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BOOK REVIEWS

REVIEW ESSAY: REFLECTIONS ON THE KILLING OF CRIMINALS

LEGAL HOMICIDE: DEATH AS PUNISHMENT IN AMERICA, 1864-1982. By *William J. Bowers*, with *Glenn L. Pierce* and *John F. McDevitt*. Boston: Northeastern University Press, 1984. Pp. xxvii, 614. $35.00.

THE DEATH PENALTY: A DEBATE. By *Ernest van den Haag* and *John P. Conrad*. New York: Plenum, 1983. Pp. xiv, 305. $16.95.

Our common morality is probably closest to what Ezorsky calls "teleological retributivism,"[1] that is, a blending of utilitarian and retributive considerations. We think that punishment in general is justified only because it achieves some societal goal—deterrence, social solidarity, moral education, incapacitation, and so on. In a given case, however, retributive considerations predominate: Only offenders deserve to be punished, and then only in an amount which is proportionate to the harm associated with the offense.[2]

For telelogical retributivists, the issue of capital punishment may be far from simple. These TR philosophers (as Ezorsky calls them) are obligated to consider whether murderers deserve to be executed, the moral implications of inevitable error in executions (and nonexecutions), whether a system of capital punishment achieves desirable social goals (such as the reduction of crime), and whether there are undesirable latent effects associated with such a system. Considerations such as these preclude an easy resolution of the issue.

When Justice Douglas joined the Supreme Court, Chief Justice Hughes advised him, "At the constitutional level where we work, ninety percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predelictions."[3] Much of the same could probably be said for advocacy of or opposition to the

[1] G. EZORSKY, PHILOSOPHICAL PERSPECTIVES ON PUNISHMENT xix-xxii (1972).
[2] *Id.*; H. HART, PUNISHMENT AND RESPONSIBILITY 1-13 (1968).
[3] W. DOUGLAS, THE COURT YEARS, 1937-75, at 8 (1980).

death penalty. For those whose emotions generate opposition to capital punishment, both Bowers and Conrad provide compelling reasons in support of that opposition. For those whose emotions lead them to favor capital punishment, van den Haag provides compelling support for that position. For those whose emotions pull both ways, these three authors raise the issues to be considered, and discuss them with varying levels of adequacy.

DETERRENCE AND RETRIBUTION

If telelogical retributivism is our common morality, consideration of deterrence and retribution may present a dilemma. Are their implications consistent? If not, which should take priority over the other? One might anticipate, for example, that a retributivist would advocate capital punishment on grounds of desert,[4] while a utilitarian would oppose it on a "greatest happiness" principle (since it causes one death without clear assurance of preventing others).[5]

Surprisingly, the van den Haag/Conrad debate does not take this tack. Van den Haag, the advocate of capital punishment, takes his position on the basis of deterrence, even though unproven. Conrad, the opponent, bases his opposition on retributive grounds. These unexpected lines of argument make their debate more interesting, more lively, and (to this reader) less compelling on both sides than it might have been.

Conrad's principle contention is that retribution requires penalties which are proportionate to their crimes, but that the requirements of the *lex talionis* need not be met. His aversion to the state's executing murderers, however, seems based more on a belief that deliberate killing is simply wrong rather than a belief that murderers do not deserve to be executed. His statement that "it is just as wrong for the state to kill Gary Gilmore . . . as it was for Gilmore to kill his victims"[6] would strike many retributivists as inconsistent with the principle of desert.

Conrad's retributivism itself is not a self-evident principle, but is justified by utilitarian considerations, primarily that "the solidarity of society requires that criminal acts must be repudiated" and that "the offender shall not benefit from his crime."[7] Given this, his po-

[4] I. KANT, THE PHILOSOPHY OF LAW, PART II 194-198 (W. Hastie trans. 1887), *reprinted in* G. EZORSKY, *supra* note 1, at 103.

[5] Bentham, *On Death Punishment* app., in THE WORKS OF JEREMY BENTHAM, VOL I, at 525 (J. Bowring ed. 1962).

[6] E. VAN DEN HAAG & J. CONRAD, THE DEATH PENALTY: A DEBATE 177 (1983) [hereinafter cited as E. VAN DEN HAAG & J. CONRAD].

[7] *Id.* at 36-37.

sition on deterrence seems inconsistent. At one point, he acknowledges that "deterrence is a secondary function of punishment" once the requirements of retribution have been met,[8] but elsewhere he states that he would prohibit capital punishment even if the execution of a murderer would deter 500 future murders.[9]

Van den Haag, although arguing for capital punishment primarily on the basis of deterrence, also appeals to consideration of desert. If it were shown that executing drunk drivers who kill would deter other potential drunk drivers sufficiently to save the lives of 500 innocent victims, would he do so?

> The answer is yes, I would. I should always be in favor of saving 500 lives by the execution of one offender, whatever his offense. But here I would demand much more conclusive proof of the size of the deterrent effect on drunken driving than is now available even for the effect of the death penalty on murder, since I would inflict the death penalty on the drunken driver only because of the deterrent effect, whereas I believe the murderer deserves it in any case.[10]

The point here is that the capital punishment debate cannot be neatly resolved by assigning priority to either deterrent or retributive considerations, because the two are necessarily intertwined. It is therefore necessary to consider not only deterrence and retribution as abstract principles, but also the adequacy of the available empirical evidence on the general deterrent effects of capital punishment.

DETERRENCE

Whether capital punishment is a greater deterrent to murder than life imprisonment would appear to be a straightforward empirical problem, but it is not. Several decades of research on this problem have shown it to be Hydra-headed. The three authors of these two books approach the problem differently, befitting its complexity. None of the three is quite convincing.

Conrad offers three principal arguments against the deterrent effectiveness of capital punishment. First, he points out that the types of murderers he knew on Condemned Row in San Quentin—"peculiarly repellent sex-murderers . . . murderers of wives or girl friends . . . [and] men who killed the persons they were robbing or the police officers who attempted to arrest them"—are unlikely to be deterred.[11] On the other hand, the most deterrable killers—

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[8] *Id.* at 87.
[9] *Id.* at 74.
[10] *Id.* at 116.
[11] *Id.* at 87-88.

drunk drivers and contract hit men—are almost never given capital sentences.

Second, Conrad summarizes the now-traditional literature on contiguous states with and without the death penalty, homicide rates in states before and after abolition, and so on, which consistently fails to reveal a deterrent effect.[12] Third, he asserts that the research of Isaac Ehrlich, who reported that each additional execution might save seven or eight innocent lives,[13] has been thoroughly discredited by other scholars.

Van den Haag, on the other hand, offers three reasons for the superior deterrent effectiveness of capital punishment. First, the only people who in practice have the choice between death and life in prison—those condemned to death—spend their time filing appeals to overturn their sentences. This shows that death is more feared than life in prison, and that it is therefore a superior deterrent. Second, he contends that Ehrlich has convincingly answered his critics, although van den Haag concedes that the issue is unlikely to be resolved statistically. Finally, van den Haag argues that the burden of proof is on the abolitionists. As long as there is *any* chance that an execution would deter others, he argues that that execution should be carried out.

Given the centrality of Ehrlich's work to the van den Haag/Conrad debate, it is regrettable that neither author attempted to dissect the specific arguments criticizing and defending Ehrlich's analyses. Such an effort would have been enlightening for many readers, even though the net result almost certainly would have been inconclusive.[14]

Bowers, in contrast, not only critiques Ehrlich's work but also creates an equivalent data set and replicates key portions of Ehrlich's analysis. His principal conclusion is that Ehrlich's time-series findings are not robust, but are highly sensitive to arbitrary changes in the model. For example, a deterrent effect is not found if the equations are presented in a linear form rather than a logarithmic (i.e., multiplicative) form, or if the time series is truncated by a few

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12 T. SELLIN, THE PENALTY OF DEATH (1980).

13 Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 AM. ECON. REV. 397 (1975).

14 For useful reviews of Ehrlich's work and that of his critics, see Barnett, *The Deterrent Effect of Capital Punishment: A Test of Some Recent Studies*, 29 OPERATIONS RESEARCH 346 (1981); Brier & Feinberg, *Recent Econometric Modeling of Crime and Punishment: Support for the Deterrence Hypothesis?* 4 EVALUATION REV. 147 (1980); Peck, *The Deterrent Effect of Capital Punishment: Ehrlich and His Critics*, 85 YALE L.J. 359 (1976); Waldo, *The Death Penalty and Deterrence: A Review of Recent Research*, in THE MAD, THE BAD, AND THE DIFFERENT: ESSAYS IN HONOR OF SIMON DINITZ 169 (I. Barak-Glantz & R. Huff eds. 1981).

years at either end. In fact, Bowers suggests that the evidence is more consistent with the "brutalization" hypothesis—that executions stimulate rather than deter other murders. Bowers concludes:

> If, at the time of its circulation, Ehrlich's research was sufficient to render the accumulated evidence "inconclusive" with respect to deterrence, this further analysis of the data should be sufficient to rescind that judgment, if not to replace it with a judgment that the death penalty "brutalizes" society and is therefore "excessive" in violation of the Eighth Amendment prohibition against cruel and unusual punishment.[15]

In my view, Bowers' conclusion is overstated. I would summarize the accumulated evidence as follows: First, the statistical evidence is mixed, inconclusive and unlikely to lead to general agreement in the forseeable future. Second, it is likely that executions have *both* brutalizing and deterrent effects, on different individuals.[16] Finally, it is unclear which side should be obligated to provide the burden of proof in the deterrence debate. From a utilitarian position, the burden of proof would seem to lie with the proponents of capital punishment. From a retributivist position, the burden of proof should lie with those who oppose capital punishment (Note that my interpretations here run directly counter to those of Conrad and van den Haag.).

DESERT AND EQUALITY

Beyond considerations of deterrence, it is necessary to consider the principles of desert and equality. The requirement of desert is met when one who deserves to be executed is executed, and one who does not deserve to be executed is not. The requirement of equality is that equally-deserving offenders are treated the same, whether executed or not. Although both principles are obviously desirable, it is clear that neither can be fully realized in practice. Worse, they often conflict. If two offenders both deserve to be executed, but one cannot be, should the other be executed anyway? Would the answer to this question differ depending on the reason for the first offender's immunity (chance, plea bargain, racial discrimination)? How one answers these questions depends on whether one assigns priority to the principle of equality or the principle of desert.

Bowers clearly assigns priority to the principle of equality. His attack on capital punishment is based in part on the assertion that

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15 W. BOWERS, G. PIERCE & J. MCDEVITT, LEGAL HOMICIDE: DEATH AS PUNISHMENT IN AMERICA, 1864-1982, at 333 (1984) [hereinafter cited as W. BOWERS].

16 Waldo, *supra* note 14, at 176.

the imposition of capital punishment is arbitrary and discriminatory, and thus impermissible under the eighth amendment prohibition of cruel and unusual punishment. Ignoring the question of desert, Bowers argues that a system of capital punishment is inherently capricious, and must therefore be abolished.

Van den Haag, as expected, argues the opposite position:

> In all legal proceedings, factors other than justice play an unavoidable role. . . . This seems no reason to give up our court system or the punishment of criminals, including the death penalty; we may catch only some and punish only some, not all, but to do so is better than to punish none. We may unintentionally discriminate between the guilty people we catch, convict, or punish and those who for one reason or other escape punishment. We must do our best and punish as many as we can.[17]

For Conrad, there is no conflict between the principles of desert and equality, because he believes that no one deserves to be executed. The principle of equality is foremost. In particular, Conrad is concerned about the irremediable execution of the innocent, which he describes as an unnecessary evil easily preventable by the abolition of capital punishment.

FAIRNESS

The relative evaluation of the conflict between desert and equality is likely to depend on the source of any inequality. It may not be too disturbing that some murderers avoid execution because they are not caught by the police; it is more disturbing if some avoid execution only because they plea-bargain; it is most disturbing if the likelihood of execution is systematically based on racial discrimination in the administration of justice.

In the not too distant past there is clear evidence of such racial discrimination. In studies of capital punishment for rape in the South, researchers have found this penalty applied primarily to black offenders with white victims.[18] More recently, however, there may be reasons to expect some improvement. For one thing, death is no longer a constitutionally-permissible penalty for rape of an adult woman, following *Coker v. Georgia*.[19] For another, the percentage of blacks among those sentenced to death has declined in recent

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17 E. VAN DEN HAAG & J. CONRAD, *supra* note 6, at 217.

18 Wolfgang & Reidel, *Race, Judicial Discretion, and the Death Penalty*, 407 ANNALS 119 (1973); Wolfgang & Reidel, *Rape, Race, and the Death Penalty in Georgia*, 45 AM. J. ORTHOPSYCHIATRY 658 (1975).

19 433 U.S. 485 (1977).

years from approximately 50 to 40 percent,[20] suggesting a lessening of racial disparities in sentencing under the post-*Furman* statutes.

More recently, research has focused on the "white victim" effect in capital punishment cases, with several studies reporting that killers of whites are more likely than killers of blacks to receive capital sanctions.[21] There are two fundamental explanations, not mutually exclusive, for this finding. One is that murders of whites typically involve more, or more serious, aggravating circumstances than murders of blacks. While this appears likely,[22] it is not the point at issue here.

The other explanation is that prosecutors and juries more readily identify with white victims, and therefore seek harsher penalties for their killers.[23] Using data from several states, Bowers pursues this possibility relentlessly. He finds clear evidence of such differential handling of similar cases, based on the race of the victim, at multiple stages of the criminal justice process. If the data he presents are representative, victim-based racial discrimination in the processing of capital cases is pervasive.

LEGAL REMEDIES

In *Furman v. Georgia*,[24] the Supreme Court struck down existing capital punishment statutes because they allowed excessive discretion which resulted in " 'freakishly rare,' 'irregular,' 'random,' 'capricious,' 'uneven,' 'wanton,' 'excessive,' 'disproportionate,' and 'discriminatory' " applications.[25] In subsequent decisions, the Court rejected mandatory capital punishment statutes, but approved the guided discretion statutes of Texas, Florida and Georgia.[26] These statutes specify the aggravating circumstances which

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[20] DEP'T OF JUSTICE, CAPITAL PUNISHMENT 1983 (July 1984) (BULLETIN OF BUREAU OF JUSTICE STATISTICS).

[21] Paternoster, *Prosecutorial Discretion in Requesting the Death Penalty: A Case of Victim-Based Racial Discrimination*, 18 LAW & SOC'Y REV. 437 (1984). *See also* sources cited *id.*, at 440.

[22] *See* W. BOWERS, *supra* note 15, Table 10-5, at 357. Bowers presents this table to point out that at each of eight levels of aggravation/mitigation, a higher proportion of offenders in white-victim cases receives a penalty trial than do offenders in black-victim cases. (A penalty trial is held when the prosecutor is seeking the death penalty.) These data, however, also reveal that 18% of the white-victim cases, but only 4% of the black-victim cases, occur at the two highest levels of aggravation/mitigation; in contrast, 25% of the white-victim cases and 50% of the black-victim cases are found at the two lowest levels of aggravation/mitigation.

[23] W. BOWERS, *supra* note 15, at 389-90.

[24] 408 U.S. 238 (1972).

[25] W. BOWERS, *supra* note 15, at 193.

[26] Jurek v. Texas, 428 U.S. 262 (1976); Proffitt v. Florida, 428 U.S. 242 (1976); Gregg v. Georgia, 428 U.S. 153 (1976).

must be found before a capital sentence is imposed. The Georgia statute also requires the state supreme court to conduct a proportionality review, to ensure that similar cases receive similar penalties.[27]

Bowers reports that in practice, the post-*Furman* statutes have not met the Supreme Court's expectations for them. As noted earlier, victim-based racial discrimination seems widespread at multiple points in the criminal justice process and is uncorrected by appellate review.

In addition, Georgia's proportionality review appears to have increasingly become merely an *ex post facto* justification for death sentences. The Georgia statute requires that cases similar in offender and offense characteristics be identified, and then compared with respect to their sentences. In practice, the Georgia Supreme Court seems to have reversed this logic, by comparing cases similar in disposition (death penalty) and asserting the similarity of the relevant offender and offense characteristics; similar cases with life sentences are being ignored.[28]

Given problems such as these, Bowers concludes that the post-*Furman* reforms have not been adequate, and that the arbitrariness and caprice which characterize the administration of capital punishment are beyond legal remedy. He may well be right.

CONCLUSIONS

Stylistically, both of the books reviewed here have minor flaws. In their debate, van den Haag and Conrad used different conventions for footnoting; an editor should have made the format uniform. Their book should have been printed with wider margins, because both authors employ debaters' tricks, and the careful reader will feel compelled to make many notes in the margins.

The stylistic flaw in the Bowers book is that Part One, pages 1-167, is reprinted from his 1974 *Executions in America*,[29] without updating. Thus, some of the arguments in this section seem dated, particularly those pertaining to mandatory capital punishment statutes.

Substantively, both books are informative and stimulating. Van den Haag and Conrad are both erudite scholars, and reading their polite exchanges is a joy and an education. Still, van den Haag's

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27 W. BOWERS, *supra* note 15 at 200.

28 W. BOWERS, *supra* note 15, at 359-363; Paternoster, *supra* note 21, at 444 n.5 (reports a similar practice in South Carolina).

29 W. BOWERS, EXECUTIONS IN AMERICA (1974).

uncritical acceptance of the deterrence argument is disconcerting, as is Conrad's indifference to it.

The Bowers book, quite simply, is a masterpiece of sustained scholarship. It is a carefully crafted, tightly argued, unrelenting attack on capital punishment in America. If one accepts Bowers' premise—that the morality of capital punishment depends on both its deterrent effectiveness and its equitable distribution—his empirical critique is devastating. A philosopher might object to Bowers' ignoring of desert, but desert is not an empirical issue. Besides, Bowers' book is not written for philosophers; it is written for an audience of nine—eight men and one woman—whose work begins annually on the first Monday in October.

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CONSUMERIST CRIMINOLOGY. By *Leslie T. Wilkins*. Totowa, N.J.: Barnes & Noble Books, 1984. Pp. viii, 184. $28.50.

Wilkins' presentation is much like the dry stone walls native to his part of England. Each stone (chapter) is placed on others so that it forms a wall which is supported by its own weight and held together without the use of mortar. It is a remarkable achievement, but one not unexpected from Wilkins. The chapters are capable of standing alone and reflect the range of tools that Wilkins uses in thinking through problems (i.e., information theory, decisionmaking, operations research and common sense). The book reflects the pure Wilkins intellect and is a joy. It also has the Wilkins human touch with its asides and pokes at sacred cows (mostly British sacred cows).

The themes are familiar, too. They argue for the need to separate the act of crime from the offender, the effect of crime on the victim (or, as he prefers, the vulnerable group), and the need to focus on the environment as a way to affect (hopefully, reduce) the incidence of crime. He talks about micro and macro views of crime, attitude surveys and the quality and relevance of information for decisionmaking. As the discourse progresses, it takes on a new shape, much like the dry stone walls, interconnecting each of the pieces into a theory.

Wilkins' consumerist criminology postulates a theory grounded on the notion of *vox populi suprema lex* and resting on the assumption

that law has a democratic base (not created by divine origin, or direct revelation). His theory asserts that first priority should be given to the citizen's desire to live and to the quality of that living. These, he contends, are the touchstones by which the government agencies, which administer justice and provide other public services, should be judged and upon which their effects should be evaluated. It is a theory that faults the absence of creative thinking or action in criminology and penal philosophy over the past decade (perhaps, even longer) and calls for the adoption of a different perspective about what we now call crime.

What Wilkins argues for is elegantly simple and reasonable, but it requires movement (both intellectually, politically and operationally) away from the narrow specialized world that supports current criminological theory, research and practice. Unfortunately, this may well be the major impediment to the testing of his theory or its potential. He is not likely to find many supporters among the practitioners, or the managers and administrators of the systems of criminal justice, even though he states he has no argument with the machinery they use to "fight" crime. Nor is he likely to find many supporters in the criminology departments of the colleges and universities, because they would have to broaden the narrow definitions of crime and the specialized fields of criminology to incorporate the perspectives embraced by sociology and social science research.

Identifying what the public considers to be harmful to its quality of life and classifying these actions as grievances, crimes and ought-to-be crimes through public opinion and attitude surveys is not unreasonable, but it is probably not feasible because support (call it money) is not available. Translating these priorities into an information base so that the government agencies which administer justice can monitor, test and evaluate their ability to affect crime is also unlikely. The rationale for its defeat will be based on the argument that it is too expensive to develop new (and untested) series of indicators. But the real reason for its rejection will be because it would mean a complete shift in priorities away from the responses to crime and back to the stimuli inducing it; away from crime and criminals and back to a strange concept called the quality of life.

Wilkins is absolutely correct in his argument that the information being collected today about crime (number of offenses, number of arrests, number incarcerated, average length of sentence, etc.) is not appropriate or relevant for administering justice and doing something about crime on a macro level (perhaps not even on an individualized, offender level). But the chances of changing the information now used for policy and program decisions are low. As

long as research funds are directed to an evershrinking focus, as long as the results are more ordained than discovered, and as long as agency performance is judged by indicators which the agency controls, there will be little opportunity to test Wilkins' position and theories.

There may be one exception to this bleak outlook. This lies in the new emphasis being placed on victims and the new school of victimology that has arisen. If this area is open to new ideas and approaches (i.e., if it attracts a new breed of researchers and practitioners), then the shift in priorities—from crime and the criminal to the victim as a representative of the group most vulnerable—would be consistent with Wilkins' emphasis and his call for the development of preventive and protective programs for the public.

One could also hope that the colleges and universities would use their power and prestige to critique the direction and scope of present day research and call for the introduction of new perspectives and the testing of new theories. But until the universities become independent of the hand that partially feeds them—namely the institutes that fund research—it is not likely that major changes will occur.

If this review is pessimistic, it is because what Wilkins proposes is sensible and *should* be tested. But in light of today's emphasis and priorities, it is not likely that the promise and potential of this approach will be tested for a long time. Hopefully, like the dry stone walls, it will still be standing when that time does come.

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THE POLITICS OF THE POLICE. By *Robert Reiner*. New York: St. Martin's Press, 1985. Pp. 258. $29.95 (cloth).

Until recently, "policing by consent" was the hallmark of police work in Britain, inasmuch as a substantial degree of mutual accommodation existed between the police and the public. All this changed dramatically in the 1980's, in part because of the mishandling by the police of a series of inner city riots and the protracted and violent miners' strike in 1984-85. Policing in Britain has now become a hotly contested affair, which makes problems with the politics of the police increasingly salient.

The Politics of the Police uses recent developments in Britain as a

backdrop for an analysis of major perspectives on policing as well as larger criminological theories. Based primarily on a critical assessment of other work on the police, the book attempts to identify the shortcomings of both orthodox and radical or "revisionist" arguments regarding such issues as police work, culture, accountability and media constructions of policing. The orthodox model is criticized as being too apologetic (portraying the police as wholly beneficent), the radical approach too rejectionist (viewing the police as the bulwark of systems of class domination and/or authoritarian control). Both are labeled teleological by Reiner.

The author sees revisionist work as an unquestionable advance over the traditional perspective. His sweeping broadsides against the latter are not too startling or novel, but the critique of radical criminology should provoke a great deal of further debate. In Reiner's characterization, the revisionists have all too often dangerously inverted the traditional paradigm. The author, by contrast, seeks to transcend the limits of both approaches.

He accepts the conclusion that the police have historically acted to defend the capitalist state by disorganizing working class opposition. But they have also been instrumental in upholding the public order required for the survival of any industrial society, and in protecting all classes from crime. The orthodox and radical models are preoccupied with one or the other of these police roles, but Reiner argues for an approach that incorporates both functions.

Reiner advocates the same balance in other areas. He chides critics of modern British policing for refusing to take police reform seriously, for labeling as cosmetic attempts to enhance police accountability, for attacking efforts to reestablish the groundwork for community policing, and for imagining sinister motives behind every extension of police powers and technological and coercive capacities. The author contends that the notion that Britain is turning into a police state is tenable only if one stretches certain tendencies and dismisses countervailing trends in policing. The perceived drift toward authoritarian policing is dubbed a "moral panic" (p. 178) on the part of concerned individuals. Later, however, he admits that no one knows what the trend is.

Although Reiner argues that policing is inherently political—having a partisan impact insofar as it defends a particular kind of political system and preserves existing social inequalities—,he is adamant that policing should not become "politicized." It is dangerous, he says, to the police and to public order to allow police work to become an object of struggle. Just why politicization cannot have a healthy influence is not convincingly argued. Reiner offers no evi-

dence to challenge the alternative argument that some politicization of policing issues may serve as a corrective over police wrongdoing. In the absence of pressure from below against unjust patterns of police activity, it remains unclear how progressive change is to occur. The author suggests that the necessary reforms will be introduced gradually by enlightened police authorities in England. It remains to be seen just how far-reaching such changes inspired from above will be.

One glaring omission from *The Politics of the Police* is its failure to draw connections or parallels with policing in Northern Ireland, from which British forces have learned so much over the past fifteen years. One wonders whether Reiner would be prepared to extend some of his arguments on the policing of the mainland to a deeply divided society such as Northern Ireland. Is the politicization of police work just as dangerous there, or is it possibly a recipe for improvement in, say, police accountability, legitimacy and impartiality?

This provocative book is pregnant with thoughtful arguments and pleas for a renewal of academic research and theorizing on the police. Reiner's efforts to go beyond the orthodox and radical positions is refreshing. *The Politics of the Police* is a splendid contribution to the field.

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THE CRIMINAL ELITE: SOCIOLOGY OF WHITE COLLAR CRIME. By *James William Coleman*. New York: St. Martin's Press, 1985, Pp. 260. $14.95.

Coleman has written a lively, thoroughly researched and comprehensive text. It is a volume sell-suited for use in undergraduate classes in white-collar crime and criminology, and the book's bibliography is of service to the field's graduate students and professionals. *The Criminal Elite* begins with a standard introduction of the costs of white-collar crime in both human and financial terms. It then proceeds to treatments of so-called organizational crimes by corporations and governments, occupational crimes by individuals in positions of power within organizations, and professions (e.g., doctors, lawyers). Coleman concludes with discussions of laws against both organizational and individual white-collar crimes, their enforcement, and, in a final chapter, there are suggestions for legal

reforms. In short, this is a complete introduction, and its scope alone will make it required reading for those with such interests. Moreover, Coleman is a gifted writer, and is careful to define terms that might otherwise perplex the novice.

Having noted these strong points, one must point out that the book is not without its problems. Indeed, I have some serious concerns about the way in which Coleman has classified this topic, and I believe his proposed remedies to the problem of white-collar criminality are illogical in that they do not follow from what he attributes as the overall cause of such criminality. Moreover, he is confusing when it comes to the distinction between white-collar crime and what D. Stanley Eitzen and I[1] have termed "elite deviance." Finally, Coleman makes an important (to him) distinction between acts committed by organizations versus acts committed by individuals for their personal gain, but then mixes up the two when discussing acts by individuals. As a result, the book ends up being definitionally and ideologically confusing in an attempt at conceptual clarity and ideological consistency.

The treatment of white-collar crime rests on the physical and financial harm wrought by such criminality. What he does not include as harmful is the so-called "role model" (imitation effect) of elite crime, so much insisted upon by students of the subject from Tarde to Thio[2] and others. To overlook the links between elite crime and non-elite illegality sadly contributes to the very overspecialization that keeps most criminologists, whose interest revolve around "street crime" and its treatment within the criminal justice system, from taking elite crime and its implications more seriously.

Second, Coleman is critical of the position held by Eitzen and I, among others, who insist that the study of elite wrongdoing be broadened to include acts that raise questions of ethics and morality. He claims that white-collar crime ought to be restricted to that which is illegal. One problem with his reasoning is that he does not adhere to it. There are numerous discussions of items like tax loopholes for corporations and the rich that, while unfair in the public's mind, are nevertheless, legal. My feeling is that he would have been better off including unethical acts (deviance) within the scope of his initial definition. This would have allowed him not only to avoid mixing illegal apples with unethical oranges, but to make a nutritious fruit salad from which all students of the subject could benefit.

Moreover, I believe that such practices as tax breaks for the cor-

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[1] D. SIMON & D. EITZEN, ELITE DEVIANCE (2d ed. 1986).

[2] A. THIO, DEVIANT BEHAVIOR, (2d ed. 1983).

porations and the rich contribute to the cynicism and distrust of elites among the public. But moral harm resulting from elite acts that are legal is simply overlooked by Coleman.

Sadly, such confusion is also evident in the discussion of so-called occupational crime. I feel that dichotomies in general, are dangerous, but that the distinction made between acts for personal gain versus crimes committed on an organization's behalf is both oversimplified and confusing. *The Criminal Elite* mentions the famous Vesco case as an example of crimes of personal gain, but Vesco was the head of an organization, which makes the distinction difficult to maintain. Moreover, the ITT case, involving a lobby, Ditta Beard and the Nixon reelection committee (CREEP) is cited as an example of such an act of individual enrichment. But Ms. Beard was working on ITT's behalf and CREEP was a political organization. How personal enrichment of people on either side was directly involved here both mystifies and confuses. One also wonders why salespeople who engage in bribing customers are involved only in an act of personal gain? Do not the companies for which they labor benefit from the increased sales?

Finally, as I pointed out elsewhere,[3] people employed by organizations can and have been fired (or sanctioned in other ways) if they refuse to go along with organizational deviance, thus further blurring the distinction between acts of personal versus organizational gain. Moreover, acts of strictly personal gain may be at times committed because of the resentment over having been coerced into participating in acts of organizational deviance. And, as Coleman himself points out, some acts of individual enrichment often occur in organizational environments in which such acts (e.g., police corruption) are perceived as either commonplace or "required." One rushes to add that acts of individual enrichment also take place within organizations where elites are perceived as corrupt, uncaring, and/or inept. Thus, the distinction between individual versus organizational elite crime is often oversimplified to the point of confusion, as is unfortunately the case here.

Finally, Coleman's discussion of elite crime laws and their enforcement, while qualified by many other variables, is attributed to America's political economy (class conflict) and its "culture of competition," both being variable of social structure. Yet, instead of advocating the logical (basic social structural) changes in the form of redistribution of wealth and power (Simon and Eitzen, 1986)), Cole-

[3] Simon, *Organizational Deviance: A Humanist View*, 12 J. Soc'y & Soc. Welfare 521 (1985).

man ends up providing us with a Sears-Roebuck shopping list of relatively modest reforms (e.g., ethical codes (again ethics versus crime), more resources for white-collar crime enforcement, more severe penalties, corporate licensing, legal precedents such as corporate manslaughter, public and worker representatives on corporate boards, and so on).

Unfortunately, what Coleman omits and that others have grasped[4] is that non-enforcement of already weak laws governing crimes by both individuals and organizations means that our economic and political systems would not function like they do were it not for such leniencies. They are, in other words, crimeogenic by virtue of their own amorality and laxities of law and its enforcement. Attempts aimed at strengthening such laws are doomed unless accompanied by more basic changes in inequalities of wealth and power. Otherwise, elites will merely invent new forms of corruption and influence that allow them to evade such laws. Finally, elite deviance is also implicated in other serious social problems, such as organized crime, economic decline, alienation and the decline of community, poverty and the arms race, to mention but a few.

Despite such problems, *The Criminal Elite* constitutes a good starting point for discussing issues within the area of elite crime.

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POLICING VICTORIAN LONDON: POLITICAL POLICING, PUBLIC ORDER, AND THE LONDON METROPOLITAN POLICE. By *Phillip Thurmond Smith*. Westport, Conn.: Greenwood Press, 1985. Pp. 229. $35.00 (cloth).

As its title states, this book describes the political role of the police during the early Victorian period, 1850-1868. Enough information is provided of the pre- and post-periods to make the period of concentration understandable. For the author, "political policing" means "police control of, or surveillance of, dissident or disaffected citizens to protect the interests or power of the government" (p. 4). Smith finds this police function arising out of a "demand for order created by the needs of an urbanizing society in the transi-

[4] McCormick, *Rule Enforcement and Moral Indignation*, 25 SOC. PROBS. 2 (1977).

tional period between the preindustrial world of the eighteenth century and the Victorian bureaucratic state based on industrial capitalism" (pp. 4-5). Thus, although the book is well-written and provides a thorough, useful and well-documented description of Victorian organizational history heretofore neglected, Smith falls into the teleological error of attributing a "demand for order" to the "needs of an urbanizing society." While *Policing Victorian London* represents more than the "institutional works" that Smith rightly criticizes for their "little awareness of broader social and political themes" (p. 3), Smith does not himself always provide a satisfying analysis of the events described.

The author follows his political theme through the development of a detective branch and effectively shows: (1) the interplay between the preventive philosophy of the police and a political spy system; (2) the role of the police in enforcing the government's meandering policy toward politically active refugees from neighboring European authoritarian regimes; (3) the problem of crowd control and the role of the police and the government in the development of the right of assembly; (4) the conflict between the police and working classes brought on by the unpopular ban on Sunday shopping and by the government's prohibition of Reform movement meetings in the Royal parks; and (5) the police handling or mishandling of the disturbances in Ireland, of particular interest because of the continuity of this problem to this day.

The quality of the presentation can best be savored by presenting in some detail what I believe to be the book's most important contribution, the police role and function in the development of the people's right of political assembly. Legally, the question posed was "the people's right to assemble in the royal parks" (p. 145), specifically Hyde Park, where many of the London assemblies were called. The issue of public order, as it impinged on the police, was nicely stated by the author: "The police and the Home Office, backed by ambiguous laws, had the uneasy task of trying to preserve order without provoking disorder and without making themselves the issue. . ." (p. 161). As we will see they failed in both and thus they themselves became "the issue" (p. 146).

The government and Mayne, the police commissioner, had taken the position that as the parks were royal and not public property, they were for recreational purposes and not for political meetings. Hence, such meetings could be banned. Generally, Mayne maintained this position throughout although the government wavered from administration to administration, and often from manifestation to manifestation, depending on the political position it

wished to sustain. Mayne, as a loyal subordinate, followed orders, with the result that the police and he as commissioner were often blamed for what was essentially governmental incompetence or indecision.

In an effort to settle the legal question of the right of the public to assemble in the royal parks, the government asked the Law Officers of the Crown for their opinion. In 1856, they declared that the public had no right to enter the parks. Meetings could be banned, however, only if a breach of the peace could be expected to interfere with the recreational function of the park. The meeting could then be banned by the commissioner of police, by order of the Secretary of State, by placing notices of the banning on the park gates and in other prominent places (p. 151). In July 1866, the Law Officers further opined that regardless of the fact that notices of a ban had been put up, there was no power in the government to disperse a peaceful meeting. Unless a riot occurred people could be removed only one at a time as trespassers (pp. 169-70). The power to ban was further restricted by an 1868 opinion stating that banning was authorized only where those present in the park conducted themselves so as to "inspire terror in her majesty's subjects and to tend to the disturbance of the peace[1] (p. 152).

It was only with the Parks Regulation Act of 1872 that a law provided a uniform regulation of park use throughout Britain. Regulations thereafter issued restricted speeches to within forty feet of the Hyde Park notice board. In 1896, all such restrictions were lifted (p. 178).

Smith skillfully describes the interplay of this issue with the ambiguity of the law, the uncertainties, and sometimes the deviousness of the government, and most important for the study, the part played by the police in the series of confrontations. The interrelationships between Mayne, the government and the reform movements consisting of the better-off working class of the day are shown in detail. Mayne (1829-1868), at the time of these events in his dotage as commissioner, continued to maintain his original conservative principles. On the whole, his retraint helped to preserve the police from becoming merely a government instrument.

During this period, the government having changed from one dominated by a landed gentry to one dominated by an industrial bourgeoisie, was intent on containing a similar coup by the working

[1] Smith is not interested in comparative studies and therefore does not follow up the obvious comparison between the development of free speech in England and the United States. Parallels do seem apparent. *See* Kairys, *Freedom of Speech*, in THE POLITICS OF LAW, A PROGRESSIVE CRITIQUE (D. Kairys ed. 1982).

classes. Eighteenth century working class riots had been replaced by nineteenth century public meetings that often attained over 100,000 people in attendance. Although the reform leaders did an outstanding job in maintaining discipline among their followers, the government and Mayne almost invariably overreacted by banning legal and peaceful meetings, in the process often provoking the violence they supposedly sought to avoid.

Smith also has fine chapters on the organization and the structure of the police, doing an excellent job in showing the continuing effect of the commissioners' policies on police function. Historians have been at a loss to explain the sudden success of the 1829 police bill organizing the London police. Smith's conclusion that it "was a logical evolution of the kind of thinking that had been going on for half a century . . . a triumph of conservative reform" together with his observation of the importance on Peel of his Irish experience is about as close to the mark as it is possible to get for the easy passage of the 1829 police bill after years of opposition.[2]

In criticism, it can be said that although Smith's account of the period is vivid and detailed it lacks deep analytical insight. Smith is quite conscious of the class system that was an accepted fact of the day. But his use of the terms governing and working classes is too facile, without describing the class conflict in terms of the changing dynamics behind the actions he details. For example, in his description of the development of the right of public assembly, he notes the various opinions of the Law Officers of the Crown but does not indicate by whom they were appointed, from what societal class, and does not seek to explain why their opinions seems constantly in conflict with government policy.

Although Smith sees that the police have become "the issue" as the result of the confrontations between the working classes and the government, he fails to make the point that this becomes one of the historical functions of the police—"all eyes have turned on the police so that the problem becomes the police and the police become the problem."[3]

Smith also fails to cite a work covering virtually the same period, a work of particular interest because it deals in great detail with the provincial forces while Smith treats London.[4] Smith's attribu-

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[2] For a superior and more detailed treatment of this same issue which comes to the same conclusion, see R. REINER, THE POLITICS OF THE POLICE (1985).

[3] Robinson, *The Mayor and the Police—The Political Role of the Police in Society*, in POLICE FORCES IN HISTORY 311 (G. Mosse ed. 1975).

[4] C. STEEDMAN, POLICING THE VICTORIAN COMMUNITY: THE FORMATION OF ENGLISH PROVINCIAL POLICE FORCES 1856-80 (1984).

tion of the police function as arising out a "demand for order created by the needs of an urbanizing society" appears to be strikingly like the way middle-class, mid-nineteenth century writers explained the rise in "lawlessness."[5] A more satisfying explanation is given by Gareth Stedman Jones:[6]

> The old methods of social control based on the model of the squire, the parson, face to face relations, deference, paternalism, found less and less reflection in the urban reality. Vast tracts of working-class housing were left to themselves, virtually bereft of contract with authority except in the form of the policeman or the bailiff.

Nevertheless, *Policing Victorian London* is a welcome and useful addition to police history and will take its rightful place as one of the better studies of this type. It is another piece in the mosaic which will eventually give us a clear picture of the police institution in relation to the social structure as a whole.

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DISCRETIONARY JUSTICE. By *Howard Abadinsky*. Springfield, Ill.: Charles C. Thomas Publishing Co., 1984. Pp. v, 185. $24.75.

Unlike several other writings called *Discretionary Justice*,[1] Abadinsky offers an introductory textbook intended for students. The book is organized into six chapters but of different lengths which will make it difficult to adopt for class use. Missing are focused discussions clarifying the issues raised. The absence of chapter summaries and a concluding chapter only compounds the problem.

The idea upon which this volume rests is important and supremely desirable for a survey textbook. Discretion involves choice—sometimes among multiple forms of action, but sometimes between acting or not acting at all. Abadinsky views all decision-making in the criminal justice system as problematic and he presents

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[5] *See* D. PHILLIPS, CRIME AND AUTHORITY IN VICTORIAN ENGLAND: THE BLACK COUNTRY 1835-1860, at 34 (1977). Phillips, although not emphasizing the political role of the police as does Smith, takes a more class-conscious approach to the police.

[6] G. JONES, OUTCAST LONDON, A STUDY IN THE RELATIONSHIP BETWEEN CLASSES IN VICTORIAN SOCIETY 14 (1976).

[1] K. DAVIS, DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY (1969); P. DOW, DISCRETIONARY JUSTICE: A CRITICAL INQUIRY (1981); Reiss, *Discretionary Justice*, in HANDBOOK OF CRIMINOLOGY 679-99 (D. Glaser ed. 1974).

discretion as largely arbitrary and uncontrolled. In the first chapter a broad definition of discretion is offered: "*A situation in which an employee of a criminal justice agency, within the scope of his/her duties, has the lawful authority to choose between two or more alternatives*" (p. 3). He argues that choice "results in disparate treatment—unequal justice—and has the potential for serious abuse" (pp. 3-4). The "employees" have "lawful authority" to choose but, with few limits and little direction, alternatives may be outside the boundaries of lawful authority. Discretionary decisionmaking is both a consequence of the structures through which we process people and of the way laws are promulgated. "Some laws are merely *symbolic*," some laws are "not meant to be enforced" and "[i]t was never intended by legislating authorities that all laws should be enforced with the same degree of rigidity" (p. 8). The implications this raises about law-abiding behavior are not noticed by the author. The chapter ends with a quotation from Breitel: " 'The question then is not how to eliminate or reduce discretion, but how to control it so as to avoid the unequal, the arbitrary, the discriminatory, and the oppressive' " (p. 11). That question, like many others raised in the volume, is not addressed later.

Over one-quarter of the book is devoted to the police (ch. 2). Beginning with an exiguous history placing discretionary decisionmaking by police officers and agencies in a political context, the chapter includes practical and applied topics along with theoretical issues. The subtopics are often no more than a collection of research notes: "Discretion and 'Styles' of Policing" (pp. 22-24), for example, introduces brief descriptions of work by Wilson (1976), Brown (1981), Goldstein (1977), Reuss-Ianni (1983), and ends with a lengthly quotation from Rubinstein (1973). The text is heavily dependent on synopses and quotations from previous research and thus must rely on solid introductions, strong transitions and inclusive summaries to make this practice tenable. Abadinsky simply does not do this. Although armed with a dynamic concept, he frequently presents a box of note cards with a minimum of explanation and allows quotations and issues to hang in mid-air.

"Laws, Lawyers, and Discretion" (ch. 3) comprises thirty-percent of the text. Brief examinations of relevant individuals are followed by topics such as bail, plea bargaining, trials and jury selection. Again, subheadings end in lengthly quotations without explanation or smooth transition to the next subject or issue. The argument is difficult to follow and the chapter's agenda is sometimes unclear. The final section, "Control of Discretion," is meant to tie

the issues raised to the organizing topic, but instead introduces new material altogether.

The final three chapters, being considerably shorter and more concise than the previous two, are the best in the text. The presentation of materials on sentencing and probation is thoughtful although the use of metaphor to explain discretion and sentencing practice—"Discretion can be compared to a balloon which is filled with water and closed; you can shift it around quite easily, but the total amount remains the same" (p. 115)—may be obfuscating to some readers. Sociological theory, introduced to ground a discussion of sentencing forms, is quickly dispatched. A truncated presentation of Rousseau's *Social Contract* is followed by:

> Another aspect of classical philosophy incorporated into our legal system is the concept of *free will*. This view insists that every person has the ability to choose between right and wrong—criminal behavior is a deliberate choice by a rational actor. Since every person is rational, endowed with free will, punishment is not to be varied to suit the person or the circumstances of the criminal. From these philosophical roots developed the *determinate sentence* (p. 111, emphasis in text).

Comte, Lombroso and the Positivists follow and fair even less well.

"Jails, Prisons, Parole and Pardons" (ch. 5), although interesting and instructive, is butchered by the printer. Sections are chopped up, enlightening lists of standard prison rules are separated by other illustrative materials, and the format makes reading the text a chore. The absence of reasonable editorial assistance is an enormous disservice.

"Juvenile Justice," the final segment, is argued to be a system "so distinctly different from that used to respond to adult criminal offenders that it requires a separate chapter" (p. 155). The juvenile court process, however, described in detail, is presented as quite similar to that used in the adult system, albeit with different labels: defendants, verdicts and sentences become respondents, findings and dispositions. Real differences between the systems—the ambivalence of defense counsel, the formal category of "status offender," and some unique dispositional alternatives—are touched upon, but not dealt with in depth.

This is the first survey textbook I have seen where an attempt has been made to explore the issue of discretionary decisionmaking at the various organizational levels of the justice system. Hopefully this will not be the last of its type since, rather than providing a clear and cogent statement, the book is confusing. Discretionary decisionmaking is an important issue in the administration of criminal justice and one well worth articulating. Abadinsky clearly could

have done just that. One of these days someone will provide a textbook which will do it right.

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INSIDE JUSTICE: A COMPARATIVE ANALYSIS OF PRACTICES AND PROCEDURES FOR THE DETERMINATION OF OFFENSES AGAINST DISCIPLINE IN PRISONS OF BRITAIN AND THE UNITED STATES. By *Bayard Marin*. London and Toronto: Farleigh Dickinson University Press/Associated University Presses, 1983. Pp. 410. $47.50.

Inside Justice provides a painstaking and thorough analysis of virtually every aspect of internal prison discipline in Britain and the United States, considered chiefly from a legal standpoint. Dr. Marin examines the nature of offenses and punishment practices, of disciplinary hearings and judicial review, and of remedies available to prisoners. Particularly useful is a section on "empirical considerations," where the author provides case studies of a number of actual disciplinary hearings which he was allowed to witness, chiefly in the United States (It will come as no surprise to connoisseurs of the English Home Office that they were unfailingly obstructive in providing any access to their institutions. The Scots were more forthcoming).

One of the most promising features of the book is its comparative focus. In recent years, there has been much talk of the convergence of patterns of criminal justice in Western Europe and the United States. It is Europeans, for example, who now seem deeply concerned about ethnic minorities, police-community relations, drug epidemics and issues of police use of lethal force. The prison systems of Britain and the United States, however, continue to mark a sharp area of contrast. British prisons operate under a highly centralized national administration, without the American distinction between prison and jail. For the inmates, concepts of rights and privileges have traditionally differed almost totally. In the United States, a wave of litigation declared unconstitutional the correctional systems of whole states in the aftermath of the 1971 Eighth Circuit decision in *Holt v. Sarver*.[1] Today, several states remain under court order to bring prison conditions up to certain minimum

[1] 442 F.2d 308 (8th Cir. 1971).

standards, and the legal rights of individual prisoners have expanded enormously.

From a British perspective, this is almost incredible. Until recently, prisoners had effectively no rights except the right to live and breathe. Everything else was a privilege, which could be withdrawn by administrators. Appeal lay only to Boards of Visitors, traditionally seen as a rubber-stamp for the governor's authority. This began to change in the early 1970's under the influence of a number of factors. Prisoner militancy was manifested by the creation of inmate unions (like PROP) and a number of major disturbances—notably the insurrection at Hull in 1976. The brutal suppression of this movement led to what were, for Britain, amazing innovations: prison officers were convicted of abusing their authority, and punishments inflicted by the "Visitors" were overturned by external courts.

By the end of the decade, racial militancy had developed within the prisons, and there were new grievances on which inmates could unite. The issue of overcrowding will be familiar to students of American prisons: less well known may be the massive use of psychotropic and sedative drugs to control unruly prisoners. At the same time, prisons came increasingly under the view of the courts, above all the European Court of Human Rights, which has gone far towards beginning in England the same kind of changes which the federal courts undertook in the United States in the 1960's.

Comparison would seem to be a fruitful means of analyzing the topic which Dr. Marin has chosen and there are indeed fascinating comparisons between the work of the federal courts in the United States with the more recent impact of the European jurisdiction in the United Kingdom. Having said this, however, it should be noted that *Inside Justice* has some serious problems—by no means all the fault of the author. Dr. Marin has been tragically unlucky in the length of time which it took his manuscript to reach publication, and the book is therefore very dated. Although it has a copyright date of 1983, the bulk of the research appears to have been done much earlier. Accounts of disciplinary hearings, for example, are chiefly taken from 1973 to 1974, and there appears to be no British material after mid-1977. A great deal of relevant recent scholarship is therefore lacking. Also, the extremely important events of the next few years are thus omitted—the work of the May committee; the formation of militant pressure groups by prison officers; some vital decisions by the European court; and the crucial riots at Gartree in 1978 and at several of the top security prisons in 1983.

In the United States, the early cut-off date means that the book

makes no reference to very important cases and decisions between 1978 and 1982; so at the very least, we hear nothing of the crisis in the Texas prison system following the decision in *Ruiz v. Estelle*.[2] Some parts of this material obviously bear more directly on the author's thesis that do others; but it is hard to avoid the conclusion that the book was in a sense obsolete before it appeared. Certainly, such omissions detract seriously from the work's value as a text for reference. Was no revision possible?

Putting aside the issue of timeliness, how far does *Inside Justice* succeed in its central aim of attempting to provide a framework for the regulation of inmate behavior that is at once humane, effective and constitutional? Dr. Marin is undoubtedly at his best in his sound and thorough discussion of the case law of the 1960's and 1970's, and here he is able to make some shrewd comparisons between British and American assumptions. The central difference appears to be the "hands-off" attitude of the British courts, compared to the interventionism of their American counterparts. And of course, this is not an issue confined to the prisons—John Griffith's *Politics of the Judiciary*[3] could usefully be cited here.

It also takes the reader far too long to arrive at the core of the book. In attempting to avoid a presentation that was exclusively legal in emphasis, the author has included a detailed discussion of the social environment of the prison. Unfortunately, this is done at much too great length, so that very familiar territory is recapitulated. A similar criticism can be made of the author's use of documents and data, which tend to be reproduced *in toto* without selectivity. A thorough editing job might easily have pruned a hundred pages from the text without real loss.

In summary, *Inside Justice* has a great deal of valuable material on the legal aspects of prisoners' rights and disciplinary hearings; but the work might have been more useful if the author had sought to be a little less comprehensive.

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2 503 F. Supp. 1265 (S.D. Tex. 1980).

3 J. GRIFFITH, POLITICS OF THE JUDICIARY (1977).

CRIME CONTROL: THE USE AND MISUSE OF POLICE RESOURCES. By *David John Farmer*. New York: Plenum Press, 1984. Pp. xix, 233. $25.00.

David John Farmer's book is "a call to arms," summoning police administrators, elected politicians, and other policy makers to help police agencies control crime more effectively by making better use of their resources. Maintaining that police organizations are not operating up to their potential, Farmer paints the rather familiar picture of the contemporary department as isolated, traditional, directionless, and unaccountable. Police administrators fail to use research, avoid innovation, are obsessed with process instead of outcome, are too secretive in policy making, fail to draw on nonpolice organizations in fighting crime, and have poorly developed planning and evaluation functions.

Farmer envisions a new form of police department that is "purpose oriented, outgoing to the environment, and creative" (p. xiii). In brief, the new department must be held accountable to the accomplishment of outcomes associated with its central mission, which for Farmer is the enhancement of order. Elected politicians perform several important functions for the new agency. They specify particular community and neighborhood order-enhancement goals, and they hold administrators accountable for achieving those goals. They encourage cooperation between the police and other public and private agencies in the achievement of these goals. They see that the police leadership makes resource allocations in an open fashion, encourage innovation and open-mindedness in administrators, and support the organization's creative processes by providing sufficient resources to enable continuous planning and evaluation.

Police chiefs are to respond to the elected officials' leadership with a new style of administration. They must endeavor to bend the organization to accomplishing its central mission. Essential to this is an effective system of planning and evaluation that keeps a constant eye on the department's progress toward its objectives. Chiefs must open up the organization by publicly explicating the reasons for their policy decisions. Finally, police administrators must become information gatherers, keeping up-to-date on research and innovations and encouraging their subordinates to do the same.

Farmer's vision is an elaboration of many themes sounded by Herman Goldstein in 1977 and others since then.[1] It is an appealing one for these times when innovation, R and D, and accountabil-

[1] H. GOLDSTEIN, POLICING A FREE SOCIETY (1977).

ity to the "bottom line" receive so much homage. The work is unique in its attempt to focus these themes on police resource allocation issues and apply microeconomics to the resolution of some difficult problems. The author does not make a compelling case, however, for the book's basic argument—that a significant contribution to crime control is within the grasp of police if they follow these prescriptions. This is due largely to conceptual and operational ambiguities which make it difficult to see precisely what he hopes to achieve and insufficient evidence supporting his prescriptions to achieve it. Four specific criticisms are offered below regarding: (1) the nature of the ultimate police purpose; (2) the demonstrated capacity of police to accomplish that purpose; (3) the ways in which politicians can make a positive contribution; and (4) the potential of microeconomics to guide resource allocation decisionmaking.

Crime Control is ambiguous about the ultimate objective of the police; is it crime reduction or order maintenance? From the title and introductory remarks, one presumes that crime control is the supreme arbiter of performance, yet in his chapter, "Purpose and Policing," Farmer concludes that police agencies should be viewed as "single-product enterprises, producing 'order maintenance service' in reference to socio-economic activity at specific geographic locations" (p. 128). He never makes clear the relationship between order maintenance and crime control. Are they synonymous, is crime control a function of order maintenance, or is order maintenance a standard for interpreting crime control? Further, order is not given a clear conceptual definition: "Thus, police agencies . . . provide order maintenance service concerned to create and/or maintain the quality of relationships among people and between people and goals" (p. 130). In addition, there is no demarcation of the boundaries between disorder that police can reduce effectively and disorder for which their efforts are irrelevant. Without an operational definition, those interested in validating different resource allocation strategies are left to ponder precisely what the author believes police produce. The book's argument is rendered directionless and appears devoid of sensitivity to the value-laden baggage the concept "order" carries. Precisely whose order are the police to produce? Had the author explored the meaning and measure of the term in greater depth, he might have been more impressed with its protean nature and less sanguine about its capacity to capture all of what it is that police produce.

Aside from the book's difficulties in characterizing the police "product," it fails to provide a convincing argument that police have a demonstrated capacity to produce it. The book's brief review of

the state of police science confirms that we know more about what does not work than what does. Nowhere is the reader provided with compelling evidence of the police capacity to reduce crime or disorder. Even a more thorough review of the literature would reveal that police science is rudimentary at best, incapable of lending to the practitioner more that the smallest assurance that either traditional or innovative methods will produce reliable results. Clearly we need more innovation, evaluation and basic research, but if researchers cannot yet generate clear and convincing evidence of the police capacity to reduce crime or enhance order, it is putting the cart before the horse to hold administrators to this standard. The author appears to acknowledge this implicitly in his own attempt to offer a workable system for making resource allocation decisions (ch. 7). His "planning-budgeting-resources allocation model" avoids any outcome-based standards for assessing policies, instead using marginal cost comparisons. At this stage of scientific and technological development, using crime control or order enhancement as a criterion of police accountability is like holding the weatherman responsible for the weather.

One of the book's strongest themes is that elected officials should become more involved in policing. Though not new, it is a proposition worth elaborating. Farmer notes that replacing the good government model of political nonintervention with one more open to intrusion requires a distinction between acceptable and unacceptable political intervention, but he fails to provide workable means to differentiate the two. Political participation in goal setting and evaluation is desirable, but "influencing operational practices to provide undue benefits to special interests" is not (p. 95). This distinction conforms to the Wilsonian prescription of delegating to politics the specification of ends while leaving to administration the selection of means. But ends and means are often not easily distinguished in practice, and Farmer's suggestion that elected officials set specific order maintenance goals on a street-by-street basis will not make this task any easier. Many, this reviewer included, would argue that oversight of police operations is the legitimate province of the elected official—whether crisis management or routine operations—and this may well require getting involved in the nitty-gritty of policing. The real difficulty is deciding when a politician has stepped from legitimacy into corruption. Farmer equates "bad" politics with special interests and "good" politics with the public interest (p. 117), but he never provides a working definition of either. Is it bad politics when a councilman votes the interest of his district? Is this corruption?

One gets the sense that Farmer sees the elected politician as a combination of cheerleader (for community involvement) and taskmaster (for police accountability), but surely it is just an important for the politician to act as the nurturing parent to the police administrator. Given Farmer's desire to have administrators open up their departments to public scrutiny and experiment with new methods, it is absolutely essential that competent chiefs be allowed to fail without being punished, for the risks are great that many innovations will not pan out. At this uncertain stage in the art and science of police administration, it seems particularly inappropriate to hold the chief's feet to the fire of the "profit-making burden"—the enhancement of order (p. 137). If, as Farmer suggests, politicians insist that administrators demonstrate such profits, communities will experience either (a) a very high turnover in chiefs, or (b) shenanigans with police statistics of the sort described by Seidman and Couzens.[2] Politicians must have the courage to take—or at least share—the political heat for policy innovation and the wisdom to guide the police leadership through the political shoals that threaten any effort to change longstanding practice.

Another of the book's recurring themes is the potential of microeconomic analysis for understanding and manipulating the conditions (political, economic, demographic) that determine resource allocation patterns and for assessing the efficiency of those strategies for achieving crime control (chs. 4, 6). A concise review of the economics literature and a cogent explanation of its implications for police resource allocations would be a significant contribution. Sadly, these sections are superficial, rambling and lack tightness. A section on controlling political intrusion with microeconomics is a grab bag of loosely connected propositions about how to identify the conditions that lead to allocation patterns maximizing public as opposed to bureaucratic self interest. A later section introduces the reader to the literature of nonmarket decisionmaking, the purpose being to illustrate the useful context it provides for police resource allocation decisions. The section offers little more than a running commentary of a sentence or two for each of at least fifty citations. Although economic analysis might well help identify efficient allocation patterns, it is unlikely that scholars and practitioners will find this presentation informative or convincing.

In addition to its disconnectedness, the economics presentation

[2] Seidman & Couzens, *Getting the Crime Rate Down: Political Pressure and Crime Reporting*, 8 LAW & SOC'Y REV. 457 (1973).

fails to explore questions of equity—a remarkable omission—,because the *distribution* of resources is the book's focus. Here Farmer might have profited from Lester Thurow's admonition that the definition of a standard of equity must precede the definition and analysis of efficiency in law enforcement.[3] One senses that the author's strong quest for the silver chalice of the "public interest" has dulled his sensitivity to issues of fairness in distribution. Police resources are to be allocated to optimize the level of order among geographic areas, the optimum level for each area being determined by its socioeconomic character. The closest Farmer comes to addressing the issue of distributive justice is an illustration in which he maintains that yuppie shopping areas are entitled to more order than lower and working class commercial areas by virtue of the differences in economic activity inherent to each. Despite the author's denial that he is advocating differential treatment of people, it is difficult to see how his argument could be otherwise construed.

The author ignores the possibility that, while current resource allocation practices might be made more efficient according to some "public interest" standard, they may by the same stroke also be made more inequitable. Decisions on how to allocate public resources should be based on an explicit resolution of the inherent tension between equity and efficiency. That local politicians and bureaucrats worry more about who gets what—while paying only lip service to the "public interest"—is not an interest group political disease, but an American tradition with a long, generally meritorious history. Farmer's failure to incorporate political reality into his framework places the discussion in the class of arguments that assume away the most difficult problems, yielding an infeasible solution.

In sum, the book's strengths are that it extends the discussion of police resource allocation beyond the realm of the merely technical and administrative to the political, and it attempts to show how science and politics can work hand-in-hand to improve police performance. The arguments, however, are not well executed. *Crime Control* adds little to existing knowledge of the use of police resources, and its proposals are insufficiently developed to offer ad-

[3] Thurow, *Equity Versus Efficiency in Law Enforcement*, 18 PUB. POLICY 451 (1970).

ministrators and elected officials the sort of guidance needed to affect significant changes in the police organization.

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ADOLESCENT SUBCULTURES AND DELINQUENCY. By *Herman Schwendinger* and *Julia Schwendinger*. New York: Praeger Publishers, 1985. Pp. 329. $16.95 (paper).

The Rubicon has been crossed! After a quarter of a century of accumulating and deciphering data concerning adolescent subcultures, the Schwendingers have written a bold, provocative treatise concerning the determinants of delinquency. The crisis in criminology concerning the attempts of reconciling the self-report findings with existing theories (that overpredict lower class and underpredict middle and upper class delinquency) will surely become more intense with the conclusions and implications of this study. Approaches emphasizing social control, opportunity structure, differential association, social disorganization as well as labeling theory are all critiqued from the radical/conflict paradigm. Rather than just another variant of previous theories, this study adds a totally new dimension in the debate concerning the causes of delinquency. And not only because it represents the first major, comprehensive theory of delinquency from the radical/conflict paradigm. Rather, because of its sophisticated synthesis of data and theory, its invitation to analyzing the "causes" of delinquency at different, relatively autonomous levels, its confrontation with the unexpected large findings of middle class delinquency uncovered by self reports, its formulation of an "instrumental theory" of delinquency, and because of its potential for reaching wide audiences—from the neophyte to the sophisticated criminologist. Precisely because of this we will see much increased debate, especially at different levels concerning the crisis. And we are offered the possibility of an epistemological break from the conventional quagmire that is upon us.

The bulk of the data employed by the Schwendingers was accumulated during the early to mid 1960's. Four years of participant observation was combined with structured interviews. The unit of analysis was adolescent subcultures. These mediate between macro-level social processes and patterns of delinquency (p. xiii).

A key element in their analysis concerns linguistically coordi-

nated action. It is precisely the question of how shared understanding is established and how collective relations are coordinated that is the key in unraveling the determinants of adolescent and delinquent subcultures. It must begin, argue the Schwendingers, with an examination of political economic determinants. Since their theory encompasses "multiple levels of reality," their methodological approach consists of "progressively concretiz[ing]" from the macro to micro-sociological structures (p. xiv). In other words, their analysis begins with changing modes of production and consequent effects on socioeconomic relations. Evidence is given from a cross-cultural perspective. For example, those societies that develop "articulated relations" that integrate youth into community and economic affairs, even though "social disorganization" exists, have less delinquency than those societies in which little articulation is prevalent and where youth are prevented from participation in the economic sphere.

It is not, the Schwendingers argue, the arrival of capitalism and its wake—social disorganization—which directly cause delinquency. Rather the temporal sequencing goes from capital "recomposing" class relationships to the creation of "marginals" within the working and middle class (p. 29). The social and economic structures found within these marginal populations (they refer to them as "stradom formations") are products of macro-level forces. But, labor market relations themselves, they argue, do not directly determine this marginalization process. For a misreading of this point see James Short's review, particularly his contention that the Schwendingers present a "conspiratorial, oversimplified view of capitalist development."[1] Socialites and streetcorner youths, they argue, "are not just simple reflexes of macro-relationships" (p. 59). In establishing the intervening causal links, they continue: one must be sensitive to a "multilevel causal analysis," which considers adolescent subcultures as mediating links. In addition, one must examine distinctive linguistic systems of moral rhetorics (p. 60) and developed "schemes of status degradation" which manifest in the youth's eyes, as hierarchical imageries ranking people as inferior or superior to others (p. 78). Specific variations in adolescent subcultures, then, can be attributed to various other factors that may militate against the development of a specific type (p. 83), i.e., specific community conditions such as racial segregation, recreational and employment opportunities and so forth. Thus, rather than making use of traditional socio-

[1] Short, Jr. *Review Essay: Adolescent Subcultures and Delinquency (Research Edition) by Herman Schwendinger and Julia Schwendinger*, 23 CRIMINOLOGY 181 (1985).

logical concepts such as social strata or class, the Schwendingers use the concept of "stradom formations" which "are informal groups with certain socioeconomic status; however, they differ by having distinctive social type compositions" (p. 87). With this concept, they indicate that these formations are somewhat autonomous of socioeconomic status. It seems, then, that by simply using "class" in correlation work many theorists miss an important social formation and its contribution to delinquency.

The Schwendingers next shift to an analysis of moral rhetoric. Here a critical connection is made between a specific form of moral rhetoric and its prevalence in specific stradom formations. Much mainstream criminology is insensitive to this notion of linguistically coordinated action. And, even more difficult analysis entails specifying the connecting link between linguistic styles and particular social conditions. The Schwendingers have ambitiously sought to explain the wherewithal of this connection. In the capitalist mode of production, for example, the conventional utterance is the "egoistic rhetoric" which, according to the Schwendingers, is best expressed in Bentham's and Hobbes' writings. Elements of the ideology of the bourgeoisie are expressed in terms of the market mentality, utilitarianism, individualism, and hedonism (p. 134). It is precisely the deliquent who is overly committed to this rhetoric and its concomitant standards of "fairness" (i.e., bourgeois notions of equality) who must make use of rationalizations to hide or suppress his feelings of guilt (p. 135). On the other hand, a specific variant of the egoistic rhetoric, one that provides justifications and accounts for committing socially harmful acts, is the "instrumental rhetoric" which is differentiated because of its lack of any egoistic standards of fairness (p. 136). Here the linguistic style conveys an image of a struggle for power "with the weak and the powerless as legitimate victims" (p. 137). Thus, for those who have incorporated this style, "techniques of rationalizations" specified by authors such as Sykes and Matza and Cressey are unnecessary (pp. 138-41). In fact, these "survival rationalizations," according to the Schwendingers, are derived from the egoistic rhetoric. This is an important insight and a unique contribution to the literature. For example, the implication here is that delinquency can be differentiated according to a commitment to a specific linguistic style. Clearly, then, on an application level, delinquency prevention programs which overlook this subtlety will have problems with adequately addressing the juvenile's existential plight.

Further research in this area will surely appear. It might be added that the Schwendingers analysis of linguistic styles can be fruit-

fully compared with Habermas' recent statement concerning linguistically established shared systems of understandings,[2] as well as with two other theses. The Sapir-Whorf linguistic relativity principle which states that language itself structures thought processes would go against the Schwendingers' idea that the rhetorics by themselves do "not necessarily encourage delinquency" (p. 142). Future studies might attempt to quantify the effects of these respective rhetorics. It might be shown, for example, that once a specific linguistic style has been developed and internalized by members of a specific stradom formation, the Sapir-Whorf thesis becomes efficacious; that is, becomes a decisive factor. Put in another way, perhaps at this point, in explaining delinquency, a decisive amount of explained variance may be attributable to the rhetorics themselves.

Another recent thesis developed by Rossi-Landi[3] concerning linguistic fetishism would seem to explain the egoistic rhetoric but be silent on the instrumental rhetorics' beginnings. It is to the Schwendingers' credit that the initial determinants of the respective rhetorics are traced to macro level factors. Here, Rossi-Landi's thesis might be applied; that is, once a particular discourse is established it becomes a domain from which linguistic forms are drawn.[4] Use-values of linguistic forms (in Marxist terms, corresponding to the concrete need to express thought processes), then, take exchange-value (i.e., become "significant symbols") during use. A leveling effect could then account for the persistence of a unique rhetoric. It would also seem that the Schwendingers' stipulation that a plurality of rhetorics of moral utterances exist would throw further light on these respective theses and add to comprehensive statement. At any rate, these respective theses on the contribution of specific linguistic styles and their effects in coordinating action have been given the long deserved recognition by the Schwendingers.

In explaining forms of delinquency the Schwendingers present the "rationality thesis," arguing that most delinquents are not unstable or emotionally disturbed. In fact, the Schwendingers point out, a bourgeois bias in mainstream delinquency theorizing exists when they posit the criteria, the operationalization, for "rationality" as pecuniary motivation, that is, economic gain (p. 157). Why has

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[2] J. HABERMAS, THE THEORY OF COMMUNICATIVE ACTION: REASON AND THE RATIONALIZATION OF SOCIETY (1984).

[3] F. ROSSI-LANDI, LINGUISTICS AND ECONOMICS (1975).

[4] Milovanovic, *Autonomy of the Legal Order, Ideology and the Structure of Legal Thought*, in HUMANISTIC PERSPECTIVES ON CRIME AND JUSTICE 97 (Schuarts & Friedrichs eds. 1984).

this criteria been selected? Oakeshott,[5] Pitkin,[6] and Winch,[7] as well as others have developed alternative operationalizations.

The development of specific delinquent modalities occur in three phases, according to the Schwendingers. The first phase, the "generalized modality," develops during the preteen years. Here the incipient forms of criminality arise in the form of truancy, vandalism, alcohol abuse and so forth—all an outcome of a stress on consumption values and the intensification of egotistical gain (p. 184). The second phase, the "ethnocentric modality," which occurs around the end of junior high school, is characterized by group rivalries and collective identities (p. 185). The third phase, the "illegal market modality," arising during middle adolescence, is characterized by thievery or personal services for "exchange" rather than for "use" (i.e., robbery, larceny, prostitution, etc.), that is, for economic gain. The "graduates" of this phase are often suppliers and entrepreneurs of goods and services. With each phase, the Schwendlingers argue, new vocabularies of motives are learned (p. 187). These linguistic styles "are dependent upon consumption standards, honorific codes, and human insensitivities that emerge among stradom formations" (p. 187).

The connection, however, between illegal market activity and economic deprivation is not direct according to the Schwendingers. Nor is the connection between economic deprivation and illegal markets simple. Neither Sutherland's differential association theory nor Cloward and Ohlin's opportunity structure theory suffices to explain economic delinquency" (p. 274). Rather, according to the Schwendingers, the existence of the market itself along with the need for "discretionary buying power" (p. 272) are decisive factors. Those delinquents who go onto adult criminal careers have already been conditioned by illegal commodity exchange relations, that is, the production and exchange of commodities for "exchange value" (p. 277). Nor is the labeling thesis a sufficient explanation. "The labels that delinquents themselves create are far more important . . . than official labels" (p. 279).

With the coming of adulthood the attraction to illegal markets becomes stronger in proportion to the reduced life chances in the legitimate structures, according to the Schwendingers (p. 288). On the other hand, if "supportive relationships" arise that buffer some of the adverse effects of capital's insatiable search for surplus value

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[5] M. OAKESHOTT, RATIONALISM IN POLITICS AND OTHER ESSAYS 80-110, 197-247 (1962).

[6] H. PITKIN, WITTGENSTEIN AND JUSTICE 149-57, 204-08 (1972).

[7] Winch, *Understanding a Primitive Society*, 1(4) AM. PHIL. Q. 307 (1964).

then delinquency will be proportionally less. It is "where capitalism extensively recomposes class relationships and does not provide alternative resources for economically marginal families, [that] illegal adolescent markets are likely to flourish" (p. 284). Many of these macro-level forces, however, are invisible to individuals argue the Schwendingers. Delinquency, then, represents "spontaneous choices freely exercised by individuals" (p. 284). Thus, contrary to opportunity structure theories, illegal markets arise spontaneously among adolescents due to the developed instrumental rhetoric, the commodification process (i.e., the movement from use to exchange value), and market relations. Thus, adult role models are unnecessary to explain stealing in the first place (p. 287).

The Schwendingers have provided an insightful, provocative alternative to mainstream theories of delinquency. Both middle class and lower class delinquency can be better understood in terms of the dynamics pointed out. Many researchable hypotheses suggest themselves. Many criminologists who have been in the academic debates concerning the relative worth of different theories of delinquency—whether the theory has emphasis on social control, opportunity structures, differential association, social disorganization, rationalizations, or labeling—will find this critical examination an extremely worthwhile addition. If a treatise's worth can be measured by the quantity and quality of new analysis that becomes part of academic discussion, this will surely rank high. Finally, a scientific revolution is possibly in the making. A paradigm shift is necessary to overcome the crisis in delinquency theorizing. This ambitious attempt must be seen in that light.

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