost, the prosecutor told us that the best explanation he could muster was that the jurors, several of whom had spoken to him after the trial, simply did not believe the young woman's testimony. As one juror suggested to him: "You had your story. The defense had its story. Your story was good. Theirs was better." If we believe, as Bennett and Feldman would like us to, that court cases are highly stylized dramatizations of reality, then it becomes easy to see how the storytelling framework can explain the strategies that underlie the prosecution's and defense's case. It becomes easier to understand what the prosecutor might have done differently to tell a better story and win the rape case he tried.

A prosecutor has the relatively narrow mandate to prove the guilt of the accused. According to the storytelling framework, the prosecutor must create a structurally complete story, must develop one interpretation of the defendant's behavior, and must then connect other actors and scenes to this interpretation. Only if the prosecution can fashion a

[4] Friedrich, *We the Jury, Find the . . .*, TIME, Sept. 28, 1981, at 44.

structurally complete story, or a story complete enough so jurors' natural inferences will fill in any gaps, will the jury be convinced of the defendant's guilt beyond a reasonable doubt. Conversely, when gaps are prevalent, they lead to doubt.

The defense has a wider range of options. In fact, because the defense need not prove innocence, they may construct no story whatsoever and still win the case, provided the prosecution fails to present a convincing case. Although the defense rarely offers no witnesses, this option is certainly a possibility and might be an effective strategy if the prosecution's case is particularly weak. More often than not, however, the defense will counter with its own version of the facts in dispute. It may do so by trying to show that the evidence of testimony does not support some key elements of the prosecution's story. Bennett and Feldman refer to this as the "challenge strategy."

Consider the trial of a group of Black Panthers charged with conspiracy to commit bombings and various other crimes. The prosecution constructed its case around the issue of the political motivations of the defendants. It portrayed the Black Panthers as "revolutionaries." Undercover agents testified to overhearing conversations about "offing the pigs" and about plans to disrupt the lives of affluent New Yorkers. The prosecution failed to prove, however, that the group of so-called revolutionaries actually planned to carry out their proposed crimes. Because the prosecution was unable to construct a complete story around the issue of political motivations, the defense had only to point out the gaps and ambiguities in the prosecution's case. That was enough to leave doubt in jurors' minds about the activities of the defendants; 156 counts of conspiracy yielded 156 acquittals.

Another strategy that the defense may use is called the "redefinition strategy." If the prosecution is able to present a relatively complete story, the defense may redefine some particular elements of the story to show how a different meaning may emerge when changes are made in the interpretation of those key elements. But this may be a tricky thing to do. The crucial elements must be both sufficiently ambiguous to support an alternative definition, and sufficiently central to the story to change the meaning of the central action.

To demonstrate the limitations of the redefinition strategy, the authors offer an example where redefinition was tried and failed. The defendant was charged with grand larceny. A department store employee had seen him in the back area of the store where damaged goods are stored. When questioned, the defendant claimed to be looking for a rest room. A short time later, a second employee saw the defendant walking through the store carrying two expensive leather bags that appeared to

have come from the damaged goods area. The defendant was charged with larceny and arrested.

The defense attorney argued that the defendant brought the bags into the store with him, set them down and went off in search of a rest room. They were able to show that the rest room was indeed located close to the storage room. Unfortunately for the defendant, this redefinition created more questions than it answered. The jurors were left to ponder how the defendant got two leather bags identical to the ones missing from the storage if he did not steal them, and not surprisingly they returned a verdict of guilty. The beauty of the story framework here is that it makes clear that redefined symbols must be connected in a coherent and plausible way with the prosecution's case.

Sometimes, the defense can more profitably construct its own version of events in question than attempt to explain the inconsistencies that come from redefinition. This "reconstructive strategy," as the authors call it, places the central element of the story in an entirely new context. In essence, the defense tells its own story.

For example, in a particular narcotics trial, it was an uncontested fact that the defendant and a drug dealer met in a tavern prior to the sale. The prosecution apparently tried to show that details of the drug transaction were decided upon at this meeting. The defendant claimed that he hardly knew the dealer and that he was in the bar trying to get a ride home to pick up his tools because his car had broken down nearby. Some time later, another man walked into the bar and offered to loan his car to the defendant if the defendant would drop him off at a shopping center (where the deal was made), and return for him later. On his return, the defendant was arrested.

Thus, the central question in this case was whether the defendant was duped into taking part in the drug transaction, or whether he was in league with the person who arranged the sale. The defense strategy was to give the defendant a plausible purpose for this involvement in the deal. The reconstruction tactic seemed successful until the prosecutor cross-examined the defendant, revealing that the defendant lived only two blocks from the tavern. Why, the prosecutor argued, would the defendant be so needy of a ride home if he lived just a short distance away? With the addition of this detail, the formerly consistent reconstruction offered by the defense failed.

Bennett and Feldman argue that an understanding of the strategic constraints put on the prosecution and the strategic options available to the defense can explain much of what goes on at trial. We quite agree. Legal posturing, major lines of questioning, and attempts by either

party to establish certain definitions for evidence can be best understood if we look beyond them to the strategies that direct such maneuvering.

B. UNDERSTANDING THE TRIAL

1. Bias and Discrimination

Over the years it has been said that certain minorities have been denied equal treatment under the law. The National Minority Advisory Council on Criminal Justice recently reported that Blacks, Hispanics, American Indians and other minorities are more likely to be arrested than whites and often serve longer prison terms.[5]

Another reason may, however, account for "The Inequality of Justice," as the Council titled its recent report. According to Bennett and Feldman, storytelling practices clear up a number of questions about bias in trials. Even when a defendant tells an apparently adequate story, bias can result when the listeners lack the norms, knowledge, or assumptions to draw the inferences intended by the story teller. When ethnic groups like blacks speak in vernaculars that differ from standard language usage, the group is put at a disadvantage since jurors may not draw the proper inferences. In one case, a young black accused of first-degree murder claimed the killing was done in self-defense. A defense witness supported the defendant's claim saying that the deceased had "put him in the dozens." Many members of the jury were unlikely to understand that this phrase means a ritualized form of verbal aggression that occurred in that particular subculture, and the defense failed to explain this. As a consequence, the story was not as complete in the mind of the jury as it might have otherwise been.

Other examples can be found of cases in which key story elements do not hold the same meanings to members of different social worlds. In one such murder trial, a black defendant was accused of shooting a patron of a bar in which both had been customers. The defendant claimed that he was just fooling around when he grabbed a bottle of wine from behind the counter. The next thing he knew the bartender and several cutomers were attacking him and the shooting occurred. The bartender, on the other hand, said the defendant was stealing the wine. The defense theory was that the chain of events leading to the killing was the unfortunate result of the bartender's misperception. Thus, the key issue involved the interpretation of the act of grabbing the wine: playing around or stealing? Norms against touching the private property of someone else were apparently very different in the defendant's subculture, but the jurors would never discover this because they were

[5] *Legal System Threatened by Failure of Minorities to Get Justice, Says Report*, Seattle Times, May 2, 1982 at A13, col. 1.

part of a different subculture from the defendant. Based upon their own customs, the members of the jury decided that the defendant shot the victim after he had been caught trying to steal a bottle of wine.

Jurors use their own experiences, norms, and social knowledge to interpret stories they hear. Differences in norms and understandings among different social groups can make it difficult to understand the meaning of actions, and can cause juries to draw incorrect inferences. When this happens, judges and jurors will reject correct interpretations because of a few deviant story elements that will be seen as "irrelevant, or, worse yet, as evidence of fabrication" (p. 179).

2. Jury Selection

As we have noted, trials often bring in contact defendants and jurors who live in substantially different worlds. This not only will affect the degree to which defendants and jurors share common language, norms, and inferences about the world, but also may affect the ways in which they structure and evaluate stories about social actions. With this caveat in mind, the process of jury selection might be viewed as one of choosing persons who have shared understandings in common with the defendant. Such a strategy was successful in the well-known case of Joan Little, a black woman in North Carolina accused of killing a jailer who she claimed had raped her. The prosecution contended that she lured the jailer into her cell with the intention of killing him and escaping. The defense was able to avoid potentially damaging bias in the case by documenting prejudicial "common knowledge" among residents in the case's original jurisdiction. A survey indicated that sixty-three percent of respondents believed that black women have lower morals than white women, and that black people are more violent than white.

The court granted the defendant's motion for change of venue, yet even in a larger, urban county, divergent social understandings between the defendant and jurors were still a possibility. Careful attention to jury selection seemed to be one successful corrective measure for this problem.

Is jury selection necessary? Surveys of potential jurors indicate that in most areas of the country approximately thirty-five percent of the jury panel would require a criminal defendant to prove his or her innocence, despite the fact that they are instructed on the presumption of innocence.[6] Other studies have shown that a large percentage of perspective jurors believe that insanity is a last ditch defense or an excuse for murder and other heinous crimes. Many individuals believe that a person who carries a gun is looking for trouble. In the past, defense

[6] B. BONURA & E. KRAUSE, JURYWORK—SYSTEMATIC TECHNIQUES (1979).

attorneys have looked to jury selection as a method of finding individuals who will be open to the defense's case. In other words, jurors should not have predispositions that will make the defendant's story seem implausible or unbelievable. Although this idea has not yet been developed very extensively, it seems clear that the storytelling framework is ripe for application to jury selection in a whole range of cases.

3. Judge and Jury Disagree

In April, 1982, a jury found Luis Marin, a twenty-six-year-old Guatemalan busboy, guilty of starting a fire that killed 26 people at a Harrison, New York conference center in 1980. Four days later the judge overruled the jurors and declared that the prosecution had not proven its arson-murder case. Marin was set free.[7] Why did the judge and jury disagree?

In their classic book, *The American Jury*, Kalven and Zeisel reported the observations of over 3000 jury trials in which the judges were asked what they would have done had they tried the case alone. In approximately twenty-five percent of the cases in the sample, the judge disagreed with the jury verdict, mostly in the direction of convicting a defendant whom the jury had acquitted.[8] Kalven and Zeisel sought a systematic explanation for these differences. In some instances, the jury apparently took into account personal qualities of the defendant, which often worked in the direction of acquitting a sympathetic person (e.g., crippled, sick, widow, veteran). In other instances, features of the crime or the law played a role, such as in those cases in which jurors saw the law as unfair.

Subsequent research confirms that jurors often take account of variables they should disregard (e.g., race and class of defendant) and that they compromise rules of law. But there may be a new way of looking at this old problem. To the extent that experiences and fundamental social understandings differ in our society, judgments made by some members (jurors) will differ from those made by other members (judges). In the case of accused arsonist Luis Marin, the evidence was purely circumstantial. The prosecution's story included the classic motive, means, and opportunity. Marin, they argued, was about to be fired for working under an assumed name, so he planned to set a small fire so he could emerge as a hero and win back his job. He allegedly used gasoline that he kept in the trunk of his car. As for opportunity, other employees testified that moments before the fire began Marin was not around. Various inconsistencies in the statements Marin made to investigators

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[7] Press & Carey, *Judge to Jury: Overruled*, NEWSWEEK, Apr. 26, 1982, at 59.

[8] H. KALVEN & H. ZEISEL, THE AMERICAN JURY 109 (1966).

did him great harm. For example, he first said that he had tried hard to rescue people and later said that he had not. At one point he confessed to starting a small fire accidentally, but later claimed he had stamped it out well before the fatal fire erupted. The jurors, who characterized themselves as being "scrupulously careful" were convinced that the defendant was guilty, but the judge was not. He claimed their notion of a motive was "pure guesswork."[9] As for the means necessary to start the fire, the judge said that although gasoline was seen in the car several months before, there was no proof that the defendant had brought it into the hotel. He characterized the proof as largely speculative, and said that the prosecution had not ruled out other explanations for the tragic fire. When asked why the jury convicted, the judge pointed to the superior persuasive powers of the prosecutor.

We would try to understand this unusual case within the story perspective by examining the quality of the stories told by prosecutor and defendant. We would recognize that judges and jurors will differ in the background, knowledge, norms and expectations that they bring to bear in understanding those stories. It seems likely that the defendant was disadvantaged by the inconsistencies in his statements, for these leave glaring ambiguities in the story structure. Why the judge was able to overlook these in arriving at this judgment, and why he was less influenced by the "superior" persuasiveness of the prosecutor, are things that we do not know.

One type of "social understanding" that may differ between judge and jury concerns certain expectations about what is likely to happen during a trial. In a rape case that occurred in Los Angeles County some years ago, the prosecutor thought he had a very strong case. But, the jury was unable to return a verdict. When the jurors were interviewed later, one woman explained that she could not vote to convict the defendant because he did not confess during the trial. The prosecutor told the woman that he had never in his eleven years seen that happen. But the juror insisted: "It happens all the time."[10] The prosecutor soon realized that the juror had never been in a real courtroom before this trial, but had come to expect to hear a confession because that is what she had heard many times on television's fictional police and lawyer shows. Interviews with other attorneys and judges similarly suggest that television shows have influenced jurors' expectations and decisions. They expect to see evidence of fingerprints, when in fact prints are often hard to lift. On the other hand, they expect to see the defense prove who really committed the crime, even though they may receive instructions to the

9 Press & Carey, *supra* note 7, at 59.

10 Siegel, *Has Television Tipped Scales of Justice?*, SEATTLE TIMES July 6, 1980, at A3, col. 1.

contrary. Thus, stories may seem incomplete to jurors because they have greater expectations. If they expect more from the prosecution than is warranted, they may acquit when the judge alone would convict. Conversely, if they expect more from the defense, they may convict when the judge alone would not.

IV. WHERE THE STORY FRAMEWORK STOPS SHORT

It is interesting to consider witnesses in the courtroom as storytellers, and jurors as story hearers and evaluators. Nevertheless, the storytelling analogy seems incomplete as a theoretical tool, and wanting as a guide to the practitioner.

Research by social scientists has produced a legacy of dozens of variables, each of which seems to influence the judgment of jurors in a small fraction of cases. Prior work provided no compelling explanation of why the variables affected judgment in some cases and not others. In their chapter entitled "Toward a theory of the criminal trial," Bennett and Feldman suggest that perhaps the most important payoff of the story perspective from a theoretical standpoint is that it lends cohesion to the number of separate factors that others have shown to enter the judgment process. Although we welcome the advent of such an umbrella-like framework, unfortunately we think that their storytelling model stops short of such a promise.

To be an effective tool for future research, their theoretical viewpoint must provide some bases for predictions about judgment processes in the courtroom. The sole contention that is compellingly offered, however, is that the more structurally ambiguous a story, the less it will be believed. This is a wonderfully straightforward hypothesis that can be (and should be) tested in a courtroom.

In the same chapter, the authors discuss biases that exist in formal trial processes. They suggest that the story structure analysis should be able to determine (1) how biases were triggered by the structure of the case, (2) what distinguishes these cases from seemingly identical trials in which prejudice is a less plausible explanation for the verdict, and (3) why a jury relies on such biases in their judgment. The authors suggest that the story model makes the nature and workings of those biases concrete. Although their model can demonstrate how important story elements may have different meanings to different people, the authors do not clarify how the story structure analysis can really be put to work to answer the questions that they pose. Their theory needs to be elaborated; it needs to be made more concrete.

In our discussions of this book, we returned several times to the questions of whether attorneys would be able to use this book and

whether it would help them. The answers are not clear to us. The book presents some very interesting and potentially helpful information about strategies that defense attorneys may use in criminal trials. Similarly, the authors present an excellent discussion of how bias enters legal judgment, and of how lawyers might profitably use their power of objection in the courtroom. Practicing attorneys can learn much from these descriptions. But much of the rest of the book seems unfortunately distant from the practical concerns of a criminal lawyer.

Of course, we may be demanding too much in expecting the book to provide a theoretical perspective from which meaningful research would spring, while also providing a body of useful information for the practitioner. For now, we will have to accept *Reconstructing Reality* as a fascinating perspective on the myriad processes at work in the courtroom. The work contributes the beginnings of a theory for the researcher. Practical advice for the attorney, however, will have to come from somewhere else.

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CRIME, RACE AND CULTURE: A STUDY IN A DEVELOPING COUNTRY. By *Howard Jones*. New York: Wiley and Sons, 1981. Pp. xv, 184. $34.95.

Jones' study is an interesting and important one. It is interesting because it concerns criminality in a country about which many outsiders are curious as a result of the Jonestown tragedy; and though the tragedy itself was examined in great detail, many observers were left wondering about the country in which it occurred. It is an important study because it is an attempt at explaining crime in a developing country with the added twist of a pluralistic population. Since industrial nations have such a poor track record in handling crime, such comparative studies may provide some badly needed new insights.

With the aid of police and conviction records and interviews of a selected inmate population, Jones gathered and analyzed Guyana crime information and compared it with similar data on England and several Caribbean island countries. The main thrust of the research, however, centers around the contrasts made between the two major Guyanese population groups, the East Indian and African Guyanean citizens, both of whom were at one time or another brought to Guyana and stayed on. The types and rate of crime in this underdeveloped, third world nation are described within the framework of the cultural diversity of the two populations, the poor economic situation controlled by outside capital, and some notion of race.

The book does a most appropriate job in showing the researcher's efforts and also the limitations on sampling and analyzing crime data in a country which does not have a well ordered system of keeping crime statistics. The explanation concerning the difficulty of defining crime, the understanding of how local crime is reported and the value of the data when it is slotted into other countries' reporting systems, all are significant reading for the student of comparative criminological research.

The use of information taken from records and interviews of a prison population and the attempt to project the data onto the larger national population from which the convicted came, may offer problems of data validity even though the author gives reasons for it. One should be wary of judging a nation's criminality by the citizens who are in the prison system. As in other nations, Guyana's prison population seems to contain those who are most indictable.

The study's explanation about the cultural background of the Indo- and Afro-Guyanese is very insightful and adds value to the book's interpretation of social and cultural problems as they relate to crime. The effect of local economics on crime causation is equally significant. Both

of these issues, culture and economics, have relevance to understanding crime in other, more developed countries. The one puzzle in this study is the issue of race. Race is not well defined and usually, in fact, has to do more with the effects of cultural disruption on a people in another strange environment than with so-called racial characteristics. At times the interpretation of data in this regard is contradictory, e.g., the Africans are found to be impulsive but seem to spend more time than their more ordered criminal Indian counterparts in planning crime. This points up a flaw in this and many other studies by outsiders involving people of African heritage: we know too little about the subjects' background and tend to stereotype.

Relatively little in-depth research has been done on comparative types of crime and crime causation between different cultures because frequently there is no access to information which would explain crime causation and types in one of the countries concerned. Researchers redundantly compare criminological information in similar western countries. Worse yet, students from alien cultures come to western countries like the United States and England and attempt to ingest what the West has to offer, which frequently has little relationship to their own criminal justice situation. Even more irrationally, Westerners offer their information to the foreigners as a standard. This is almost as unfortunate as developed nations under-utilizing the opportunity of the foreign student's presence to discover and integrate reciprocal information for the purpose of a better understanding of crime, its etiology and treatment. The developed nations are not doing that well in understanding and controlling crime in their own bailiwick; developing states may have something to offer concerning the understanding and control of crime.

Jones' study is a valuable, albeit limited, attempt to give both in-depth information on crime in a developing nation and to show the etiology of that crime in relation to the subcultures involved. The information is pertinent to developing new ideas on the causes and solution of crime in relatively old pluralistic societies and for other developed countries which are now experiencing the impact of uprooted cultural groups with all the accompanying problems of deviance.

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CAREERS OF THE VIOLENT. By *Stuart J. Miller, Simon Dinitz and John P. Conrad*. Lexington, Mass.: Lexington Books, 1982. Pp. v, 354. $36.95.

Careers of the Violent is one of a series of volumes based on the Dangerous Offender Project, co-directed by John P. Conrad and Simon Dinitz. This intensive research program has previously investigated the violent juvenile offender and the effect of longer prison sentences on adult violent offenders. The present volume focuses on the interaction between the career of the violent offender and the criminal justice system.

This research addresses two broad issues: (1) what is the effect of the response of the criminal justice system on the persistently violent offender?; and (2) how can more effective strategies be developed to shorten the careers of the violent? Official demographic, arrest and dispositonal data provided by the police department in Columbus, Ohio and the Federal Bureau of Investigation form the basis for the analysis. The violent offenders are divided into two groups: (1) persons arrested for criminal homicide, aggravated assault, or forcible rape (N=967); and (2) those persons arrested for robbery (N=624). The careers of the violent are analyzed in terms of their persistence (chronicity) against their potential desistance; their transitional probabilities or the likelihood of subsequent arrests given a particular criminal history; and the spacing or interval between arrests.

The understanding of criminal careers is admittedly limited to the perspective of law enforcement and judicial agencies. Sellin has cautioned that official criminal statistics are in fact measures of law enforcement.[1] This research then could be cast as an inquiry into the police processing of criminal cases and their subsequent judicial dispositions, rather than an investigation of the actual careers of the criminally violent. Nonetheless the authors have effectively used the vantage point of the criminal justice system to probe the "known" career of the violent offender. The persistently violent person was found to be a generalist, i.e., rarely an offender who over the course of his career was exclusively charged with non-property crimes. Once a person is arrested, there is a pronounced tendency to become chronically involved with the criminal justice system. The probability of subsequent arrest is reported to be a startling eighty percent. Yet the severity of disposition tends to be unpredictable: repeated serious offenders do not consistently receive the longest sentences.

At the outset, the authors state that their study is atheoretical. It is

[1] Sellin, *The Significance of Records of Crime*, 67 THE L.Q. REV. 489 (1951).

designed to provide analyses that have a bearing on pragmatic questions of immediate concern to the administration of justice: the effective control of the violent criminal. Some of the more interesting findings, however, contribute to a conceptual understanding of the relationship between violent and non-violent criminal behavior. It has been argued, for example, that "murderers, assaulters, and forcible rapists do not have criminal careers. They do not conceive of themselves as real 'criminals,' they seldom identify with crime, and criminal behavior is not [a] significant part of their life organizations."[2] Gibbons concurs, referring to a violent offender as a "one-time" loser.[3] However, the National Commission on the Causes and Prevention of Violence reports that: "[t]he individual who commits at least one violent crime is likely to have a long criminal history."[4] The Commission found that "violent offenders on the average have been arrested seven to nine times for crimes of all kinds, and two to three times for a major violent crime or burglary."[5] The findings of Miller, Dinitz and Conrad are strikingly consistent with those of the Commission. They report that violent offenders are involved in extensive criminal careers and that overwhelmingly violent offenses are interspersed with property crimes. Murderers, serious assaulters and rapists as a group averaged seven arrests, compared to an average of nine for robbers. With few exceptions the violent offender represents in Roebuck's terms a "no pattern" criminal.

The authors present an impressive array of data to support their conclusions. The data are organized in ways that are potentially theoretically meaningful. The researchers' meticulous attention to detail, however, seems to preclude their concern with a broader interpretation of the findings.

All in all, this book represents a valuable source of information about the involvement of the criminal justice apparatus with the persistently violent offender. It is what good research should be, an invitation to further inquiry.

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[2] M. CLINARD & R. QUINNEY, CRIMINAL BEHAVIOR SYSTEMS: A TYPOLOGY 50 (2d ed. 1973).

[3] D. GIBBONS, *Changing the Lawbreaker*: The Treatment of Delinquents and Criminals 116-17 (1965).

[4] D. Mulvihill & M. Tumin, 12 Crimes of Violence 530 (1969) (Staff Report to the National Commission on the Causes and Prevention of Violence).

[5] *Id.*

POPULAR JUSTICE: A HISTORY OF AMERICAN CRIMINAL JUSTICE. By *Samuel Walker*. New York: Oxford University Press, 1980. Pp. 287. $12.95.

This book is a very readable synthesis of three overflowing but, until now, essentially separate streams of criminal justice history—police, corrections and parole-probation. Walker chronicles almost all relevant occurrences in that history from the "colonial experience" through the 1970's. This book is a milestone in the writing of criminal justice history. The author, however, fails to support his major theme, "Popular Justice," and supplies no cohesive theoretical orientation with which to understand the trends, meanderings, fads and criminal justice policy circumlocutions described in the book.

Nevertheless, in assessing the book as a possible college classroom text, the author provides more than enough material, both descriptive and interpretive, to fuel class discussion, though the conciseness of the treatment of individual issues may mean that an instructor teaching a course on the history of American criminal justice will need to supplement the book with appropriate articles. Walker has a list of "suggestions for further reading," as well as thirteen pages of chapter references to books and articles.

The book is divided into three parts: Criminal Justice in Early America to 1815; Building a Criminal-Justice System, 1815-1900; and Reforming the System, 1900 to the Present. Walker begins with the "Colonial Experience" then moves on to "The New Nation and Criminal-Justice Reform," wherein he discusses the meaning of crime and criminology, punishment and social control, the institutions of criminal justice and the origins of American vigilantism, among other attributes of colonial criminal justice. He shows how the ideas of European philosophers of the Enlightenment Era influenced American criminological thought, then covers the John Howard reform movement, criminal justice reform coming out of the American Revolution and the "legacy" of the post-revolutionary period.

In the second part, Walker tackles the period beginning with the Industrial Revolution. He discusses the dimensions and sources of disorder, the origin of organized police in the cities, early problems of acceptance of the police, police corruption and its relation to politics. Consistent with his objective of combining the three strains of the criminal justice system in one volume, he tells of the start of the modern penal system and its rationale. He does the same for juvenile justice, capital punishment in America, the correctional system, probation and parole and the historical roots of the relationship of politics to crime. Finally,

he adverts to developing inequities of the criminal justice system in the treatment of Indians, blacks and the working class.

In the third part, Walker shows the influence of the Progressive movement on reform, the birth of professionalism, the policewomen's movement and the trend to reform in all parts of the tri-part system. He discusses the growth of police unionism, organized crime, the increased role of the federal government and threats to civil liberties by a government concerned with "internal security." Following the period after the Second World War, he notes police responses to riots, and then picks up on earlier themes about police unions, "juvenile delinquency" and organized crime. He ends the book with a chapter on the "Crisis of Crime and Justice, 1960 to the Present." That chapter covers police-community relations problems in the ghettos, the due process revolution, Attica, flat-time sentencing and the "Future of Criminal Justice."

Modern criminal justice historical writing begins with articles on police history in the 1960's and then progresses to books on the history of police in individual cities.[1] These books were in turn followed by a host of individual articles on various aspects of criminal justice history, the vast number of which treated only one part of that system, the police. There were also several important works on the history of prisons such as David Rothman's *The Discovery of the Asylum*,[2] Blake McKelvey's *American Prisons: A History of Good Intentions*,[3] and James B. Jacobs, *Stateville: The Penitentiary in Mass Society*.[4] But the major impetus in criminal justice history came from those works concerning the police. Walker's own book, *A Critical History of Police Reform*,[5] carried on the criminal justice tradition of each of the branches going their separate ways. These books, however, led to several extremely useful integrative literature reviews of criminal justice literature.

It is understandable why historical research was so long separated into police, corrections and parole-probation. Each has developed a separate bureaucracy, rationale and specialization. Departments of criminal justice teach courses with textbooks dedicated to this separation. By considering themselves specialists in one branch, instructors and researchers may comfortably assume ignorance in others. Walker points out that it is only since the 1967 presidential report, *The Challenge of*

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[1] *See, e.g.*, R. LANE, POLICING THE CITY: BOSTON, 1822-1885 (1967); J. RICHARDSON, URBAN POLICE IN THE UNITED STATES (1974).

[2] D. ROTHMAN, THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC (1971).

[3] B. MCKELVEY, AMERICAN PRISONS: A HISTORY OF GOOD INTENTIONS (1977).

[4] J.B. JACOBS, STATEVILLE: THE PENITENTIARY IN MASS SOCIETY (1977).

[5] S. WALKER, A CRITICAL HISTORY OF POLICE REFORM: THE EMERGENCE OF PROFESSIONALISM (1977).

Crime in a Free Society,[6] that criminal justice has been thought of as a system at all.

Walker's book, therefore, can be seen as being the logical next step in conceiving of criminal justice as having a common rather than a divided and divisive history. That same trend is now becoming evident in textbooks devoted to "criminal justice" rather than to one of its segments. That trend in textbooks, in turn, is merely responding to the development of courses dealing with the same combined subject-matter.

The defects of this book themselves point toward the likely future of criminal justice literature. The author states the issues very well:

> What we lack is perspective. Inundated by a wealth of new data, we do not know what it all means. Is the quality of justice better or worse than before? What is the role of the police today, compared with fifty or one hundred years ago? This book is written to provide a brief interpretative overview of the development of the criminal justice system in America. . . . The author views the criminal justice system as a political entity, responding to the changing context of social and political controversies in our society. . . . The historical record clearly indicates that institutions can survive no matter how serious the over-crowding, how gross the injustice, or how intense the public dissatisfaction.

(preface vii-viii).

Walker is sensitive to the failures of much past writing about the criminal justice system. Previous restriction to only one aspect of the criminal justice system confines one's perspective. Walker is exactly right. The purpose of establishing a perspective is to help in determining "what it all means"—to take a look from one step back. Walker did just that. His perspective is essentially that of the "criminal justice system" rather than that of the police, corrections, or probation-parole. He did realize, however, that other matters, such as the industrial revolution, emigration of blacks to the cities, unemployment, prejudice, unequal access and control of vital resources and reform movements did have important consequences for criminal justice. But these were asides. It is perhaps unfair to criticize him for not doing more than he intended to do.

An understanding of the criminal justice system remains incomplete until a history of criminal justice is written as part of a much broader perspective—placing the rise of the criminal justice system within the growth of the class structure, within a history of the growth of the cities, of corporate enterprise and its conflict with labor unions and within the setting of priorities for the division of wealth and the like. Walker does make many perceptive comments in the course of setting

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[6] U.S. PRESIDENTIAL COMMISSION ON LAW ENFORCEMENT AND THE ADMINSTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY: A REPORT (1967).

forth the history of individual periods, but, significantly, his summation in "The Future of Criminal Justice," consumes barely a page and one-half of text and ends on this dour note:

> The research revolution of the 1970's had produced an unprecedented outpouring of data on criminal justice. Yet, the experts were not sure what to do with all this knowledge. The "wars on crime" promised first by Lyndon Johnson and then by Richard Nixon had both failed to achieve their stated objectives. Moreover, the false promises had generated a potent backlash of disillusionment. The experts were inclined to promise less and, for the most part, were unwilling to venture firm predictions about the future of criminal justice.

(p. 252).

It is rather disappointing after traveling with Walker through three hundred years of American criminal justice history, viewing the repetitive patterns of reform and regression and the urging of the same nostrums century after century, to be left by the author with such an implied opinion of the uselessness of the very historical "perspective" that the author has argued. This result follows, from the author's apparent lack of any clear theoretical persuasion.

Not having any coherent theoretical view of his own, the author is particularly unfair to the Marxist point of view. He turns Marxist theory aside as "inadequate" by setting up too simplistic a statement of the alleged Marxist position, quoting one Marxist writer as his source and then asserting that the Marxist analysis (together with the liberal interpretation) does not "adequately [reflect] the complex reality of the role of the criminal-justice system in American Society" (p. 103). Walker took substantially the same position in his 1977 work.[7] Since that time, however, an enormous literature on Marxist theory emerged, some of it directly relevant to criminal justice.[8] Thus Walker should have been more thorough in his research.

More importantly, such lack of theory has important consequences in the way Walker analyzes his material. In the preface, he suggests, if not a theory, at least a stance: "The author views the criminal justice system as a political entity, responding to the changing context of social and political controversies in our society" (p. viii). This idea appears fine, but on numerous occasions when Walker was faced with the necessity of supplying the "social and political" context of controversies, the challenge was avoided by vague references to "people," "citizens," "society" and the like.

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[7] S. WALKER, *supra* note 5, at xii-xiii.

[8] For Marxist literature dealing with criminal justice, see CENTER FOR RESEARCH ON CRIMINAL JUSTICE, THE IRON FIST AND THE VELVET GLOVE (2d ed. 1977); F. PEARCE, CRIMES OF THE POWERFUL: MARXISM, CRIME AND DEVIANCE 61-68 (1976); and the periodical, CRIME & SOC. JUST.

Finally, Walker's theme—the title of the book, Popular Justice—comes through as a very hazy and tenuous concept. His failure to explicate and elaborate on this theme is directly related to his lack of a clear theoretical approach to the subject-matter. He begins his explanation of his conception of "popular justice" by writing about "American attitudes toward law and justice," and that "Americans have not hesitated to violate the rights of individuals and groups they regard as 'undesirable'" (p. 3). Since both the groups violating rights and the groups whose rights are being violated are Americans, such analysis is not very helpful. Walker states:

> The central theme revolves around the concept of "popular justice." The special character of American criminal justice lies in the high degree of direct and indirect popular influence over its administration. Popular influence takes many forms: criminal codes written by democratically elected legislatures; the direct election of many officials such as sheriffs and judges; citizen participation on juries; the control of police departments and other agencies by political machines responsive to their constituents; and, finally, the pervasive influence of public opinion over day-to-day decisions. Compared with that in other countries, the extent of this participation is extremely high.

(pp. 3-4).

If Walker had consistently developed that theme, testing it as he proceeded through the book, it would have been an exceedingly profitable and rewarding venture. But without analyzing the stratification of the population, determining the relative distribution of power and privilege, such as Lenski did in *Power and Privilege*,[9] and calculating the effect on the criminal justice system, it is difficult to understand how one can arrive at a determination of how "popular" the system really is. To take one example, it would not be difficult to show that elite groups such as the American Law Institute substantially influence criminal codes. To what extent "popular" influences affect the result thereafter would make for interesting research. But as a starter, "popular" would have to be clearly defined. Walker's lack of a coherent theory unfortunately drives him to a rather cynical termination of the book: "[t]he history of American criminal justice seems to suggest that what the people wanted has not always resulted in either the fairest or most effective adminstration of justice" (pp. 253-54).

This criticism, however, does not diminish the importance of this

[9] G.E. LENSKE, POWER AND PRIVILEGE: A THEORY OF SOCIAL STRATIFICATION (1966).

book as one step toward a more expanding view of what constitutes criminal justice history.

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DISCRETIONARY JUSTICE: A CRITICAL INQUIRY. By *Paul E. Dow*. Cambridge, Mass.: Ballinger Publishing Company, 1981. Pp. xiii, 286. $28.00.

The central theme in *Discretionary Justice* is that the ideal of justice put forth in the American Constitution and expressed in such legal axioms as "a nation of laws and not men" is far from the reality of the criminal justice system. Dow's focus is on the primary actors in the system—police, bail bondsmen, prosecutors, defense attorneys, judges and jurors. These primary actors, he contends, have broad discretion in the performance of their duties. They exercise this discretion in ways that thwart the attainment of the constitutional justice ideal.

Dow devotes a chapter to each of the primary actors, examining the historical development of their roles, and tracing differences between their ideal functions and their typical behaviors in the criminal justice process. He argues that at every layer of the system, actors are constrained by bureaucratic, managerial objectives. They make decisions that systematically deny or at least de-emphasize the rights of the accused in criminal cases. Their decisions are based on considerations of efficiency, and are guided, not by constitutional principles, but by routinized norms and shared stereotypes. Thus discrimination against racial minorities, the indigent and other unpopular or politically impotent groups is widespread. Dow supports his argument with an impressive array of the scholarly research that has been carried out in the discipline.

Despite the veracity of Dow's claims about the bureaucratic operations of the criminal justice system and the constraints that bureaucracy imposes on police officers, attorneys, judges and the like, his actor-oriented approach lacks a coherent theoretical focus. He at times seems to fault the system as a whole for its assembly-line nature, and at other times to blame the individual functionaries for abusing their discretionary power; see, for example, his section on judicial performance and misconduct.

Similarly, Dow's recommendations for closing the chasm between real and ideal criminal justice processes are scattered, piecemeal and often naive. He writes, "[e]liminating the disparities between the rich and the disadvantaged in the legal environment offers the best opportunity for attaining the justice imperative" (p. 268). He goes on to suggest such reforms as putting more money into legal defense funds for indigents; making the ancillary services that are available to prosecutors (private detectives, laboratory personnel, etc.) also available to defense counsel; and paying higher salaries to attract better qualified, and presumably less prejudiced, judges and jurors. Questions of feasibility aside,

these changes might produce more just outcomes for the disadvantaged but other perspectives on American criminal law reveal little cause for optimism.

One such perspective is the radical viewpoint which claims that the legal system is a creation of the ruling classes and is thus designed to protect their interests. The radical critique easily explains the overwhelming evidence presented by Dow that the disadvantaged are systematically denied due process. It casts doubt, however, on the likelihood that Dow's proposed reforms will make any difference. Dow advocates throwing money at the inequities in current legal practices without changing the underlying economic and political structures that have spawned such practices. The administration of justice would remain "top-down" with control over discretionary decision-making still in the hands of the politically powerful.

Another perspective of the criminal justice system focuses on its conflicting notions of "law" and "order." Dow's primary actor approach overlooks the fact that the entire system has simultaneous and competing goals of efficient crime control and protection of the rights of the individual. Herbert Packer, in "Two Models of the Criminal Process," notes that the gap between the constitutional ideal and the day-to-day workings of the system is produced by the mutually exclusive claims of their two competing value systems.[1] The crime control model presumes that social freedom is dependent on strict enforcement of laws. As a deterrent to future crime, justice must be swift and final. Justice is dispensed in an environment where resources are scarce and efficiency is a central concern. Rather than presuming that an accused is innocent, efficient functioning of the crime control model presupposes guilt. Most cases are resolved by a plea of guilty and not by time- and resource-consuming trials. Trials, when they occur, are administrative rather than adversarial proceedings.

The due process model reflects the anti-authoritarian streak in American political culture. Individual rights are primary and limitations are placed on the power of the state to interfere with those rights. This model also emphasizes the notion of equality before the law, recognizing that some groups and individuals might not have the resources to invoke challenges to the state. For example, the Supreme Court ruled in *Gideon v. Wainwright*,[2] that states must provide counsel to defendants who are unable to furnish their own. In a sense, there is a public obligation to provide the accused with opportunity and aid in challenging the criminal justice process. This is the adversarial due process ideal.

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[1] Packer, *Two Models of the Criminal Process*, 113 U. PA. L. REV. 1 (1968).

[2] 372 U.S. 335 (1963).

Nowhere is the tension between criminal justice ideology and the actual functioning of the system more pronounced than in the controversy over the doctrine of legal guilt versus factual guilt. Here the due process model holds that an accused cannot be found guilty merely because there is reasonable evidence that he or she has committed the crime. Rather, the criminal law process must move beyond the several legal obstacles that protect the rights of the accused. These include stipulations that guilt must be determined within a "procedurally regular fashion," that there be appropriate "jurisdiction," that the "statute of limitations" cannot have elapsed and that the accused is not placed in "double jeopardy." Applying the standard of legal guilt over factual guilt means that a guilty prisoner might go free "because the constable has blundered."

While Dow sees this outcome as the more just, there is not a consensus even among Justices of the Supreme Court. Hence, the two competing philosophies that shape American jurisprudence have often incompatible standards for justice. Support for the due process model over and against efficient crime control varies with the social and political climate. The philosophy of the Burger Court reflects a shift toward the crime control model and away from the due process orientation of the Warren Court. The due process guarantees of the Constitution are at best vague standards subject to changing interpretations.

Dow, however, conveys the impression that the due process model can be realized by finetuning the present system of criminal justice. Citizen watchdog committees for police practices, more money to public defenders, professional jurors and the evils of the current system would recede to reveal a more just society. Even if Dow's suggestions were adopted (and some of them probably ought to be), the move toward due process would be a temporary swing of the pendulum. The internal conflict, the conflicting goals would remain.

Discretionary Justice is a mainstream reconsideration of the criminal justice system. Dow faults the system's primary actors for the failure of American criminal justice to live up to its own ideology. Little of what Dow says is new or radical. But he does offer a readable integration of literature that spans several areas of the criminal justice field. The strength of this book is its impressive review of the research showing that discrimination and injustice occur at every layer of the criminal justice process, from encounters with police to decisions of juries. This would

be an appropriate choice for a text in an undergraduate criminal justice or legal institutions course.

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