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BOOK REVIEWS

CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH. By *David Finkelhor*. New York: Free Press, 1984. Pp. xii, 260. $22.50

Over the past two decades awareness of child sexual abuse among academics and professionals has grown from several convergent trends: the "discovery" of child abuse in the 1960's, concern by feminists over sexual assault and rape, increasing reports to law enforcement and child protective service workers of sexually abused children, and the general "deprivatization" of the family. More recently, general public awareness of child sexual abuse has followed well-publicized cases of child molestation in day-care centers, nationwide concern over pornography and its subsequent links to teenage prostitution, and runaway youth, delinquency, and family violence among adults.

Child Sexual Abuse, by David Finkelhor (with several co-authored chapters), promises at the outset to summarize and consolidate the empirical knowledge developed within the relatively short history of this field. The timing of the book's publication presents it with a unique opportunity to serve as a guide for intervention theory and practice, as well as empirical research. Its goals are to advance theory and research by raising new issues and recasting current knowledge in new theoretical frameworks. Unfortunately, despite an ambitious topical agenda, the book falls somewhat short of these goals. Nevertheless, *Child Sexual Abuse* provides a thorough overview of a relatively new body of theory and knowledge.

The first five chapters culminate in the construction of a theory of child sexual abuse. Building a problem definition from both social and ethical perspectives, the early chapters cite broad societal contingencies and cultural norms on sexual behavior and families. Presumably, the social forces which gave new recognition to child sexual abuse also shaped its epidemiology and contributed to its occurence. The significant contributions of feminists in framing the issue in the context of sexual exploitation and aggression, and rapid shifts in family structure (through divorce and remarriage or single

parenthood), all locate child sexual abuse within broader social trends in families and sexual mores.

Finkelhor overlooks, however, other important trends of the past two decades: increasing attention to victims in theory, research, and policy and the general deprivatization of the family. Until the mid-1960's, when public policy began to look behind the closed doors of family life, the home was considered to be a peaceful domain.[1] The revelation of a battered child syndrome, and research detailing the incidence and severity of violence toward children, changed these views.[2] With the new revelations of family problems came increased legal and social interventions in family life, including incest. In the mid-1970's, the emergence of rape crisis programs, together with the growing child protection activities and new interest in victim services, focused attention on non-stranger child sexual victimization. Once the stereotype of the child molester was discarded, new knowledge of child sexual abuse rapidly came to public attention which illustrated the physical and emotional risks to children from sexual contact by adults.

Finkelhor emphasizes the moral component of child sexual abuse. He contends that moral issues form normative attitudes and beliefs on child sexual abuse. Moving quickly over cross-cultural considerations, Finkelhor builds a moral argument based on consent—children are incapable of consenting to sex with adults and lack the ability to consent based on their lack of information and power. Few would argue with the need to protect children from adult sexual demands, especially since children usually cannot protect their own interests. The emotional, physical and social risks of child sexual abuse mandate special measures to protect children. The lively debate in the field over the conditions and appropriate types of intervention is briefly mentioned. The argument that criminal intervention is appropriate in many cases, and state intervention in some form in all cases, is widely accepted.

Finkelhor's efforts to reinforce the moral argument raise several difficult questions. He equates ethical positions on slavery with sex between adults and children. Later, he claims that sexual ethics are rapidly changing, resulting in "moral confusion" (p. 22) which may be partially responsible for child sexual abuse by neutralizing external restraints and sending ambiguous moral signals. The solution proffered is "ethical clarity."

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[1] Wardell, Gillespie & Leffler, *Science Against Wives*, in THE DARK SIDE OF FAMILIES (1983).

[2] D. GIL, VIOLENCE AGAINST CHILDREN (1970).

Ecological fallacy notwithstanding, Finkelhor's argument raises a giant empirical question. Child sexual abuse was recently "discovered," but its occurence has been noted regularly in historical works.[3] The association with changes in sexual norms may be confounded by increased reports as well as increased incidence. It will take several years of careful study to sort out the reasons for increased reports of child sexual abuse, particularly whether the reports reflect actual increases or simply growing public awareness and inclination toward disclosure.

Finkelhor's theory draws upon data from victims and perpetrators, as well as broader social and moral contingencies. Using 1979 data from a sample of college students, the correlates of victimization are reduced to eight predictors which explain 32% of the variance. These are largely epidemiological locators, such as social status and family composition. Some measures of family sexual dynamics are also included. Sampling issues threaten the validity: if lower income and educational attainment are correlated with child sexual abuse, the sample likely underrepresents these groups. Nevertheless, the results are an important step toward the theory which emerges. Finkelhor again raises moral concerns and social displacements as risk factors—divorce exposes children to dates and stepfathers, while social isolation removes potential deterrents to sexual abuse. The author seems to have made up his mind about the risks to children of a changing moral milieu, but overlooks alternative explanations. For example, divorce has severe economic consequences for women which may diminish their resources as caretakers. These alternative explanations need to be explored.

The book's discussion of perpetrators moves more quickly toward theory, identifying four factors which describe motivation toward sexual behavior. Social learning theory undergirds these processes, with much discussion of the gratifying aspects of sexual arousal. But social learning explanations have been elaborated upon and tested in the domains of both family and sexual violence.[4] Pornography is raised as a reinforcer, but no better evidence is offered here than in the recent *sturm und drang* from presidential commissions. The resulting explanations of child sexual abuse incorporate both incest and pedophilia, resulting in a "unified" theory. The framework integrates theories of behavior with theories of victim selection. But in so doing, it leaves unanswered several ques-

[3] Gordon, *Child Abuse, Gender, and the Myth of Family Independence: Thoughts on the History of Family Violence and Its Social Control, 1880-1920*, 12 N.Y.U. REV. L. & SOC. CHANGE 523 (1983).

[4] M. PAGELOW, FAMILY VIOLENCE (1984).

tions: Why does childhood sexual victimization lead to pedophilia for some, but physical child abuse or assaults on adults for others in later years? Why do some perpetrators select their own children while others victimize strangers? Why do behaviors range from savage attacks to fetishism or voyeurism? Do some perpetrators assault more than one type of victim, engage in other forms of violence, or a range of sexual behaviors? Are these patterns immutable over time? Moreover, the factors do not address the violent component of some victimization. Though one does not expect the model to address all such questions, these questions clearly should be placed in a future research agenda.

The resulting model is based on four preconditions. It has both the strengths and weaknesses of many theoretical integrations, including situational, individual and cultural factors. Finkelhor states that the model encompasses several types of abuse. As such, Finkelhor runs the risk of explaining everything and nothing at the same time. While attempting to integrate sociological and psychological theory, the "four preconditions" model at times simply grafts together constructs from different disciplines. An example proceeds from arousal (through frustrated sexual needs) to disinhibition (from alcohol) to counterdeterrence (from lack of maternal supervision) to opportunity (from a child's lack of resistance). For example, cognitive processes are needed to decribe how pornography overcomes other social controls to "permit" the abuse of children. The linear sequence of this model carries forward the limitations of each successive stage, and overlooks possible interactive or reciprocal effects. Also, it is unclear whether the preconditions are additive, or what threshold must be achieved for abuse to occur. The major limitation of this model is the substitution of correlates for causes. The links which translate cultural norms into behavior need to be specified to begin the process of theory testing and refinement.

Nevertheless, *Child Sexual Abuse* advances existing theory. Further advances will occur when Finkelhor's model integrates prior empirical and theoretical knowledge on aggression, sexual deviance, and addictions. The persistent, compulsive nature of some forms of child molestation raise parallels with other repetitive deviant behaviors. If child sexual abuse spans the theoretical domains of both violent and sexual offenses, integration of theory should borrow from both disciplines.

The balance of *Child Sexual Abuse* reviews findings from several research efforts. These chapters highlight important issues ranging from public awareness and perceptions to reporting of disclosed in-

cidents. The analysis of professionals' responses to reported abuse illustrates the diversity and fragmentation of official responses, as well as the competing philosophies of intervention. Not enough attention is given to preventive effort. The chapter on longer term consequences of child sexual abuse is particularly well done. It leaves unanswered, however, the question of why inter-generational "transmission" is more common among male victims. The brief discussion of the long-term effect of homosexuality would have been better left untouched, in light of the voluminous literature in this area.

The final chapter of *Child Sexual Abuse* calls for future research, but is somewhat limited in identifying other theoretical orientations or disciplines for possible integrations. For example, little attention is given to deviance/social control perspectives or assorted theories on aggression. Also, Finkelhor calls for further theory development based on new developments within the field. Perhaps a second strategy is needed in a still relatively emerging area: the merging of empirical knowledge and theory from separate but related disciplines to move this area forward. For example, other authors have examined sex offenses from an interdisciplinary perspective to integrate explanations of violent sexual assaults with pedophilia and other sex crimes.[5] Similar attention is needed here.

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DELINQUENCY AND COMMUNITY: CREATING OPPORTUNITIES AND CONTROLS. By *Alden D. Miller* and *Lloyd E. Ohlin*. Beverly Hills: Sage Publications, 1985. Pp. 208. $—

In 1960, Richard A. Cloward and Lloyd E. Ohlin published *Delinquency and Opportunity: A Theory of Delinquent Gangs*. The book was dedicated to Robert K. Merton and Edwin H. Sutherland. The dedication is significant because it highlights the book's attempt to integrate two distinct theoretical traditions. Merton, following Durkheim, attempted to account for the societal pressures that led to deviance. Sutherland, following such people as Shaw and McKay, focused on how certain features of the social structure led to the selection and evolution of particular forms of deviant behavior.

[5] D. WEST, *Sex Offenses and Offending*, in 5 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH (1985).

In *Delinquency and Community*, Miller and Ohlin continue and extend the process of integration begun in the earlier work. Added to the concerns about social pressures toward deviance and the selection of particular behaviors by juveniles are the issues of community prevention, control and treatment. Were this book to carry a dedication, Merton and Sutherland could be joined by the names Enricco Ferri, Frederick Thrasher, Neil J. Smelser, James Thompson and David Fogel. This is integration on a grand scale, and the result is a book of both practical and theoretical significance.

The book's primary thesis is that the prevention, control and treatment of delinquency is largely the responsibility of local communities and the institutionalized services and agencies through which the community acts. Communities, however, vary in their abilities to respond to threats to public safety because of different levels of organization and institutional integration. Thrasher's concern with disorganized communities and Ferri's criticism of legislators who rely on punishment for social defense are thus echoed in *Delinquency and Community*. The authors empirically demonstrate that social control is exercised most effectively by a variety of community agencies and that increasing the correctional dollar at the expense of, for example, the educational dollar, results in an incomplete social control mechanism that will be unable to provide alternative behaviors for youth.

Clearly, it is incumbent upon social scientists to understand the processes of organizational change if effective strategies of community response are to be implemented and institutional integration achieved. It is in this area that Miller and Ohlin apply theories of social and organizational change from the perspectives of Smelser and Thompson to the problems of delinquency. The result is a series of models that allow the authors to consider the simultaneous interactions of behavior generating systems, control generating systems, policy generating systems, and systems of political mobilization. Thus, the book provides a major advance in understanding and anticipating the path of organizational change when juvenile reform efforts are undertaken.

The data for this book are drawn from a ten-year study of the process and effects of major reform efforts in the Massachusetts juvenile justice system. Although these data have been reported elsewhere, *Delinquency and Community* integrates these past findings with a more fully developed theoretical model of community change. A report on a new pilot study and a research agenda for the future round out the book's six chapters. The pilot study demonstrates that a community's system of adult social control over youth can be

assessed in an efficient cost effective manner. In these days of tight research budgets, this demonstration represents both a methodological and a fiscal breakthrough.

Karl Marx noted that the writings of intellectuals, to be accepted, must conform to the ruling ideas of the time. Miller and Ohlin's book shows that these sentiments need not be interpreted cynically. In the 1960's, *Delinquency and Opportunity* formed the theoretical base for much of what occured during Lyndon Johnson's War on Poverty. In the 1980's, large scale efforts on the part of the federal government to alleviate social problems are no longer popular. *Delinquency and Community* resonates with current ideological trends which emphasize the importance of the local community through the concept of a "new federalism." At the same time, the book carries on the tradition established earlier, pointing out that institutional arrangements create conditions conducive to delinquency and that such arrangements can be altered to create a safer and more just environment. *Delinquency and Opportunity* pointed the way for the federal government to achieve certain of these aims. *Delinquency and Community* shows how the local government can assume and share some of the burden. The message of both books is the same: the community is responsible for its youth and their problems. In keeping with the times, *Delinquency and Community* shows how to respond to the needs of youth within the framework of local government policy options.

Lloyd Ohlin wrote the foreword to David Fogel's . . . *We Are the Living Proof. . . The Justice Model for Corrections*. In that foreword, Ohlin noted that the author was not proposing a new model of rehabilitation for individual offenders, but instead was proposing a model for rehabilitating the correctional system itself. In practice, the justice model has put heavy emphasis on the need to advocate the use of community resources to rehabilitate offenders. The burden of rehabilitation is not one to be borne by the correctional system alone, which is most, or perhaps only, effective in delivering punishment. The need for community advocacy is similarly underscored in *Delinquency and Community*. Punishment, in the sense of confinement, is given its due, but as noted, sole reliance on corrections is shown to be a disservice to both youth and community.

Those interested in advocating for youth are presented with practical suggestions regarding how to approach the various interest groups which have a stake in the issues. Miller and Ohlin have succeeded in integrating diverse theoretical strands, methodological approaches and policy options. Perhaps more importantly, however, the authors have shown how academics, policy makers and re-

formers can join together to rehabilitate communities as well as the youth who belong to them. It is this last integration which provides a note of hope for the future course of reform, despite the current political rhetoric of punishment and incarceration.

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IDEAS ON INSTITUTIONS: ANALYZING THE LITERATURE ON LONG-TERM CARE AND CUSTODY. By *Kathleen Jones* and *A.J. Fowles*. Boston: Routledge & Kegan Paul, 1984. Pp. viii, 234. $13.95.

During the past twenty-five years the United States and much of Europe have witnessed major changes in long-term care and custodial institutions. The number of patients in mental institutions in the United States, for example, declined from over 600,000 in 1960 to some 170,000 in the 1980's. While this decline was taking place, the number of sentenced prisoners in federal and state penal institutions increased from 213,000 to over 400,000, with most of this increase beginning in 1974.

Given these large and dramatic shifts in the numbers of confined persons, Jones and Fowles can be commended for attempting to examine some of the important ideas and activities associated with long-term care and custody during this period. The usefulness of periodically looking back to discover what has occurred cannot be overstated. This is especially true when one attempts to understand what has taken place in different cultures and countries, much as the authors of *Ideas on Institutions* have done. There is, in fact, a need for more retrospective analysis of this type, especially as it relates to research undertaken to influence public policy.

Jones and Fowles, in their review of selected literature on "institutional living," argue that there are common features evident in the varied types of institutional care, and the authors set out to explore these common ideas. The book is divided into three main sections. The first examines the writings of Erving Goffman, Michel Foucault, and Thomas Szasz and the influence of their ideas in creating the "springs of protest" against institutional living that rose to dominance in the 1960's. All three writers are recognized as having played a major role in shattering forever the liberal myth that pris-

ons and mental hospitals were engaged in treatment strategies aimed at reform and rehabilitation. For those readers who have encountered the unsettling experience of reading Foucault, the authors provide a useful analysis of the intellectual growth of Foucault from the publication of his *Madness and Civilization* to his *Discipline and Punish*.[1]

In focusing their analysis on such divergent authors as Goffman, Foucault and Szasz, Jones and Fowles remind their readers of the importance of ideas in raising to observation, the devastating impact of long-term custodial care for the purposes of treatment and rehabilitation. Unfortunately, however, *Ideas on Institutions* does not provide a comparative analysis as to why the "springs of protest" arose at the time they did. There is, in this regard, a need to relate the ideas of the anti-institutional movement to the cultural and political changes that took place during the period under review. Such an analysis would better enable one to determine the ideas and themes that may dominate the cultural landscape in the years ahead.

The second part of the book focuses on the works of four British empiricists who document the evidence of institutional living, thereby confirming the critical perceptions of Goffman, Foucault and Szasz. Included for review is Terence and Pauline Morris' study of *Pentonville*,[2] a London prison, a work well known for its careful integration of theory and research. Also reviewed are Peter Townsend's *The Last Refuge*,[3] Russell Barton's *Institutional Neurosis*,[4] and a study of the elderly in government institutions, conducted by AEGIS (Aid for the Elderly in Government Institutions). Although labelled as the work of "empiricists," this is the weakest part of the book and provides little understanding of the dynamics of institutional care. The authors' decision to forego any comparative analysis with research conducted in other countries further weakens this section.

The final part of *Ideas on Institutions* attempts to establish the direction of the anti-institutional movement since the "springs of protest." Included for review are the works of David Rothman,

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[1] M. FOUCAULT, MADNESS AND CIVILIZATION (1965); M. FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (1977).

[2] T. MORRIS & P. MORRIS, PENTONVILLE: A SOCIOLOGICAL STUDY OF AN ENGLISH PRISON (1963).

[3] P. TOWNSEND, THE LAST REFUGE—A SURVEY OF RESIDENTIAL INSTITUTIONS AND HOMES FOR THE AGED IN ENGLAND AND WALES (1962).

[4] W.R. BARTON, INSTITUTIONAL NEUROSIS (1959).

Nicholas Kittrie's *The Right to Be Different*,[5] Stanley Cohen and Laurie Taylor's *Psychological Survival*,[6] Roy King and Kenneth Elliot's *Albany*,[7] an analysis of the failure of a therapeutic experiment in Britain; and a brief review of the much publicized work of Haney, Banks and Zimbardo regarding the effects of a simulated prison on the personalities of those who participated in the experiment.[8]

In their concluding chapter, Jones and Fowles argue that there is a basic theme to the disparate works they review. For them, the theme of institutionalization includes five aspects: loss of liberty, social stigma, loss of autonomy, depersonalization and low material standards. While this is not a startling conclusion, it provides a basis for understanding the dynamics of institutional care and custody. Unfortunately, this is where the authors should have begun their analysis rather than ended it. Had they used the concluding chapter as a guide to their review and analysis of the ideas associated with the literature on long-term care and custody, Jones and Fowles could have made a contribution to the way in which the unit ideas guide both theory and research. Robert Nisbet's *The Sociological Tradition*[9] demonstrates how the core of the ideas in sociology provides a real sense of continuity from one generation of social scientists to another; creating an intellectual tradition upon which ideas are generated, interpreted and given meaning. In *Ideas on Institutions*, Jones and Fowles have touched upon the need for such analysis in the area of "institutional living," and it is hoped that this task will be pursued in the years ahead.

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[5] N. KITTRIE, THE RIGHT TO BE DIFFERENT: DEVIANCE AND ENFORCED THERAPY (1971).

[6] S. COHEN & L. TAYLOR, PSYCHOLOGICAL SURVIVAL: THE EXPERIENCE OF LONG-TERM IMPRISONMENT (1972).

[7] R. KING & K. ELLIOTT, ALBANY: BIRTH OF A PRISON—END OF AN ERA (1977).

[8] Haney, Banks & Zimbardo, *Interpersonal Dynamics in a Simulated Prison*, 1 INT'L J. CRIMINOLOGY & PENOLOGY 69 (1973).

[9] R. NISBET, THE SOCIOLOGICAL TRADITION (1966).

LIFE IN THE BALANCE: PROCEDURAL SAFEGUARDS IN CAPITAL CASES. By *Welsh S. White*. Ann Arbor: University of Michigan Press, 1984. Pp. viii, 289. $19.95.

The death penalty debate and the literature[1] which has both fueled and chronicled it have addressed two principal constitutional questions. The first asks whether capital punishment is inherently cruel and unusual punishment and thereby in violation of the eighth amendment. While abolitionists secured a moratorium on executions between 1968 and 1976,[2] they have failed to convince the Supreme Court of the intrinsic cruelty of the death penalty.[3] Ironically, in *Furman v. Georgia*[4] the abolitionists succeeded in invalidating all state capital punishment statutes as then drawn, but not on the grounds of intrinsic cruelty. Instead, three justices located the constitutional defect in the arbitrary imposition of the death penalty.[5] *Furman*, as subsequent Supreme Court decisions have made clear,[6] shifted the death penalty debate to a second question: what procedures must accompany capital trials to rid them of the arbitrariness that *Furman* condemned?[7]

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[1] *See, e.g.*, H. BEDAU, THE COURTS, THE CONSTITUTION, AND CAPITAL PUNISHMENT (1977); H. BEDAU, THE DEATH PENALTY IN AMERICA (3d ed. 1982); W. BERNS, FOR CAPITAL PUNISHMENT (1979); C. BLACK, CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE (1981); W. BOWERS, LEGAL HOMICIDE (1984); M. ENDRES, THE MORALITY OF CAPITAL PUNISHMENT (1984); M. MELTSNER, CRUEL AND UNUSUAL: THE SUPREME COURT AND CAPITAL PUNISHMENT (1973); U. SWIGERT & R. FARRELL, MURDER, INEQUALITY, AND THE LAW (1976); E. VAN DEN HAAG & J. CONRAD, THE DEATH PENALTY: A DEBATE (1983).

[2] Only three executions occurred during 1966-67. Thereafter, no one was executed until 1977. Between 1977 and 1982, a total of six executions took place. Commencing in 1983, the pace of executions increased, with 21 executions in 1984 alone. *See* U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, 1984 12 (1986). M. MELTSNER, *supra* note 1, at 106-25, presents the definitive examination of the strategy leading to and sustaining the moratorium.

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

[4] 408 U.S. 238 (1972).

[5] *See* Furman v. Georgia, 408 U.S. 238, 240 (1972)(Douglas, J., concurring); *id.* at 306 (Stewart, J., concurring); *id.* at 310 (White, J., concurring).

[6] *See* Roberts v. Louisiana, 428 U.S. 325 (1976); Woodson v. North Carolina, 428 U.S. 280 (1976); *Jurek*, 428 U.S. 262; *Proffitt*, 428 U.S. 242; *Gregg*, 428 U.S. 153.

[7] As the Court in Eddings v. Oklahoma, 455 U.S. 104, 112 (1982), observed of *Furman* and its progeny, "capital punishment [must] be imposed fairly, and with reasonable consistency, or not at all." The path to consistency cannot be constitutionally achieved by mandatory death sentences. *See also Roberts*, 428 U.S. 325 (mandatory death sentences violate the eighth amendment because they are incompatible with contemporary standards of decency); *Woodson*, 428 U.S. 280 (same). Instead, guided discretion must be employed in determining who will be executed. *See Gregg*, 428 U.S. at 189 (Stewart, J., plurality opinion)("*Furman* mandates . . . that discretion must be suitably directed. . . . ").

Welsh White's *Life in the Balance* reflects the prominent place of this latter question in the death penalty debate. *Life in the Balance* showcases several essays addressing the major challenge confronting post-*Furman* jurisprudence—to construct a procedural model of capital punishment that can meet *Furman*'s objections to the arbitrary imposition of capital punishment. White originally wrote the essays as law review articles, which were individually published between 1974 and 1983.[8] The essays address a variety of legal aspects of the death penalty, including: (1) *Furman* as a condemnation of arbitrariness; (2) the tendencies of death-qualified juries[9] to convict and impose the death penalty; (3) the subtle deception employed in police interrogation methods as a violation of the right against self-incrimination; and (4) the doctrine of waiver by offer of psychiatric evidence[10] as unfairly deterring the defendant from presenting mitigating evidence at the penalty stage of a capital trial.

Each of the several essays in *Life in the Balance* is a well-crafted piece of legal scholarship. Persons familiar with the jurisprudence of capital punishment should welcome the accessibility provided these former law review articles by their republication in *Life in the Balance*. Individuals unfamiliar with this area of law may find White's essays too advanced and should first read a more general study of the death penalty issues.[11] Both groups of readers, however, will benefit from White's introduction to the essays. The introduction first summarizes the essays and places them in the context of *Furman*'s objection to arbitrary imposition of the death

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8 White, *The Psychiatric Examination and the Fifth Amendment Privilege in Capital Cases*, 74 J. CRIM. L. & CRIMINOLOGY 943 (1983); White, *Waiver and the Death Penalty: The Implications of* Estelle v. Smith, 72 J. CRIM. L. & CRIMINOLOGY 1522 (1981); White, *Police Trickery in Inducing Confessions*, 127 U. PA. L. REV. 581 (1979); White, *Death-Qualified Juries: The "Prosecution-Proneness" Argument Reexamined*, 41 U. PITT. L. REV. 353 (1980); *White*, Witherspoon *Revisited: Exploring the Tension Between* Witherspoon *and* Furman, 45 U. CINN. L. REV. 19 (1976); White, *Disproportionality and the Death Penalty: Death as a Punishment for Rape*, 38 U. PITT. L. REV. 145 (1976); White, *A Book Review—Cruel and Unusual: The Supreme Court and Capital Punishment*, 74 COLUM. L. REV. 319 (1974).

9 A death-qualified jury is one in which members of the venire are excluded when their opposition to capital punishment is so strong that they would refuse to vote for the death penalty in any instance or that it would interfere with voting for guilt though they believed that the prosecution had established guilt beyond a reasonable doubt.

10 The doctrine of waiver by offer of psychiatric testimony states that when the defendant intends to present psychiatric tesimony, he waives the right to refuse to answer questions put to him in a government psychiatric examination. *See* W. WHITE, LIFE IN THE BALANCE 238-39 (1984).

11 *See, e.g.*, T. DRAPER, CAPITAL PUNISHMENT (1985); R. SCHWED, ABOLITION AND CAPITAL PUNISHMENT (1983); E. VAN DEN HAAG & J. CONRAD, *supra* note 1; Marshall, *Remarks on the Death Penalty Made at the Judicial Conference of the Second Circuit*, 86 COLUM. L. REV. 1 (1986); van den Haag, *The Ultimate Punishment*, 99 HARV. L. REV. 1662 (1986).

penalty. White then briefly mentions the many other procedural issues that await consideration by the Supreme Court. White's introductory comments include his prediction that the number of executions will remain small because death sentences frequently cannot withstand appellate scrutiny.[12]

While *Life in the Balance* helpfully reminds us that arbitrariness is yet to be banished from the administration of the death sentence, this book is plagued by two shortcomings. The first defect concerns the structure of *Life in the Balance*. The individual parts—the introduction and the essays which follow—do not make for a book equal to the sum of its components. Initially posited in the introduction, White's appropriate concern about the reliability of the procedural model of capital punishment grows distant as the reader progresses through essays dealing with varied and specialized subjects ranging from death-qualified juries to the psychological examinations of accused murderers. The absence of a conclusion to *Life in the Balance* also prevents White from returning his readers to the theme of arbitrariness.

The second shortcoming of the book is its failure to grasp that the post-*Furman* era has nurtured what one commentator calls "due process romanticism":

> In the case of the death penalty, the law has sometimes offered the sentencer the illusion of a legal rule, so that no actor at any point in the penalty procedure need feel that he has chosen to kill any individual. But our ambivalence has simply manifested itself in the clumsy administrative and legal complexities with which we have undone the innumerable death sentences that we have generated. The due process romanticism of the penalty trial has enabled us to avoid acknowledging the inevitably unsystematic, irreducibly personal moral elements of the choice to administer the death penalty.[13]

While abolitionists have thus far convinced the courts to set aside numerous death sentences on procedural grounds and scholars such as White have identified the continuing unreliability of the procedural model,[14] on balance the procedural model has been a

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[12] Between *Gregg*, 428 U.S. 153 (1976), and Barefoot v. Estelle, 463 U.S. 880 (1983), 73% of the capital cases adjudicated on the merits by the federal circuit courts of appeal held in favor of death row appellants. In contrast, only 6.5% of federal non-capital defendants successfully appealed their convictions. Note, *Summary Process and the Rule of Law: Expediting Death Penalty Cases in the Federal Courts*, 95 YALE L.J. 349, 357 (1985). *See also* Greenberg, *Capital Punishment as a System*, 91 YALE L.J. 908, 919 (1982)("Virtually all capital sentences and convictions that have been litigated to a conclusion have been reversed").

[13] Weisberg, *Deregulating Death*, 1983 SUP. CT. REV. 305, 393 (1983).

[14] *See, e.g.*, W. BOWERS, *supra* note 1, at 372-73 ("[T]he arbitrariness is manifold in its links to race, location within state, and other personal, situational, and social influences;

boon to the proponents of capital punishment by establishing a constitutionally acceptable level of arbitrariness. As the Supreme Court observed in *Eddings v. Oklahoma*,[15] the eighth amendment requires not an end to arbitrariness, but simply "reasonable consistency" in the application of the death penalty. "Reasonable consistency," while amenable to objective tests of institutional competence, ultimately entails a subjective as well as a moral judgment about the sanctity of a murderer's own life in the face of imperfect institutional reliability in determining the appropriate punishment. In the final analysis, the procedural model cannot assign value to human life; to achieve that task one is called back to a moral rather than a procedural analysis.

In conclusion, *Life in the Balance* provides a small contribution to the death penalty debate. Whereas White's essays individually possess considerable merit, they can already be read in law reviews. While there are instances in which previously published essays have been collected to form a scholarly work that is important in its own right,[16] *Life in the Balance* falls short of that mark.

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that it is pervasive in its presence at various decision-making points in the handling of capital cases; that it is intractable under different kinds of statutes in different states . . . .)"; Gross, *Race and Death: The Judicial Evaluation of Evidence of Discrimination in Capital Sentencing*, 18 U.C. DAVIS L. REV. 1275, 1282 (1985)("The evidence indicates, unmistakably, that there has been substantial discrimination in capital sentencing by race of victim . . . ."); Fitzgerald & Ellsworth, *Due Process vs. Crime Control*, 8 LAW & HUM. BEHAV. 31, 48 (1984)("[D]eath qualification systematically distorts the attitudes of the jury in a direction that discriminates against the defendant and undermines the protections of due process."); Streib, *Executions Under the Post-*Furman *Capital Punishment Statutes: The Halting Progression from "Let's Do It" to "Hey, There Ain't No Point in Pulling So Tight"*, 15 RUTGERS L.J. 443, 486 (1984)("Caprice may well have played a role in these executions [first 11 executions of the post-*Furman* era] and the rare and random pattern of their occurrence could lead one to conclude that the death penalty is being freakishly imposed and carried out.")(footnote omitted).

15 455 U.S. 104 (1982).

16 *See, e.g.*, R. DWORKIN, TAKING RIGHTS SERIOUSLY (1978).

DETERMINATE SENTENCING AND IMPRISONMENT: A FAILURE OF REFORM. By *Lynne Goodstein* and *John Hepburn*. Cincinnati: Anderson Publishing Company, 1985. Pp. vii, 244. $15.95 paper.

Determinate sentencing can be added to the growing list of failed reforms of the criminal justice system. Goodstein and Hepburn draw this conclusion in their evaluation of determinate sentencing in the states of Illinois, Connecticut and Minnesota. Specifically, *Determinate Sentencing and Imprisonment* addresses the impact of determinate sentencing on the attitudes and behavior of prison inmates. Claims of reformers regarding the negative impact of indeterminate sentencing on inmates and the related benefits of determinate sentencing are not supported by the findings of the research reported.

Goodstein and Hepburn avoid a Martinson-like conclusion, however, by seeking to *explain* the dismal performance of determinate sentencing policies. To do so, they adopt a policy analysis model that views reform as a process: determinate sentencing policies vary in terms of structure, process, and function and evolve through varying political processes within different organizational environments. Particularly critical to sentencing reform are two factors: (1) the contextual issue of prison overcrowding, and (2) the seemingly incompatible objectives of reducing judicial leniency in sentencing and protecting prisoners' rights. The outcomes observed could not, therefore, be simply attributed to the idea of sentencing reform itself.

Following a review of criticisms of indeterminate sentencing and a review of limitations of determinate sentencing reform, Goodstein and Hepburn present the findings of their own research. The evaluation model they adopted leads them through a thorough analysis of the three statutes selected, the legislative histories surrounding them, and the complex implementation of each statute. The major focus of the study, however, is the impact of determinate sentencing on inmates.

Although this study makes considerable use of interview and record data, the evaluation of inmate responses to determinate sentencing rests heavily on quantitative data. By means of surveys conducted in four prisons—two in Connecticut and one each in Illinois and Minnesota—measures of inmate perceptions of predictability and inequity, as well as relevant attitudes and behaviors, were obtained. Comparisons of inmates sentenced under the previous indeterminate statutes and those sentenced under the new determinate statutes serve as the basis of the evaluation.

Goodstein and Hepburn note that an alternative research design would be possible—one that would analyze court and prison records to obtain quantitative data on sentencing inequity and the extent to which inmates are released on predicted release dates. The authors argue, however, that changes in practice will have no effect on inmate attitudes and behavior unless inmates perceive that such changes have occurred. Perceptual data, therefore, are sufficient to test the impact of determinate sentencing on attitudes and behavior. One flaw in this argument is that the kinds of changes relevant to the evaluation of sentencing reform may be normative changes, rather than individual-level effects. Normative changes are likely to be linked to actual changes in sentencing practice. Moreover, such changes typically take time to emerge—more time than the evaluators have allowed. In addition, data published regarding the Minnesota Sentencing Guidelines, both at the time Goodstein and Hepburn were writing their report[1] and more recently,[2] indicate that Minnesota's reform was unsuccessful in bringing about a significant increase in proportionality. It is unlikely that such failure would be irrelevant to measures of inmate attitudes and behavior.

Detracting from this valuable work are several structural problems. *Determinate Sentencing and Imprisonment* is quite clearly a research monograph, and in order to make it conform to a book structure, information regarding design as well as much of the quantitative analyses were relegated to lengthy appendices. While such practices appear to be increasingly common, continual reference to tables in an appendix interrupts the flow of reading. In addition, large blank sections of pages and an unusual typeface were distracting. Finally, redundancy and wordiness could have been greatly reduced by adequate editing. The style of writing gives the impression that this book was written for undergraduate students, but the content appears to be most valuable to policy analysts, evaluation researchers and those interested in sentencing reform.

In spite of the impact of historical and implementational factors on the observed outcomes of determinate sentencing reform, Goodstein and Hepburn conclude that even under the best of circumstances, determinate sentencing is unlikely to achieve the intended ends of liberal reformers. Perceptions of inmates regarding inequity and predictability were found to be weakly associated with attitudinal and behavioral measures, indicating that the claims of

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[1] Minnesota Sentencing Guidelines Commission, THE IMPACT OF THE MINNESOTA SENTENCING GUIDELINES: THREE YEAR EVALUATION (1984).

[2] Knapp, *Proactive Policy Analysis of Minnesota's Prison Populations*, 1 CRIM. JUST. POL'Y REV. 37, 57 (1986).

reformers may have been "unrealistic, . . . overrated . . . [and] overly optimistic" (p. 171). Further investigation is needed, however, to test the impact of actual changes in sentencing practices, resulting from the implementation of new sentencing statutes, on inmate adjustment and prison environments. One would hope that such evaluations will follow the lead of *Determinate Sentencing and Imprisonment* in addressing historical, contextual and implementational factors that markedly affect the outcomes of reform efforts.

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ORGANIZED CRIME (2d ed.). By *Howard Abadinsky*. Chicago: Nelson-Hall, 1985. Pp. xiii, 368. $24.95 cloth, $14.95 paper.

The mere mention of the words "organized crime" generates much interest. Novels, motion pictures and television productions have long explored the influence of the Mafia on American society. Yet it was only a few short years ago that it was nearly impossible to find a college text solely devoted to the study of organized crime. Today, however, the interested student can turn to the second edition of Howard Abadinsky's *Organized Crime*.

After providing the reader with a working definition of organized crime, as well as two models of criminal hierarchies, Abadinsky proceeds to discuss the historical antecedents of organized crime. His narrative on the Mafia, Comorra and Onorate Societa is more than adequate, but his indictment of the American "robber barons" as the forerunners of modern-day organized crime falls short. Abadinsky does not go beyond speculative musing to adequately demonstrate the link between the early-American capitalist and the modern-day *capo*. It is one thing to write about the unbridled greed of John Jacob Astor and still another to explain how his example created the fertile soil for the growth of criminality.

Dispensing with the historical antecedents, Abadinsky turns to explain the continued existence of the mob. He suggests that it exists because economic success is not open to various segments of the population. He also suggests that the sociological theories of, for example, Merton and Sutherland can help explain the mob's continued existence. Although both suggestions have merit, Abadinsky does not prove that organized crime exists as a mecha-

nism to achieve the American way of life, nor does he show how Merton and Sutherland help explain the continued existence of the mob.

Abadinsky devotes four chapters to the history of organized crime. Preceding this rather interesting discussion is a caveat on the accuracy of the reported data. Abadinsky writes that he will report when there is a divergence of opinion in the literature. He tells us that otherwise his data will be recorded as history. But, is it true that Joey Gallo was dining in a restaurant on Mulberry Street with his fiancee and her daughter when he was murdered (p. 123)? Yes, it is true that "Crazy Joe" was celebrating his forty-third birthday in Umbertos Clam House in Lower Manhattan when he was rubbed out, but he was there with his new wife and step-daughter.

Admittedly, the aforementioned error is minor and does little to distract from the discussion of the Profaci Family. It nevertheless calls attention to the manner in which Abadinsky validated his information. In the book's preface, the author states that he weighed and tested "information from one source against information from other sources" (p. xii). Unfortunately, he never reveals how he could accomplish this in a satisfactory, scientific manner. Furthermore, Abadinsky relies heavily on the problematic sources of informants, newspapers and government documents for his data.

The middle chapters of *Organized Crime* are devoted to examining the business activities of the mob. Specifically, seventy-seven pages are set aside to cover a wide variety of topics ranging from gambling to prostitution. This space was insufficient to allow Abadinsky to discuss these topics in detail. Nevertheless, the author crafts a satisfactory review of the different ways the mob fills its coffers.

The book's latter chapters are devoted to a variety of topics related to laws and law enforcement. Specifically, Abadinsky discusses, in sixty-five pages, issues such as political corruption as it applies to fighting organized crime, the ways law enforcement officials gather information about organized crime and the techniques used in combatting organized crime. Here, as before, the allotted space does not allow for a detailed discussion of the different topics.

Organized Crime concludes with a brief chapter on the public policy issues pertaining to organized crime. Incidently, Abadinsky states in his preface that "Part 6 provides insight into the policy issues that surround our response to organized crime . . . . " (p. xii). There is, alas, no mention of Part 6 in either the table of contents or

the text of the book, only the discussion of public policy in Chapter Nineteen.

A text, as Thomas Kuhn suggests, transmits a discipline's lexicon to initiates. It also gives its subject matter a sense of correctness. "It's in print, so it must be right" is a popular credo. What of the subject matter of *Organized Crime*? Unfortunately, some matters may be suspect, since Abadinsky failed to (1) support various arguments, (2) elaborate on the method of data validation, and (3) avoid reliance on problematic sources of information. Still, Abadinsky's *Organized Crime* blazes a path into relatively uncharted territory.

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CHILDREN AND ARSON: AMERICA'S MIDDLE CLASS NIGHTMARE. By *Wayne S. Wooden* and *Martha Lou Berkey*. New York: Plenum Press, 1984. Pp. vii, 267. $16.95

It is curious that so little scholarly attention has been devoted to arson, which has in the last twenty years surpassed all other street crimes in dollar losses and contributed decisively to this nation's position as the world leader in fire deaths. *Children and Arson* is this decade's first major academic book on the subject. Government agencies and the insurance industry have been far more attentive, and a number of very useful local and national studies have appeared in the wake of repeated Congressional hearings, major arson conspiracy prosecutions, and community challenges to insurers and banks.

Though federal research has been lately curtailed by an apparently unconcerned Reagan Administration, a great body of information has been compiled about the sociology and economics of arson patterns. Contemporary research and action programs have demonstrated that arson can be predicted reasonably well from data on property foreclosure, unpaid taxes, real estate values, bank reinvestment practices and shifts in land use. The assembled data have provided the foundation for increasingly sophisticated arson prevention and control measures in a number of major cities.

Unfortunately, the authors of *Children and Arson* have not considered the more important recent studies, nor even the most ele-

mentary canons of research design and empirical analysis. This work by Wooden and Berkey is an outstanding example of uncritical positivist reductionism and careless statistical interpretation.

Wooden and Berkey's book is subtitled "America's Middle Class Nightmare" to emphasize the thesis that more affluent white juveniles set most of the fires as a form of "maladaptive behavior" (p. 205). The book is largely based on a study of sixty-nine convicted juvenile arsonists from San Bernardino, California who are compared to a "control" group of seventy-eight randomly selected individuals from the same county. Behavioral and sociological characteristics of the two groups were derived from interviews and questionnaires completed by juveniles and their parents and from local probation department records. Secondary data drawn from the California Youth Authority are utilized in comparisons of juveniles committed to the Authority for firesetting in 1971-81 with a "composite profile" of CYA juveniles committed for all offenses. Wooden and Berkey identify four juvenile arsonist typologies from the data, describing their subjects as "playing with matches," "crying for help," "delinquent" or "severely disturbed." Suggestions for enforcement, prevention and offender treatment focus on discovery of firesetter's psychological motives, behavior modification within institutions, and public education in fire safety.

Children and Arson is fundamentally flawed with respect to both logic and data interpretation. The authors begin by equating arson with the "flames of youth" because juveniles account for 40% of arrests (p. 6). However, arson has a lower arrest rate (15%) than any other "index crime," and investigators quoted at length by the authors themselves observe that juveniles are "distinctive" in that they are "stupid in the mechanics of setting the fire [,] . . . are not as professional or mature as adults [and] . . . don't try to cover up the arson" (p. 171). Certainly the authors have pushed the arrest data beyond the limits of responsible inference.

Wooden and Berkey trace the rise of arson in the United States to the decline of backyard incinerators and fireplaces, arguing that "diminished exposure to the primitive uses of fire may make it a more mystifying and therefore attractive element" (p. 17). Additionally, they assert that the ". . . efficiency of modern fire fighting may actually work to promote fires [since] society has become apathetic about the danger . . . . " (p. 17). The authors, however, advance no data to support these opening arguments. Such generalizations hardly explain the twenty-fold increase in incendiary fires since 1961, pronounced variations between different cities and

neighborhoods, or the fact that Japan, Britain, France and Italy have far lower urban arson rates than the United States.

The book's arguments largely rest on statistical comparisons drawn between a population of sixty-nine juvenile arsonists and a randomly selected sample of seventy-eight non-firesetting youths. This sort of data manipulation is entirely untenable, since one cannot draw responsible conclusions from the correlation of a *population* with a *sample*. In view of the authors' emphasis on the supposed middle class origins of firesetters, it also seems strange that the variables presented for arsonists and "controls" do not include family income, neighborhood, parent's educational level, occupation, or other dimensions of stratification.

Wooden and Berkey's handling of data from the California Youth Authority exemplifies the worst sort of sloppiness. The authors accept uncritically the CYA's classification of firesetters as "unsocialized," "conformist," or "neurotic." The authors are apparently untroubled by the fact that black and Hispanic youths are largely consigned to the more pathological "conformist" category while the CYA classifies most white firesetters merely "neurotic" and therefore amenable to therapy (pp. 123-5). Wooden and Berkey base their "middle class arsonist thesis" on their interpretation of CYA data showing the general population of imprisoned juvenile offenders are about 20% more often from poorer and crime-ridden neighborhoods than are imprisoned arsonists. But the absence of neighborhood information for about 20% of the firesetters certainly undermines the authors claim that a "clear distinction" exists in this comparison (p. 124).

Apart from reliance on highly suspect numbers generated from an invalid research design, the authors incorporate psychoanalytic writings, interviews with arson investigators and correctional counselors, and frequent "vignettes" of juvenile firesetters to illustrate their proposed etiology of arson. The footnotes to existing literature are remarkably sparse and badly dated, and no mention is made of scholars who have since 1970 challenged the vague "pyromania" classification. Wooden and Berkey insist that "masturbation, sexual fantasies, and homosexuality" are important predictors of juvenile arson, despite the admittedly contrary indications of their own data on sixty-nine juvenile offenders (p. 111).

Given the author's apparent unfamiliarity with most of the recently published work and their uncritical embrace of the positivist psychological tradition, it is hardly surprising that their concluding chapter, "Strategies for the Future," is so vague and uninformative. Beyond the recommendation that parents and authorities be alerted

to psychological and behavior "clues that . . . identify the child at risk" (pp. 202-03), Wooden and Berkey can only recommend that youth and adults be more actively involved with fire safety programs. These are the same tired measures which have been advanced by fire departments for the last fifty years. The failure of such measures is not unrelated to the theoretical and empirical weakness of the positivist tradition which is so well represented in this poorly conceived and executed book. Fortunately, our hopes to understand and control arson find encouragement in other more critical, imaginative and factually grounded works emerging from both research and action programs in our threatened neighborhoods.

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THE CANTING CREW: LONDON'S CRIMINAL UNDERWORLD, 1550-1700. By *John L. McMullan*. New Brunswick, N.J.: Rutgers University Press, 1984. Pp. ix, 226. $25.00

A number of historiographic studies of English crime, criminals and criminal organizations have been completed. Careful inspection of this literature reveals, however, that social, legal and criminal justice historians have offered conflicting and sometimes diametrically opposed descriptions and interpretations of illegal activities. Some historians have concluded that highly structured, cohesive criminal networks existed and flourished; other historians have concluded that the criminal network thesis is highly exaggerated. John L. McMullan's *The Canting Crew* addresses this debate by describing and analyzing the structure, origin and activities of the criminal community in Elizabethan and Stuart London.

McMullan's skillful analysis of a variety of sixteenth, seventeenth and eighteenth century primary and secondary sources—e.g., criminal biographies and autobiographies, songs, ballads, poems, dramatic works, extant canting dictionaries—leads to a new thesis on the nature of London's criminal underworld. McMullan concludes that criminal organizations and networks did, indeed, exist; however, these groups were fluid, flexible confederations of criminals, rather than highly centralized and structured collectives. Canting crews—i.e., groups of three or four "professionally" ori-

ented criminals—sharing techniques, norms and cant (the English equivalent of French "argot"), prowled the streets of London during the Elizabethan and Stuart periods. Canting crews were, in essence, a product of complex economic, demographic, social, political and legal transformations which, in the final anaysis, created a new "masterless" and "demoralized" social class which resorted to crime to survive.

McMullan's analysis is sytematically organized to reconstruct London's criminal underworld and to develop this thesis. Chapter One reviews prior literature and presents research questions and methodology. Chapters Two and Three examine economic and demographic factors which served as an infrastructure for the development of London's criminal underworld. Chapter Four explores the linkage between London's social ecology and the development and maintenance of canting crews. The effectiveness—or, perhaps more appropriately, ineffectiveness—of policing institutions in controlling criminals is examined in Chapter Five. Chapters Six and Seven analyze the origin, structure and operation of canting crews focusing, in particular, on the dynamics of theft and prostitution. The ninth chapter exposes the integral role played by "middlemen entrepreneurs" (fences, thief-takers, informers) who served as mediators between criminals and the state. This final chapter is followed by a glossary of criminal argot.

McMullan's analysis of the structural factors that contributed to the rise and maintenance of canting crews is particularly extensive and enlightening. An eight-fold increase in London's population between 1500 and 1650 served as the catalyst for radical transformations in the social order. In particular, the massive influx of displaced and impoverished rural workers precipitated major economic changes. Increased demand for goods and services, increased production and new divisions of labor, and expanded domestic and foreign trade were the byproducts of demographic shifts and contributed to the development of commercial capitialism. However, classes did not profit equally from this expansion. High structural unemployment (ranging from twenty to fifty percent), poverty, disease, high death rates, and a variety of other pernicious conditions resulted in a large population living on the verge of subsistence. In short, commercial capitalism and labor market conditions created a surplus population which was receptive to crime for survival; it also provided new opportunities for theft and other forms of crime and deviance.

The formation of canting crews and the survival of the criminal underworld was, however, facilitated by other factors. Police insti-

tutions—constable, Privy council police, marshalcy, army and militia—were, for a variety of reasons outlined by McMullan, ineffective. Courts and laws, particularly poor and gaming laws, had little impact in controlling or deterring criminals. In fact, police and courtroom officials were highly corrupt and directly contributed to the survival of the criminal underworld. The social ecology of London also greatly facilitated the activities of criminal groups. McMullan demonstrates that London developed four distinct geographic sections which, in essence, served as "criminal sanctuaries." These areas developed unique territorial customs and traditions and exerted informal social control over members of canting crews. Territorial protectorates also neutralized the law by providing "fixers," offered fencing operations, and finally, fissured political and police control.

Canting crews were a product of demographic, economic, political, legal and even geographic factors. Loose, fluid, decentralized criminal teams of ordinarily three or four members worked as pickpockets, confidence men, panderers and gamesters. Shared techniques for committing crime (which were transferred through apprenticeships), rational divisions of labor and argot enabled canting crews to survive in Elizabethan and Stuart London. Craft specializations also developed. Theft, for example, resulted in unique roles and activities for nips and foins (pickpockets), lifters, curbers and dubbers (sneak theives), lifts, markers, and santars (shoplifters), bobs and fences (receivers of stolen property). Prostitutes also specialized. Private mistresses served the upper classes while "wandering whores" and brothel prostitutes served the needs of lower classes. In short, diverse canting crews pursuing similar economic interests united to form London's criminal underworld.

A number of criticisms might be levelled against McMullan's analysis and conclusions. Some historians might be disappointed with the starkness and superficiality of some of the analysis. Can a history of London's criminal underworld from 1550 to 1700 be completed in 159 pages? Historians specializing in the Elizabethan and Stuart periods may also take exception with some of McMullan's interpretations of economic, political, social or legal conditions. Readers might also expect a more elaborate description and analysis of the canting crews. McMullan devotes considerable attention to structural factors which shaped canting crews, but surprisingly little detail on their structure and activities. These criticisms are, however, tangential and largely a function of scarce and inadequate data sources. Locating and interpreting historial records from the fifteenth, sixteenth and seventeenth centuries is, to say the least, a formidable task. In fact, McMullan does point out the limitations of the

study and couches his interpretations in appropriate caveats and disclaimers.

The Canting Crew is an important contribution to the literature of the history of crime and social control in England. McMullan's thesis is convincing and his analysis is concise, well written and, given the limitations of historical data sources, well documented. Historians, sociologists and criminologists, as well as other social scientists interested in the history of crime and social control, will profit from this study. Comparative historical research in other temporal and geographical settings will determine whether the canting crews of Elizabethan and Stuart London were unique or whether they were a byproduct of more universal, worldwide economic, political, demographic and legal transformations.

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PUNISHMENT AND RESTITUTION: A RESTITUTIONARY APPROACH TO CRIME AND THE CRIMINAL. By *Charles F. Abel* and *Frank H. Marsh*, Greenwood Press, Westport, Connecticut, 1984. Pp. viii, 214. $29.95

In their preface, Abel and Marsh propose restitution as a "workable, efficient, and fair alternative" to current practices of punishment, particularly imprisonment. A restitutionary approach to punishment is superior for several reasons: it focuses on the victim and the social damage done by the criminal act, it makes punishment operative through damage awards, it strikes a morally more neutral stance (by shifting from an "inherent evil" idea to a "damage caused" idea) and a more "active" pose (by ameliorating the social impact of the crime).

Punishment and Restitution is divided into two parts: the first deals with the justification of restitution as a form of punishment; the second describes the restitutionary model and its implementation. In justifying restitution as a form of punishment, the authors find the traditional approaches to crime and punishment unsatifactory and lacking for ethical, theoretical or practical reasons. Restitution is argued to be a form of punishment that accomplishes all the aims of punishment: deterrence, retribution, and rehabilitation or reintegration.

Abel and Marsh suggest a reformulation of punishment that emphasizes the process and reciprocity involved in punishment rather than the pain, loss and suffering. This reformulation, the authors argue, will broaden the scope of possible forms of punishment to include imposition of debt, forced sales of property, receivership or other useful techniques under the proper circumstances to attain restitutionary purposes.

In the second part of *Punishment and Restitution* the authors present their restitutionary model which includes several central elements: punishment must be individualized in terms of the offender, the context and the impact of the crime; the principle of damage done, and not moral turpitude or deterrence, should regulate the sentence; the nature and duration of sentences should depend upon the offenders' capacity to earn money they owe and the length of time it actually takes them to do so; prison sentences should be the exception not the rule; prisons should be places from which restitution can be made; most restitution should involve supervision outside prison and within the community.

In their discussion of the restitutionary model Abel and Marsh go beyond the issue of restitution and recommend changes in both criminal procedure and substantive law. The restitutionary court should employ a "problem solving" rather than an adversary approach, should act as a neutral arbiter among conflicting value systems, and should address the damage done to all individuals or groups involved, including the offender. In discussing who should make how much restitution to whom, Abel and Marsh propose recognizing certain public interests (e.g., public peace, security and quality of life) but rejecting others (public morals); differential disposition for the different participants in crime (e.g., principals, accessories before and after the fact); abolishing punishment for inchoate crime (e.g., conspiracy) if no damage occurred; shifting many misdemeanors out of the criminal jurisdiction and into the administrative sphere; and expanding the scope of the people defined as "victims" who are thus entitled to restitution.

The proposed penal model includes in-prison manufacturing or service programs, residential in-community programs and non-residential in-community programs. These programs are to be funded by tax-free municipal bonds, by publically offered securities of in-prison businesses, and by government secured loans. A restitutionary trust fund may also be established, its principal coming from punitive damages from corporations, excess profit of offenders, proceeds from sale of offenders' life stories and film rights, and from

fines for misdemeanors, victimless crimes, white collar and corporate crime.

Although restitution is not a novel idea, *Punishment and Restitution* is commendable for its creative suggestions for incorporating restitution into the punishment process. These suggestions deserve serious consideration from policy makers. It is unclear, however, why the implementation of restitution has to await a reformulation of punishment, redefinition of the judicial role, restructuring of the criminal law, and reordering of priorities in the criminal justice system.

The definition of crime in terms of the damage inflicted, and the individualized punishment based on the economic or social impact of the offense, may lead to the same injustices and disparities in sentencing that have characterized the rehabilitation model, which Abel and Marsh criticize considerably. Having solely the fortuitousness of the results of crime determine the offender's punishment and ignoring the intent and the blameworthiness of the actor is incompatible with the concept of crime and the principle of "just desserts." Additionally, the preventative purpose of the criminal law will be substantially undermined if the law leaves unpunished persons whose plans for criminal activities do not materialize.

The authors (a political scientist and a philosopher/lawyer) are quite comprehensive and thorough in supporting their arguments concerning the nature and justification for punishment, although they tend to force their interpretation on texts or cases. Many of their assertions concerning crime, however, are unsubstantiated, and at times reflect notions of commonsense rather than scientifically based knowledge. Their proposal for expanding zones of interests affected, or the impact of injury, is intriguing. However, its implementation, particularly in complex environmental and corporate crimes, will render restitution neither a workable nor an efficient solution to current practices of punishment. Abel and Marsh's examples showing the kind and range of contending interests to be recognized (Wounded Knee and Daniel Ellsberg) are atypical and not representative of the bulk of cases which are tried daily in the criminal courts.

Despite Abel and Marsh's efforts to answer some nagging questions about their model (such as restitution for murderers, class differences and differential capabilities of earning money, or whether government should provide jobs for offenders), some basic problems remain unanswered. First, the main assumption underlying the restitutionary model—the availability of jobs for all those who have to make restitution—cannot be taken for granted. Sec-

ond, the use of imprisonment for the "dangerous few," or for those who refuse to work constitutes a double punishment. This latter point actually arises from the authors own critique of court decisions which "undefine things as punishment" (p. 45). For instance, defining commitment to jail until fines are paid as a method of executing the sentence and not punishment is described by the authors as a distinction without a difference (p. 45). In the same vein imprisonment will continue to constitute a punishment even when restitution alone is defined as such.

Punishment and Restitution is an appropriate book in penology and corrections as a point of departure to debate the concepts of crime and punishment and the use of restitution.

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ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS. By *James D. Wright* and *Peter H. Rossi*. New York: Aldine de Gruyter, 1986. Pp. ix, 247. $36.95 cloth, $14.95 paper.

In many areas of public policy, legislatures have acted on the basis of only a sketchy understanding of the underlying social and economic dynamics. After their 1983 review and analysis of the literature, Wright and Rossi felt this was clearly the case with gun control legislation.[1] *Armed and Considered Dangerous* is a report on Wright and Rossi's attempt to provide some policy-relevant information on felons and their firearms.

The authors surveyed almost 2,000 convicted male felons in eleven prisons in ten states. States, prisons and prisoners were selected primarily on the basis of availability. The subjects, however, were fairly typical representatives of the population of imprisoned felons in the United States, in terms of demographic characteristics such as race, age and education.

Approximately 39% of the sample had never used a weapon in committing a crime. Eleven precent used weapons other than firearms, and one-half had used a gun at least once. Surprisingly, however, among the handgun users, only 14% owned a "Saturday Night

[1] J. WRIGHT, P. ROSSI & K. DALY, UNDER THE GUN (1983).

Special" (SNS). Preference for such pistols was strongest among those who rarely or never committed crimes with handguns. As the authors put it: "[s]erious criminals preferred serious equipment" (p. 180).

The survey asked dozens of questions, including many dealing with where, how and why these felons obtained guns. For instance, 76% reported that they obtained their most recent handgun in-state, but only one in six acquired his handgun through a legitimate retail outlet. Almost one-third reported personally stealing their most recent handgun. Homes and cars were the most frequently mentioned places from which guns were stolen.

The authors estimated that the convicts in this study had stolen 30,000 firearms during their careers, and that the probability that the most recent handguns owned by this sample had been stolen at some point was somewhere between .4 and .7. Further, the market in stolen guns was apparently integrated into the general criminal market in stolen goods and drugs.

Although most convicts were aware of federal and state laws that prohibited felons from acquiring firearms, few anticipated much trouble in acquiring a handgun after release from prison. In addition, most felt they could evade partial or total handgun bans by changing to other firearms. It is thus not surprising that a majority of these convicts, like a majority of the public, agree that "gun laws affect only law-abiding citizens; criminals will always be able to get guns" (pp. 210-11).

When asked what they would do if SNS's were not available, a majority of those who had used firearms in crimes said they would move up to bigger and more lethal handguns or to sawed-off shotguns. If no handguns of any kind were available, a majority of these same individuals would find a substitute in sawed-off shotguns. This appeared to be no idle threat; 50% of those who said they would switch to a shotgun had shortened one at some point in their lives.

In the final portions of *Armed and Considered Dangerous*, the authors discuss some of the policy implications of their results. Because stolen guns are a major source of weapons for criminals, Wright and Rossi urge that something more be done about firearm theft. Among the options they discuss are public education and increased penalties for stealing firearms.

Wright and Rossi's conclusions about current handgun control proposals are not optimistic. Given possible weapon substitution and the difficulty in penetrating illegal markets, the major effects of strict handgun control policies will fall more on the ordinary gun

owner than on the criminal. Such policies may also weaken some of the crime-thwarting effects of civilian gun ownership.

Handgun or SNS bans may cause an unanticipated increase in levels of homicide and serious injury as many criminals substitute more lethal weapons. Wright and Rossi caution that sweeping " 'solutions' that are implemented before the problem is reasonably well understood rarely solve anything" (p. 238).

Although *Armed and Considered Dangerous* is not free of methodological problems, it is the best policy-oriented study of criminals and their guns available. Gun control proposals that seemed relatively straight-forward a few years ago must now be reconsidered. The "gun lobby" may not be the only obstacle to be surmounted.

Wright and Rossi do not claim to have found any easy answers; they have, however, enhanced our understanding of a complex and difficult policy area.

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