Book Reviews

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BOOK REVIEWS

REVIEW ARTICLE

BEAT THE HORSE DEAD, BUT HE RISES AGAIN*

JOHN P. CONRAD**

Ever since the publication of that uncompromising polemic, *Struggle for Justice*,¹ by the American Friends Service Committee, prisons have been an easy and frequent target for attack. Events have kept them in public view. Attica, the tragedies at San Quentin and Soledad, and spectacular disturbances at other prisons throughout the country have reminded all concerned parties that something must be done about the hideous conditions in which we keep our convicted offenders. The federal courts have set some limits to those conditions through a succession of opinions which have established rights for men and women who had previously been considered civilly dead. Powers of wardens and guards, formerly limited only by their estimate of the public tolerance, are now curtailed by the application of due process. The jaded aphorists are wrong when they argue that the more prisons change, the more they are the same. Prisons have changed, and they will never again be the same. No one should assume that there has been substantial improvement in the ugly routines of cell-block management or that contentment reigns in the nation's prison yards. Nevertheless, some abuses have been abruptly stopped by firm and courageous judges, and the conditions have been created by which changes for the better can be made by administrators minded to make the possible real.

The five years which have elapsed since the Quakers' frontal assault on the practice of incarceration have seen the flowering of a whole literature of penological commentary and criticism. To bring order to this proliferation, Gordon Hawkins proposed in his recent disquisition, *The Prison*,² a typology of prison critics. Abolitionists wish to do away with prisons entirely. Rigorists want to make them tougher. Reformists advocate continued pursuit of the rehabilitative ideal. Reductivists reject the ideology of rehabilitation and argue that although prisons are necessary, they should be used as little as possible. In this review I shall make some use of this taxonomy, even though it is too neat for the clash of the ideas it is intended to classify.

The two books under consideration here fall into separate bins. Murton is a reductivist, a practical man with little stomach for the practice of incarceration as he knows it in this country, but unable to foresee an early end to it. Hawkins points out that the true abolitionist is a rare bird indeed, best exemplified by that eloquent nineteenth century anarchist, Prince Peter Kropotkin. Until the publication of Dr. Sommer's book, Kropotkin's nearest modern counterpart was Jessica Mitford. Like Mitford and Kropotkin, Sommer advocates the abolition of the prison as a phase in the fundamental overhaul of all our social institutions.

Both abolitionists and reductivists take naturally to the recital of correctional horrors, and both Murton and Sommer lay about them with admirable vigor in ticking off the wishful euphemisms and brutal actualities of correctional controls. Both writers try with might and main to beat the horse dead. In the opinion of this reviewer, neither succeeds. The horse plods on. His route leads nowhere, but he seems


** Center for Crime and Justice, The Academy for Contemporary Problems.

¹ AMERICAN FRIENDS SERVICE COMMITTEE, STRUGGLE FOR JUSTICE (1971).

more likely to gain in strength than to collapse from the belaboring he has received from these authors.

The adventures of Dr. Murton in Arkansas and elsewhere are well known to the criminal justice public and beyond. It is not difficult to dismiss his strategy of confrontation as quixotic and self-defeating. He was sent packing by a state government unwilling to change its ways so fast, but ever since that confrontation the Arkansas prisons have been emerging from a slough of incomparable misery and brutality. Some of the credit must be Murton's, some of it must go the federal judiciary which pronounced the Arkansas prisons unconstitutional. Surely none of it can go to the late Governor Winthrop Rockefeller or to the political villains whom Dr. Murton denounces. A forthright stand against iniquity is inconsistent with the style of the times. We prefer to administer our way out of nastiness, but it does not require a blue ribbon task force or even a staff committee to identify a wrong that is being done and to prescribe the steps for putting an end to it.

Dr. Murton tells his story in the context of the long and miserable history of punishment. Much of what he has to tell has been better told by others; he is not a trained historian. Many pages are given over to heavy-handed irony, angry rhetoric and the denunciation of evil; they would have been better allocated to a careful account of what actually happened in Arkansas and the meaning of that episode for the politics of prison reform. The mighty thwacks Murton administers to all the correctional rogues who have come to his attention would be more effective if better documented. It would not have required an investigation in depth of the callousness of some of Murton's villains to identify in them the same banality of evil that Hannah Arendt discovered in Adolf Eichmann. This reviewer is well enough acquainted with some of these penal ruffians to venture a perspective on their infamy. Most of them are godly bureaucrats by their own lights, kind to their families and reasonably considerate of their subordinates. Caught in a system in which the resources provided them are grossly insufficient for the decent performance of the tasks to be done, they lapse into a time-serving inertia marked by private cynicism. The public hears from them a resounding "commitment" to the rehabilitation of the offender and the reform of the system, but the annual defeat of their efforts to improve the budget prompts none of them to resign their jobs in favor of a campaign to remedy conditions. Paper-work fills their days instead of the inspection of the facilities for which they are responsible. They do what they must, and they justify their inability to do it well by pointing to the law, the budget or the state of public opinion. They find ways to justify or at least excuse the promiscuous use of deadly force, they tolerate the filth and increasing disorder of their facilities, and they resist the attempts by outsiders to improve the system. It remains for the federal judiciary, prompted by a few boat-rockers like Murton and a few persistent convict writ-writers, to correct the most egregious abuses. Unfortunately, it is not within the province of judges to manage the system or to remedy the fundamental causes of mismanagement.

There is indeed a *Dunciad* to be written about penal bureaucrats, but Murton is no Alexander Pope, despite the passion of his invective. Nor does he have the scope for a theoretical formulation which would provide the reader with hope for better things to come. He concedes that this country will need prisons for so long as our troubled society generates the level of violence from which we now suffer. To remedy the awfulness of the American prison, he urges a model of participatory management in which inmates would be allowed a maximum share in the administration of the communities in which they live. Citing the examples of Alexander Maconochie, Thomas Mott Osborne, Howard Gill, and his own brief efflorescence in Arkansas, he proposes a sort of village life for correctional staff and residents. Around a downtown of central services, residential "suburbs" would be clustered in which life would be as nearly as possible like a democratic small town. Murton does not tell us how he would maintain freedom and an approximation of normal community life within coercively enforced boundaries. Although he takes note of the abrupt termination of the four experiments on which he draws for his model, he does not explain how the future participatory management of prison can avoid the same melancholy fate.

Dr. Sommer's anger at what he has seen, read and heard suffuses his book. A psychologist of distinction and unusual originality, he
has made important contributions to an understanding of the interaction between man and man-made environments. Invited by the Law Enforcement Assistance Administration (LEAA) to participate in a study of the impact of the man-made prison on prisoners and staff, he expected at first to help modify the oppressive models in which correctional restraint takes place. This undertaking was part of a major effort by LEAA to assure that its impending investment in correctional construction would be held to standards of rationality and humanity which had not hitherto characterized the American prison. From this initiative LEAA received more than it bargained for. Moyer and Flynn produced their immense Guidelines for Correctional Design and organized the National Clearinghouse for Criminal Justice Program and Architecture, by which the processes of design review have been institutionalized to assure compliance with standards for prisons which are to be built with federal money. Nagel completed a study of recent correctional construction and ended with a magnificent documentation of the inadequacies he had seen and plans for proceeding along more hopeful lines in the future. Johnston wrote a companion piece, a history of prison architecture which defined the monstrous errors of the nineteenth century and the misapplied correctional "technology" of the twentieth. Dr. Sommer describes his approach and its consequences forthrightly in his preface:

I believed that the problems of the prison could be solved by building small, modern institutions close to the inmate's home, with ample amenities, privacy, provision for family contact, counseling, academic and vocational training, and access to community facilities. This was a liberal dream which might have worked except that it didn't take into account the obvious facts that prison is used for only a very small number of offenders in a highly discriminatory manner and that most of these offenders are losers who are marked indelibly by the experience. (p. v)

Examining that liberal dream within the context of the California correctional system, in which both brains and money have been ap-

3 Moyer & Flynn, Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults (1971).

plied in an attempt to make prisons both humane and useful, Dr. Sommer concludes that the task is hopeless. The only honest course is to bring the prison as an institution to an end as quickly as possible. Relentlessly he asserts the failure of the prison. He insists that it survives because of a childish strain of thought about human beings and their behavior which he calls paleologic, following Arieti's coinage of the term as a tool in understanding schizophrenic communication. Rationality in an approach to crime and correction would discard the idea and practice of incarceration as an ineffective waste of resources when such less destructive alternatives as fines, reprimands, ridicule, public humiliation, banishment and restitution are available.

For the present, Dr. Sommer thinks, the first step is to "empty the prison of the 85 to 90 percent of inmates who are not 'violent predatory offenders.' " (This figure recurs again and again in the literature of prison reform, always attributed to an anonymous, not to say mythical prison warden who proffers the estimate, based on otherwise unspecified data.) What is to happen to the residue is not clear. At one point, Sommer seems to think that after a "decompression period of six weeks, and with ample back-up staff and money," they could be released back into the community (p. 181). At another point, he endorses a proposal to sentence all offenders to short terms of detention, no more than six months. For those to be confined for the six-month maximum, a jury trial would be held to determine whether the offender presented a danger to society, with the burden on the state to prove future dangerousness. "Since this task is extremely difficult, and most expert opinion in this area is suspect, the state is probably not going to attempt to hold too many people beyond the initial six-month period." In a footnote, he adds that "the development of suitable procedures to protect the rights both of convicted offenders and of society will require a considerable amount of legal and legislative work." (p. 175)

If it is uncertain how the detention of the offender is going to work out in the friendly new world which Sommer foresees, the justification for the uncertainty is explicit. He cites with approval the position laid out by the Norwegian criminologist, Thomas Mathiesen, in his carefully reasoned Politics of Abolition. 6 "Ma-

thiesen distinguishes between positive reforms that aim at abolishing the present system and negative reforms that perpetuate it." (p. 187) Thus, if Sommer has correctly understood Mathiesen, either approach to the management of future offenders is satisfactory if planned within the conceptual framework of abolition. Maybe all prisoners can be turned loose, maybe we should briefly detain all offenders. We can decide these matters later, once society has agreed to abolish the whole system.

But Mathiesen does not conclude his advocacy of abolition on that note. Essential to his argument is the principle that social change is never finished. To him, the abolition of the prison is only a step in the endlessly unfinished business of abolition. In his suggestive explication, “The maintenance of an abolition implies that there is constantly more to abolish, that one looks ahead towards a new and still more long-term objective of abolition, that one constantly moves in a wider circle to new fields of abolition.”

This is the politics of continuous revolution, not far from the principles once propounded by the late Mao Tse-tung. The returns on the Chinese strategy are not yet final, but it is obvious that Mao’s successors intend to bank the fires of perpetual revolution. However that may be, a cultural revolution is an improbable eventuality in the United States. Our business is certainly unfinished, but the sense in which this is true is the gradualism or the incrementalism which the revolutionary finds distasteful. Until and unless we abolish the prison as a part of an encompassing abolitionist strategy, it seems inevitable that we will have to use the prison as the social control of last resort. The truth is that the criminal justice system can never eliminate or even significantly reduce the rate of recidivism. Few police chiefs or judges were discharged because the crime rate rose in their jurisdictions; few correctional administrators, whether actually competent or not, were inconvenienced by a rise in the recidivism of offenders released from their facilities. Yet we hear from both Murton and Sommer and many of their colleagues in the abolitionist and reductivist camps that the prisons have failed.

The source of our confusion is to be found in the muddy reasoning which allowed the idea of success or failure to be applied to the operations of criminal justice in general and to prisons in particular. Here is a peculiarly American habit of thought, indispensable in most endeavors but fatally inappropriate for the evaluation of the processes of justice. A business succeeds if it makes money and fails if it does not. A football team succeeds if it wins all or most of its games and fails if it does not. For a good many years after World War II, which was a great success, we were persuaded that the criminal justice system could be properly assessed by its effect on the crime rates, as measured for us by the Federal Bureau of Investigation. By the same reasoning, a correctional system’s success could be measured by its rate of recidivism. Few police chiefs or judges were discharged because the crime rate rose in their jurisdictions; few correctional administrators, whether actually competent or not, were inconvenienced by a rise in the recidivism of offenders released from their facilities. Yet we hear from both Murton and Sommer and many of their colleagues in the abolitionist and reductivist camps that the prisons have failed. The truth is that the criminal justice system can never eliminate or even significantly reduce

Dr. Sommer scorns as “modern, pastel-hued prisons,” of the kind which he considers without merit. Elsewhere the choice lies between new mega-prisons or increasingly severe overcrowding. Some reductivists hold that overcrowding is to be welcomed because it will force the state to release all offenders who are not demonstrably dangerous. This is the position taken by the American Friends Service Committee in the Struggle for Justice. Other reductivists, this writer included, believe that new construction cannot be avoided if our prisons are not to become more shameful than they already are. Public impatience with the present level of crime will not be satisfied by alternatives to incarceration, nor will it be put off by the prospective reconstruction of the social order which the abolitionists urge as the only hope for urban peace. Both these arguments are valid, but until they are accepted, men and women will be jammed into noisome old prisons which should have been demolished decades ago.

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The truth is that the criminal justice system can never eliminate or even significantly reduce
the incidence of crime. Whatever the prison can do, it is certainly unable to affect the crime rates, or even the recidivism rates to a significant degree. We should never have expected that such goals were achievable, but we declared war on crime anyway, and pumped billions of dollars into the support of our “crime fighters,” just as resources were unstintingly poured into the military during the war against the Axis powers. But an authentic war against the military forces of an enemy can be won or lost. A war against a social condition is a metaphor. We now know that the police can do little to prevent crime, the courts can do little to deter it, and the prisons can hardly do more than intimidate the offenders committed to them.

Criminal justice must be seen as a process without goals or objectives. Its success or failure cannot be measured by statistical dents in the crime rates. Instead, we must learn to think of the system as consisting of interacting agencies of the state, each with immediate tasks to perform. These tasks are to be performed well; what is inexcusable is the cynical tolerance of non-feasance and misfeasance. The police should apprehend more criminals, prepare cases against them better, and deal fairly and efficiently with the victims of crime. The courts should dispense justice without delay and with even hands. The prisons should hold offenders securely and humanely, providing such assistance as possible to facilitate resocialization. Success is to be judged in the performance of these tasks. Unfortunately, there is little evidence that anyone, even the performers, is prepared to assess the achievements of the system in these terms. For too many years we have all been mesmerized by teleology. In that baleful light, no success is conceivable. If crime is out of control, it must be because there are not enough policemen, because judges are soft-headed, or because prisons are failing to reform prisoners. The first step toward realism in crime control is to abandon teleology and to expect less of the criminal justice system, indeed to expect of it no more than the decent and efficient performance of its immediate duties. The second step is to expect much more of all our other social institutions.

It is here that the sorest point of all is to be found. Our human service institutions are generally losing public confidence, but in no section of the public more than among the poor. The poor have always received poor services, where they have had any at all. Their schools are dilapidated, poorly staffed and overcrowded. Their hospitals are smelly theaters of death and despair. Welfare offices are neither sensitive to clients' needs nor efficient in meeting them. The worst services of all are generally to be found in our prisons, which until recently have been inhabited mostly by poor people. Their crime can be best understood as adaptations to the conditions of poverty. There are other adaptations: unskilled labor, dependency on welfare, drugs and alcohol—and for a lucky few, upward mobility out of poverty. It is a sore point that both the criminal and the non-criminal poor, standing in the most need of service, get the poorest quality.

There are many exceptions to the rule that the poor are poorly served. Religious orders and societies do what has to be done in accordance with what they perceive as a divine mandate. Altruists form societies to relieve distress. Even in the civil service many are to be found who are motivated to help and who possess the training to help efficiently. In these kinds of exceptions to the dreary rules which govern the lives of America's poor are to be found the hopes for change for the better. Our prisons can be better and it is worthwhile to try. The contrast between the wickedness to be found in the mismanagement of some and the altruism to be found in the management of others establishes the possibility of hope within the least promising of our public institutions.

So far as he goes, Mathiesen is right. Society is always unfinished. The way out of stagnation and oppression is to recognize this endlessly unfinished state of affairs. But Mathiesen is wrong in the assumption that abolition is a route to a better world. We have to identify the sources of the wrong-doing performed for us by the State, as Murton and Sommer have done, but we have to build on what we have. We must consider the meaning of our occasional successes and our frequent mistakes in doing what has to be done. We have no other choice.

As Roger Lane recently noted, few articles of conventional wisdom in the study of urbanization have attained so widespread an acceptance as the notion that the growth of cities has brought with it a dramatic increase in crime. Almost without exception, social scientists—criminologists and historians alike—have tended to reaffirm the validity of this proposition without stopping to examine its foundations.

Yet despite its persistence, this assumption may have little real evidence to support it. As Lane and others have recently demonstrated in local studies, crime rates during the nineteenth century, when America underwent a period of intense industrialization and urbanization, remained comparatively stable and in some cases even declined. Indeed, this research has suggested that urbanization itself may have contributed to this limiting trend.

Eric Monkonnen's *The Dangerous Class*, the latest examination of the traditional view, is easily the most sophisticated to date. With the aid of seldom-consulted court and poorhouse records and by an impressive application of statistical analysis, Monkonnen ultimately rejects the proposition and substitutes a theory of his own: If Columbus, Ohio, reflected the experience of other cities, urbanization did not create a criminal or pauper class; rather, he concludes, it affected the kind and quality of social deviance.

As Ohio's cities grew and industrialized, most crime tended to be ubiquitous in both urban and rural areas and rates tended to stay constant. Two interesting exceptions to this rule were murder, whose incidence decreased in Columbus and other cities as they grew, and theft by trick, which dramatically increased. Monkonnen attributes both of these trends to the gradual dwindling of face-to-face relationships in business and social life and their substitution by the general anonymity of urban life. Monkonnen concludes that as cities became more modern, they went through changes in their crime patterns which decreased the incidence of more traditional forms of criminal behavior.

For the urban historian, an equally interesting finding of Monkonnen's is the remarkable "normality" of Columbus' criminals, as measured by such indices as family size, occupation, wealth and geographic mobility. The fact that offenders were no more prone to move than the rest of the population suggests that some of the assumptions which Thernstrom and other historians have made about the meaning of mobility deserve reconsideration. Likewise, the finding that criminals were so relatively "normal" indirectly contributes much to our understanding of the social reformers of the day, who invariably perceived offenders as a class apart from the mainstream of society.

Monkonnen's analysis of the paupers of Columbus is equally provocative. Using poorhouse records, census manuscripts and city directories, he demonstrates that as the city became more modern, the number of poor unemployable persons did indeed increase, but only among certain discrete groups. Homeless tramps, and not persons with a tie to some community, whether local or nonlocal, claimed an increasing share of poorhouse space.

Monkonnen ends his book with an analysis of the "dangerous class," a nineteenth century concept which reformers used to lump together criminals and paupers. Contrary to the beliefs of that time, this "class" was far from homogeneous. Indeed, within it there existed a complex social structure composed of criminals, paupers and tramps, both urban and rural. Then, as today, the indiscriminate lumping together of these distinct groups by reformers and legislators was a mistake.

Monkonnen's book is not without its flaws. Most glaring is the relative absence of qualitative material. Throughout the book, but especially noticeable in those sections in which Monkonnen discusses the seriousness which criminals and courts attributed to various crimes, his argument neglects the testimony of the participants. This kind of evidence, which he might have found in transcripts, case law and elsewhere, would have complemented his analysis and given it greater depth.

The omission of qualitative material forces the reader to scrutinize Monkonnen's statistics, particularly his reliance on court and poorhouse records and by an impressive application of statistical analysis, Monkonnen ultimately rejects the proposition and substitutes a theory of his own: If Columbus, Ohio, reflected the experience of other cities, urbanization did not create a criminal or pauper class; rather, he concludes, it affected the kind and quality of social deviance.

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house records, all the more rigorously. For example, by allowing poorhouse inmates to stand for all poor people and all persons who appeared before criminal court—regardless of conviction—to stand for all criminals, Monkonnen may have made grievous errors. Surely not all of Columbus' poor were institutionalized, nor all of its offenders arrested, nor all of its accused found guilty.

An example of how these defects in Monkonnen's methodology combine to dilute the strength of his argument appears in his discussion of criminal recidivism. According to Monkonnen, court records amply demonstrate that "although the percentage of crimes accounted for by recidivists was on the increase through the whole period, the percentage of persons starting out as recidivists steadily declined." (p. 102) In light of the notoriously inaccurate methods of criminal identification of the day, however, as well as the fact that then, as now, not all prior offenses appeared in court records, especially if they occurred in other jurisdictions, a conclusion on the rate of nineteenth century recidivism seems presumptuous at best.

On the whole, however, the book's skill and imagination outweigh its flaws. The Dangerous Class contributes much to our understanding of cities and their social deviants. By revealing the subtlety and complexity of the changes which urbanization generated, Monkonnen has furnished a number of controversial hypotheses and avenues of research for future social scientists. Whether Columbus reflected the experience of other cities, whether the trends which it exhibited continued past 1885, and how later innovations in technology, law and criminology influenced these trends are all questions which now await careful consideration. The social history of America's poor, and especially of its criminal offenders, is still a relatively unexplored field. With The Dangerous Class, Monkonnen has broken new ground which future students must now follow.

Eric Fishman
Columbia University


Japan's remarkable achievement in reducing the incidence of serious crime in the past decade has been a social miracle which has gone largely unheralded in the Western world. What makes this achievement especially noteworthy is that during this period of time Japan experienced significant urban growth and industrial expansion, socio-economic developments which would normally result in alienation, increased social breakdown and crime. How this densely populated island nation has been able to realize this welcome state of affairs is the intriguing question to which Clifford addresses himself in this impressive, knowledgeable book.

As in all questions of this magnitude, Clifford found the answers both simple and complex. He attributes the Japanese success in curbing and controlling crime to several factors: (1) a homogeneous, socially cohesive society which maintains a degree of orderliness and control unheard of in Western society, (2) their ability to retain effective small groupings and (3) the intertwining of social obligations and dependence imposed on each individual which in turn produces enormous internal pressures to avoid deviant behavior. The end result is that the average Japanese has a strong moral commitment to lawful behavior and, in effect, acts as his own internal policeman.

Clifford also is impressed by the efficiency and professionalization of the Japanese criminal justice system. Their police have an unusually close relationship to the citizenry and are supported in their efforts by neighborhood crime control associations. A much higher rate of clearance by arrest is realized by Japanese police than is true in our country. The conviction rate enjoyed by Japanese public prosecutors is over ninety-nine per cent, and they have wide discretion in deciding whether or not to prosecute a case. Judges are professionals in the true sense of the word who start their legal careers as jurists and they too, enjoy considerable public respect and trust. And, finally, Japan has provided a rather elaborate, modern correctional system utilizing the latest advancements in contemporary penology.

The author also deals with the problems of female crime, gangsters, juvenile delinquency and drugs in separate informative chapters.

In my judgment, Clifford has succeeded in unraveling the mystery of Japan's phenomenal success in crime control. His book is well worth reading as a case study of an industrial society which has been able to make its better traditions
work in this vital area of social concern. The book is highly recommended.

I. J. "Cy" SHAIN
Judicial Council of California


Dr. Berkson tells us in his preface that, unlike the other major provisions in the Bill of Rights, the eighth amendment prohibition against "cruel and unusual punishment" has never been given book-length treatment; hence his intention to remedy this neglect with "a broad and comprehensive picture of the . . . concept." (p. xiii). How well does he succeed in providing us with such a picture?

Berkson cites over 800 cases in which this federal constitutional provision or one of its state counterparts is at issue (this is less than a third, by his own count, of the relevant cases since the first one in 1811—see pp. 9-10). He appears to review every kind of punitive and quasi-punitive practice under state and federal law insofar as it has been criticized in litigation as cruel or unusual. Capital punishment in all its familiar modes (electrocution, lethal gas, hanging, shooting) for any of several crimes (murder, rape, robbery, kidnapping), as well as other corporal punishments (flogging, sterilization), whether administered under statutory or administrative authority, are reviewed. So are "incorporeal punishments," such as deportation, expatriation, chain gangs and whole prison systems, as well as status criminalization (narcotic addiction and habitual offender statutes).

The author's approach is generally chronological toward each of the types of punishment under study. Anyone wanting information (as of early 1975) concerning whether any given mode of punishment has been challenged, successfully or unsuccessfully, as unconstitutional on eighth amendment grounds cannot hope to do better than to consult this volume. The table of cases, index, and notes make Berkson's book an indispensable guide for the serious reader through the pertinent scholarly literature and judicial decisions.

No reader or reviewer of Berkson's book is likely to be equally familiar with all the topics discussed. I studied with particular attention his chapters on the death penalty, the topic to which he understandably devotes approximately one-fifth of his book. If the accuracy and thoroughness of the whole is like this portion, then just below the surface the book is open to a wide variety of criticisms, most minor but a few major.

Berkson rightly subjects Justice Brennan's "elaborate" (p. 160) concurring opinion in Furman v. Georgia to specially detailed analysis (pp. 15-17), but he fails to explain why none of the other eight opinions in Furman warrants comparable treatment (cf. pp. 45-49). Although he discusses the state supreme court rulings in North Carolina and in Delaware that rejected an abolitionist reading of Furman for those states (p. 51), he does not mention the Massachusetts decision (Commonwealth v. A Juvenile, 14 300 N.E. 2d 439 [1973]) in which Furman was given an unusual extension by a state supreme court. Berkson makes it clear, as did several of the opinions in Furman, that Furman is difficult to square with the Supreme Court's 1971 decision of McGautha v. California (pp. 50-51), but he does not probe the two rulings correctly and show how it is not necessary to read them as contradictory. Although he gives the reader a helpful digest of the "aggravating" and "mitigating" circumstances incorporated in post-Furman statutes that offer guided discretion in death penalty sentencing (p. 52), he makes no mention of the many mandatory death penalty statutes also enacted in the wake of Furman. Hence the reader of his book is not prepared for the important distinction the Court drew during 1976 on these two types of death penalty statutes with regard to their constitutional status as cruel and unusual punishments, upholding the guided discretion variety in Gregg v. Georgia and ruling against the mandatory variety in Woodson v. North Carolina. A careless juxtaposition of sentences (p. 161) suggests that there have been no executions between 1967 and 1975 owing to gubernatorial commutations of death sentences during those years. Most important, the slow development of a rationale under the eighth amendment to show the unconstitutionality of capital punishment is not examined.

13 408 U.S. 238 (1972).
17 96 S. Ct. 2978 (1976).
punishment, beginning with the arguments of Gerald Gottlieb in 1960 and culminating in the NAACP Legal Defense Fund briefs in Furman, is never more than sketched. Although Berkson cites much of the vast range of pertinent literature, he does not cite some of the best, and his style thoroughly conceals whether he has seriously grappled with the cognitive and judgmental issues this literature raises. Finally, the values that a just society endeavors to protect through prohibiting cruel and unusual punishments, and why these values are important, are never adequately examined. In these ways, Berkson's book falls short of achievements it might have made and thus leaves much for others to accomplish.

Hugo Adam Bedau
Tufts University


At 19, Edward Kemper was released from a mental hospital where he had spent five years for killing his grandparents. In the following year, he shot, stabbed and strangled eight women, cut off their limbs, attempted sexual intercourse and engaged in acts of cannibalism. His finale consisted of decapitating his mother, cutting out her larynx and depositing it in the garbage disposal. In October of 1970, John Frazier, acting on a "personal message from God," killed a prominent doctor, his secretary, his wife and two children.

It has been two hundred years since Lord Bracton set forth the principle that some people suffer from mental disease and should not be held accountable for their acts. Two centuries later, the term "insanity" remains as the definitive term in the judicial arena. As strange as it may seem to the lay person, both Kemper and Frazier were found legally sane and sentenced for murder.

Expounding on the myths and realities of murder and mental illness, forensic psychiatrist Lunde begins his treatise with the realization that the Kempers and Fraziers are exceptions to the statistical rule. In our ever-increasing de-personalized society, murder is still committed predominantly between intimate parties. Of the one in every 10,000 Americans that will be killed this year, seventy per cent will be murdered by relatives, acquaintances or friends. Felony murderers, those committed during the commission of another felony, account for almost all of the remaining thirty per cent.

Knowing who kills whom is a matter of statistical analysis; it is the why that has generated conflict and confusion among the social and medical scientists. Herein lies the value and clarity of Lunde's book. Beginning with his chapter on "Violence and Social Factors," Lunde methodically reviews historical and contemporary studies on the causes of murder as presented by the relevant disciplines. He then expounds on his own professional experiences to present the reader with valuable case studies and insights into the psycho-legal process of the adjudication of accused mass murderers.

Perhaps most familiar to the student of criminology and psychiatry is Wolfgang's research and theory regarding both homicide and the "sub-culture of violence." Wolfgang maintains that certain value systems and social groups have internalized violence and as a consequence experience higher murder rates due to the social environment in which they find themselves; i.e., racially tense, urban ghettos. Citing studies that question the racial nature of this sub-culture, Lunde analyzes the proportionately higher homicide rate of the southeast United States and concludes that the sub-culture of violence should be examined as a regional, rather than a racial, phenomenon. Studies of black murderers by Pettigrew and Spier revealed that neither socioeconomic status nor degree of family disorganization correlated with the murder rate. "The single most important factor that did stand out was the culture in which the black had been reared . . . . Blacks raised in the South had the highest murder rate." The attitudes and traditions of the South that deserve attention according to Lunde are: the condoning of physical redress to insults, the development of such violent institutions as dueling, the presence of vigilante groups such as the Ku Klux Klan, and the proliferation of deadly weapons, especially handguns.

A national, as opposed to regional, explanation for murder trends is presented by Andrew Henry in the form of his external restraint theory. Treated by Lunde as a social (as opposed to psychiatric) factor, external restraint theory examines the relationship between murder and suicide. For the first time since accurate records have been kept, United States suicide and homicide rates are essentially equal.
Since the late 1950's, the United States has experienced a dramatic increase in homicides, while suicides have remained relatively constant. This is consistent with a new and increasingly popular theory that the church, school and other American institutions are playing a decreasingly significant role in our society.

Discussing the economy, mental illness, alcohol, guns and even weather as possible correlates of murder, Lunde points out that although no single theory can explain all violence or murder, there are important "indicators of tendencies toward violence" which serve as a base for future multi-disciplinary study. Although it is given little attention, the chapter on "Murder in Other Countries" reveals some interesting comparisons. For example, the percentage of United States murderers found insane is given to be between two and three per cent, as compared to twenty-five per cent in England. Lunde's analysis of the difference leaves the reader to conjecture.

The remainder of Murder and Madness is devoted to madness. Lunde in effect begins an entirely different book, switching from the social analysis of murder to an illustrative psychiatric narrative. The cases of John Frazier and Herbert Mullin, paranoid schizophrenics, and the case of Edward Kemper, sexual sadist, are presented to the reader as examples of these "types" of mass murderers. Although they make for interesting reading, more important than the case histories themselves are the frustrations revealed by Lunde acting as court psychiatrist. Calling for a greater commitment from his colleagues and more expertise in identifying people most likely to commit murder, Lunde describes a major barrier:

Quite frankly, interviewing and analyzing suspected or convicted murderers in the grim atmosphere of a jail or prison cell is an unpleasant task. Interviewing a client in the pleasant, familiar surroundings of one's own office and collecting a fee for services rendered to a grateful patient is understandably more rewarding to most professionals.

This would seem to be a grasp of the obvious were it not for the fact that it is rare indeed to find such a refreshingly honest critique of one's own profession. Hopefully, psychiatrists like Diamond, Goldzband, Bozzi, Rusk, Read and Lunde will continue to enlighten and clarify the profession and its role in jurisprudence.

Lunde denounces the unprofessional manner in which some of his colleagues and some lawyers engage themselves in the psycho-judicial proceedings of suspected murderers. He alludes to the fact that the legalistic adversary system is not conducive to the psychiatric evaluation but nevertheless concludes his work by disagreeing with Menninger, et al. that the present system should be abandoned in favor of one utilizing a panel of experts. After convincing the reader that psychiatry and the judicial process are indeed strange bedfellows, Lunde calls for the relationship to continue, including the determination by jury of the sanity of the accused. Donald Lunde feels that "insanity is a legal and moral issue, not simply a psychiatric one."

Finally, Lunde adds his own expertise to the study of murder by presenting his own classification of murderers based on the type of victim killed. Suggesting that there are no "typical psychological profiles," he believes that only by recognizing "distinctive subtypes" of murderers can we understand the mental processes involved.

Murder and Madness does not offer the reader any startling revelations, nor does it address the political and economic facets of the justice process. What it does offer, however, is a clear and concise summary of existing social theories of murder and murderers and a thought-provoking analysis of murder, insanity and the case study method. Murder and Madness is easy, interesting and required reading for those who wish intelligently to discuss the subject of murder.

G. Thomas Gitchoff
San Diego State University


The contents of this book tend to support the editors' contention that diversion of juvenile offenders from the criminal justice system comes dangerously close to being a fad. While differential association is mentioned as one theoretical basis for diversion, the selections emphasize the role of labeling theory and little empirical evidence favorable to labeling theory or diversion programs occur in these selections.
Indeed, some results suggest that recidivism is more likely among diverted offenders than among offenders not diverted. Also more recent research on recidivism\(^{18}\) is similarly unfavorable to the official stigmatization proposition.

Extracts from federal government reports help document the importance of the subject of diversion; but they occupy more space than their informative value recommends and increase redundancy, always a potential problem for compilations on relatively novel topics. More careful editing of these reports and other selections was needed to reduce the frequency with which readers learn of: the difficulty of defining diversion; the findings on police disposition of offenders by James Wilson, Black and Reiss, and Briar and Piliavin; and the assumption that official labeling stigmatizes and encourages deviance.

A more important limitation of the book is the disproportionate selection of studies of California programs. While unavailability of adequate studies might have reduced the options, unrecognized peculiarities of California programs might bias conclusions about diversion.

About two-thirds of the selections have not benefited from anonymous review, but their claims are reliable and these studies help to make the book a handy reference source for criminal justice policy-makers and researchers.

Roy L. Austin

The Pennsylvania State University


In the preface to her book, Reid contends that what is currently lacking in criminology is a textbook that provides not only a comprehensive analysis of the etiology of crime, but also an analysis of the criminal justice system and penology. It is with "that dichotomy in mind," she states, that this textbook was written in an attempt to combine her training in sociology and law. However, Reid's text does not succeed in combining or integrating the two approaches. She makes no real attempt to bridge the gap between texts in criminology and texts in criminal justice except to put them under one cover. The unique aspect of the book consists of legal cases that are interspersed throughout the text. Unfortunately, the author fails consistently to integrate these cases in other than a descriptive or legal basis.

Aside from the sporadic development of legal issues (there is one chapter devoted entirely to prisoner's rights), the format is relatively standard. The book is divided into four parts. Part I: Crime, The Criminal and Criminology deals with basic concepts in criminology and research methods. Part II: Theories in Criminal Behavior presents the usual eclectic sequence of theories starting with the classical and positive schools of thought, to more explicitly physiological theories and on to psychological and, finally, sociological theories. Part III: The Criminal Justice System treats the systems analysis of the processing of offenders with major focus on the police and courts. It is predominantly issue-oriented and is close in style, content, and quality to introductory texts often used in criminal justice programs where introductory sociology is not a prerequisite. Part IV: Penology could more appropriately be titled "Corrections;" it discusses forms of punishment, prisons, the prison community, alternatives to treatment and civil rights.

In Part I, the chapter on research and criminology is particularly confusing, if not misleading. Using the scientific method as a frame of reference, Reid contends that empirical research into causes of crime can be approached in essentially two ways—neither of which are defined conceptually—the longitudinal and the cross-sectional study. If I interpreted the subsections correctly, then longitudinal studies consist of case studies, single factor studies, multiple factor studies, experimental methods and ex post facto designs. The distinguishing feature of cross-sectional approaches, according to Reid, is that they use statistical techniques, especially "correlation techniques." The value of such a classification is not apparent and Reid does not indicate the utility of her typology of research methods. Conceptually, longitudinal and cross-sectional are usually distinguished by time as sequence dimension in which data in given groups are collected and by the different assumptions made about the sampled group—not by how many variables are used or whether statistical analyses were performed.
Further, in her critical analysis of each method, she first gives what she feels to be a research effort representative of the method employed. One is never sure whether the weaknesses she points out are intrinsic weak spots of the method or the result of abusive use of research design and statistics by the researcher. The possible failure of the researcher to pick the appropriate methods for the research problem is not even mentioned.

There are also serious problems evident in her approach to criminological or deviance theory in Part II; this section consists of a brief presentation of a theory followed by a critique. There appear to be no criteria for the selection of theorists other than that the aggregate represent a fairly broad spectrum of disciplines. I have no idea why, for example, Quinney is frequently picked as a representative of the conflict theorists except that he is perhaps the most vociferous in asserting that he is a conflict theorist or a radical. There appears to be a slight preference for theories presented by Sutherland and Cressey and a distinct preference for typologies and classificatory systems which are perhaps more suited to legal analysis. Not only is much time devoted to differential association and the behavioral systems approach, but Sutherland has the distinct honor of being the only theorist whose photograph appears in the distinguished company of three photographs of correctional centers, one of a prison and two more of the electric chair and the gas chamber.

In addition, Reid is somewhat indiscriminate in her critical analysis of each theorist, selecting criticisms by other theorists such as Quinney, Cicourel, Cloward and Ohlin, Matza, where the criticisms may be due in part to differences in theoretical perspectives rather than in questions of accuracy determined through some scientific method. Her own criticisms are distinctly atheoretical. Reid does not assess the logical adequacy of any particular theoretical perspective or the implicit or explicit assumptions that theorists have made to arrive at their respective conclusions. Instead, her comments range from fairly analytic with respect to methodology to very mundane. I doubt, for example, that there is a sample large enough to satisfy Reid.

In Parts III and IV, which focus on the criminal justice system, the approach is more informational and less theoretically thematic. There is no consistent use of theories from sociology of law, complex organizations, or of decision-making theory, labeling theory or role theory that might tie the discussion of the different components of the criminal justice system together. There are no theoretical ties to the perspectives in Part II.

I expect that readers will find Part III and Part IV to be more stimulating than Part I and Part II because they raise issues and alternative solutions. Therefore, they provide a focal point for class discussions and lecture. The critiques in Parts I and II are major weak spots in the textbook because they tend to offer rather pat solutions and criticisms to both empirical and theoretical issues. My own preference is to encourage and motivate students to assess these issues using a broader foundation and to carry that motivation over to the study of criminal justice. With this approach in mind, I would not recommend Crime and Criminology as an introductory text.

JOCelyn Young

University of Maine


The focus of this book is on "mapping a wide spectrum of despair...cataloging the feelings...[and examining] self-destruction [in the prison setting]." Professor Toch does not examine the appropriateness of the medical model but considers the words "patient" and "prisoner" to be synonymous. He assumes that self-destructiveness in prison, for the most part, is a result of longstanding emotional problems of coping by the "patient" in his life prior to his incarceration. The approach to the problem under study is clinically scholarly and painfully "objective."

In discussing the research approach, the author rightfully acknowledges the cooperation of New York prison authorities, including Russ Oswald. But in an effort to maintain "objectivity" (a will-o'-the-wisp in any research endeavor), Toch becomes in effect an apologist for the correctional administration:

The reason for cooperation was probably the desire of officials for relevant, trustworthy feedback...[I]n our experience the custodians of inmates do not seem oblivious to the suffering of their charges. They appear concerned about
their impact and about possibilities [within the limits of the available options] for ameliorating the experience of incarceration ... [T]he warmth with which we were received may have been due in part to the fact that our credentials and our past involvements implied that we would approach our task with an effort at objectivity. (p. 20)

Translation: Based upon the prison authorities' previous experience with Toch's research, the former were convinced they had nothing to fear because the research would be "safe" and would constitute no threat to the correctional administration. But that kind of self-limiting alliance unduly biases the results of any research.

The author notes some ill effects from imposed constraints in general prison management. But the morality and the efficacy of the administration's contribution to the phenomenon under study is accepted with equanimity because the modality of prison management is not questioned.

Toch has accomplished a difficult task in selecting cogent portions of voluminous transcripts of inmate interviews. *Men in Crisis* (that strangely includes a chapter entitled "Women in Crisis") is well written and displays Toch's ability to convey clearly what he is trying to say. However, sometimes the beauty of the language blurs the meaning. In discussing one case study, for example, the writer scrupulously avoids conceding guard brutality. Instead he observes: "It can be assumed that in the charged atmosphere that existed at the time, minimal provocation by Johnson could spark retribution." (p. 232) In another context in the same case, he writes that "The obdurate walls of confinement do not yield to Johnson's trumpet." (p. 249) Or, one could say that Johnson had no impact on the prison organizational structure in making it more responsive to his needs. Both statements hint at the same meaning. While the former rendition is more artistic, the latter is perhaps more accurate.

Toch's research focused on inmate perceptions as if they were in fact reality. It was assumed that inmates either were telling the truth or believed themselves to be telling the truth about their feelings. Other writers, practitioners and this reviewer have all attested to the common occurrence of willful "sandbagging" or "jackpotting" (claiming an alleged grievance against an innocent victim) of an officer or inmates by an inmate whose purpose is to agitate the system or to pursue his own personal goals. Such activity is mere manipulation and an effort on the inmate's part to cope with his environment or to adjust it to his needs. The researcher's apparent unawareness of this fact of prison life (that inmates have been known to lie upon occasion), calls into question the validity of the analysis and consequently some of the conclusions regarding self-destructiveness in the prison setting.

Nonetheless, the case study method in this book is effectively and artistically utilized and both the correctional worker and the inmate probably can gain some insight into prison dynamics from a perspective differing from that set forth in the writings of Clemmer, Cressey or Sykes. The difficulty with any new intellectual discourse lies not in its conceptualization but in its implementation. In the closing chapter, Toch describes how the prison pathology can be diminished by more skillfully applying treatment techniques. The recommendations include a "network model for the human services ... mapping of the needs of the clients ... fact-gathering and evaluation procedure applied to all inmates." (p. 306)

A closing paragraph begins with the hopeful statement that "physical and social environments of institutions are also alterable." However, Toch avoids an opportunity to propose methods by which the administration could change the prison environment. Instead:

Even within the narrow range of settings of the prison system, the social-ecological dimensions of different prisons vary significantly, and a single prison may contain a variety of subenvironments that differ significantly. If we know what a man's milieu requirements are, we can use crisis-relevant dimensions to place him in a "matched" setting. It requires ecological mapping of tiers, wards, public rooms and living accommodations.

The institutional practitioner could easily find experts to help him plot the range of environments available to him, and to develop ways of improving relevant environmental attributes. (p. 306)

No doubt.

Acknowledgement is made that the para-professional—the foreman, the housewife or the inmate—could be an effective therapist.
But use of the latter “requires the training of inmates in differential diagnosis, so as to assure the appropriateness of their response.” (p. 320) This training is to take place under the guidance of the professional therapists on the prison staff. Yet one of the major themes that comes through the interviews is the inmates’ consensus that the therapist is about as skillful at treating inmate problems as is an orangutan at brain surgery.

The training model is expected to produce “guards specializing in rehabilitative and human relations areas . . . under a classification system [that provides] a milieu inventory [in] a supportive environment.” (pp. 322–23) Well, maybe. But how?

It appears that Toch is arguing that inmates should be given a greater share in their own cure because “men who act troubled deserve at least the opportunity to ventilate their concerns, if they desire to do so. . . . Many inmates now poorly integrated into the prison society could acquire a useful and meaningful place in it.” (pp. 321, 322) But is adjustment of the inmate to the prison society either a worthy or functional objective?

The bottom line in the book is “[I]f men permit themselves to respond to their own humanity, even environments of stress such as prison can become settings for survival and milieu for personal growth.” (p. 326) Yet placement of a deviant person in a hostile, dictatorial milieu as an appropriate learning center for future responsible functioning in a free society always has seemed a little peculiar.

Men in Crisis presents some interesting data and analyses in an effort to explain one aspect of prison violence. It would have been more useful if Toch had not endeavored to examine the phenomenon of self-destructiveness in a vacuum but instead had called into question the effectiveness of rehabilitation, case work and the medical model with all the ramifications that these artifacts of pseudo reform have upon the prison culture.

Maconochie commented in 1839 on the danger of using tactics that “suppress the indications of error, rather than remove error itself . . . instead of seeking to improve the apparatus of physical coercion, the real problem is how we may, in whole or in part, advantageously dispense with it.” [emphasis in original].

Of course.

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