Book Reviews

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BOOK REVIEWS


This book is not about the agonizing political and moral problem of whether or not death at the hands of government is justifiable as punishment. The entire contemporary debate about deterrence and desert is absent from these pages. Instead, Raoul Berger’s thesis is that “control of death penalties and of the sentencing process . . . was left by the Constitution to the States” (p. 9). Death Penalties is a defense of an extreme states’ rights position—not just in imposing the death penalty, but in many other matters such as state-mandated racial segregation (e.g., pp. 24, 184-85) and state-run sectarian schools (p. 108).

The principle of complete state sovereignty over punishment for acts made criminal by state law, together with an extremely narrow interpretation of the Cruel and Unusual Punishments Clause, leads Berger to the position that the United States Supreme Court has no power to prevent the government from punishing by branding, mutilation, and whipping (p. 113), nor from imposing death for the crime of forgery of public securities (p. 47), or for piracy, arson, rape, robbery, burglary, and sodomy (p. 44). Berger seems unclear whether the eighth amendment would permit the government to impose disembowelling for treason (pp. 40-41). "At issue is not whether a man may be hanged for stealing a loaf of bread, but whether the Court is authorized to take that decision away from the legislature and the people” (p. 128).

How does Berger defend this position? While two chapters deal with the Cruel and Unusual Punishments Clause, most of Death Penalties reiterates his general constitutional theory, which he has urged in previous works. In my view his theory has been effectively discredited

1 Compare 40 n.52 (“If it did not violate the 1689 clause [as he argues disembowelling for treason did not], it did not violate the Eighth Amendment”) with pp. 42-43 (“Whether there was in fact no ‘causal connection between the “Bloody Assize” and the cruel and unusual punishments clause’ is of no moment if the Founders thought there was”).

2 Chapter 3 considers the history of the Cruel and Unusual Punishments Clause, and Chapter 6 considers the Supreme Court’s death penalty cases.

among contemporary scholars in constitutional law, and it will not be discussed here in great detail. This review will instead set forth the argument structure of the book insofar as it relates to imposition of the death penalty and discuss its underlying theory sufficiently to explain why the argument rests on a deeply flawed, and at bottom an incoherent, theory of constitutional government. The review will briefly consider Berger's treatment of eighth amendment case law, and finally, comment on the book's character and tone.

Berger does not set forth his argument systematically. Nonetheless, it can be fairly reconstructed as follows:

A. Whatever the Cruel and Unusual Punishments Clause of the eighth amendment means, it does not limit state governments at all, since the Bill of Rights does not apply to the states. This is because (1) the Bill of Rights and hence the eighth amendment did not apply to the states in 1789 and (2) the fourteenth amendment in 1866 did nothing to change that situation—its requirements that state legislation stay within the bounds of due process and equal protection of the laws have no effect on state punishment or sentencing practices. Why not? Because the Framers of the Constitution and the fourteenth amendment so intended.

B. In any case, assuming arguendo that the eighth amendment limits state governments as well as the federal government, the Cruel and Unusual Punishments Clause does not prohibit executions for any crime punishable by death in England and/or the American colonies in the seventeenth and eighteenth centuries. Shameful and degrading punishments (p. 118 n.29, p. 127); excessive and disproportionate punishments (p. 34 n.28, p. 148), punishments that violate human dignity (pp. 117-20), and punishments administered discriminatorily on the basis of race or class (pp. 55-58; pp. 42-43) are all excluded from its scope. Why? Because the Framers of the Constitution so intended.

What is apparent from this skeletal reconstruction of Berger's argument is that its backbone must be a theory of constitutional government that equates the authoritative meaning of Constitutional words and provisions with the intention of the Framers. Berger is indeed a thoroughgoing intentionalist or originalist in constitutional interpretation, yet Berger does not argue explicitly for such a constitutional theory. Apparently he regards its validity as self-evident. To the question, "Why should the words in the Constitution mean only what the Framers intended them to mean?" Berger would think it sufficient to answer, "Because that's what the Framers intended."

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This *petitio principii* is not a satisfying theory of constitutional government. One obvious rival interpretivist theory is textualism: the words mean what the words mean (the plain meaning rule). An originalist species of textualism is possible (the words mean what they meant in 1789); insofar as Berger sometimes seems to embrace textualism, this is the species he embraces. But another species of textualism would not see meaning as primarily historical at all. Under that kind of textualism, in order to determine whether something is a cruel punishment, we look into what "cruel" means. Thus, semantics and perhaps ethics become more important than historical psychology. In any case, in order to choose one of these interpretive theories of constitutional government, or some non-interpretive theory, a normative political theory is necessary. Berger lacks such a theory.

Perhaps Berger thinks that his brand of interpretivism is not a political theory at all, but rather an historical "fact." He derides scholars who argue on the basis of philosophical or political theories. Yet most of the sophisticated participants in the constitutionalism debate have realized that even appeals to historical fact require theory; our historical and interpretive theories determine what we consider to be historical facts and what political significance we attribute to them.

Not only does Berger fail to argue for his constitutional theory, he likewise ignores the many ambiguities and philosophical difficulties of using the Framers' intent as a criterion for authoritative meaning.\(^5\) Sometimes he writes as if intent means the actual private thoughts of the individual members of the Constitutional convention, or of the colonists in general; sometimes he writes as if the Framers' intent is to be equated with judicial practice, or legislative practice, or common social practice in England or the colonies in the seventeenth and eighteenth centuries. He does not seem to be aware that all these "intents" may be different. He argues simultaneously that the Cruel and Unusual Punishments Clause means what it meant in 1689 when enacted in the English Bill of Rights (pp. 40-43, esp. n.52); means whatever the Founders or the colonists thought it meant, even if they were mistaken about its meaning in the common law (pp. 43-44); and that the word "unusual" in the clause is to be given its ordinary everyday meaning (p. 41). The latter is not even an intentionalist argument, but rather the originalist version of textualism, since Berger suggests that the clause prohibits only punishments

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\(^5\) The difficulties with interpretive theories based on legislative intent are incisively and systematically set forth in Moore, *The Semantics of Judging*, 54 S. CAL. L. REV. 151, esp. 265-69 (1981); see generally id. at 246-70. What does it mean to speak of a group's intent? Who counts as part of the group? What if the individual members have different ideas of meaning or imagined results? What constitutes evidence of the group's intent?
that were unusual (in this ordinary sense) in the seventeenth and eighteenth centuries.

Thus, Berger is hampered by unexamined and impoverished views of political theory and semantics. He is no less hampered by an unexamined and impoverished view of ethics. His view of value judgments seems to be that of a radical skeptic: there is no such thing as right or wrong, only individual subjective preferences. For him there is only a stark dichotomy: either the Justices implement the “will” or “predilections” of the Framers, or their own “will” or “predilections.”

There is no room here for viewing the Court’s efforts as good faith attempts to implement ethical principles implied by the text. There is no room for the common sense idea that perhaps we should interpret the word “cruel” in the Constitution by finding out what really is cruel (i.e., by applying our best ethical theories of what is cruel). It is no wonder that Berger does not consider the marriage of textualism and intentionalism possible under Ronald Dworkin’s concept/conception analysis. Applying Dworkin’s analysis to the eighth amendment suggests that the Framers “intended” future generations to be bound by the concept of cruelty, but not necessarily by the particular conception of cruelty then prevalent.

Other than to repeat the petitio principii that Berger must think establishes his brand of intentionalism as the theory of constitutional government, Berger might make three replies to what has been said here. He might say: (1) Under any plausible theory of constitutional interpretation, the Constitution leaves to the states total sovereignty over the death penalty in state criminal law; (2) if we don’t want the Constitution to do this, we should amend it; and (3) under any theory of the meaning of the clause, the death penalty is not cruel because it was commonly used until fairly recently. Berger doesn’t really argue for the first reply, since he is so sure his theory is the theory, but clearly the proposition is false. There are plausible theories for applying the fundamental guarantees of the Bill of Rights to limit state government actions against individuals. Still less does he argue for the third, but clearly there are plausible theories under which the meaning of “cruel” in the Constitution is not exhausted by the accepted cruelties of the eighteenth century.

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6 Berger’s obvious belief that his brand of intentionalism is the right theory of constitutional government no matter how much judges and others act contrary to it is inconsistent with his implicit belief that all value judgments reflect merely subjective preferences. The inconsistency might be made to disappear if no value judgment is necessary to decide what is the right theory of constitutional government. Thus, if one believes that the right theory is “simply” a “fact,” or accepts the legal positivist cleavage of law and ethics, one might cling both to the radical subjectivity of values and constitutional objectivity of the kind sought by Berger.

or even (if one is a realist in ethics\(^8\)) by the accepted cruelties of today.

As in his other works, Berger dwells on the second proposition (change must be by constitutional amendment) throughout *Death Penalties*. The proposition reflects a perennial problem in democratic government with separation of powers: what is the proper role of courts in our ongoing process of social and ideological development? The problem has generated an ongoing debate of great complexity in law and political theory. No hard-and-fast answers have emerged, and perhaps the nature of the problem is that they cannot, but it is pretty clear that naive legal realism (the law is whatever the Court says it is) and naive legal positivism (the radical separation of “making” law from “applying” law) are both inadequate theories of what our institutions are and ought to be.

Berger contributes nothing to the discussion of this central problem of democratic government. In fact, because of the ambiguities in his brand of intentionalism, one cannot even tell what kinds of things he thinks would require constitutional amendment to make them permissible judicial domain. He seems to think that what is prohibited by the Cruel and Unusual Punishments Clause is limited to the list of known cruelties in the seventeenth and eighteenth centuries; yet, he states that “[o]f course the Fourth Amendment ‘search and seizure’ principle, for example, goes beyond physical searches to comprehend current wiretaps and electronic surveillance. They are analogous to what was prohibited . . . ” (p. 73). Furthermore, Berger obviously believes that there is a bright line separating the extension of one principle by analogy and the application of a different principle. Here he mistakes quicksand for *terra firma*. Beneath the false distinction between analogies and new principles lies a philosophical problem of great complexity. It seems obvious that where one principle leaves off and another begins depends upon what level of generality is chosen for the principles, from among the infinite points on the continuum from the very specific to very general. Why does the fourth amendment, with its reference to persons, papers, houses and effects, not imply only the narrow principle of “no unreasonable intrusions upon bodily integrity, living space, or tangible private objects by government agents in person?”

I turn now to what the reader may have supposed *Death Penalties* is all about: the United States Supreme Court’s death penalty cases. Berger is correct that the Court's jurisprudence of death\(^9\) is in distressing disarray. In 1971, the Court decided that unfettered jury discretion in


death sentencing did not violate due process, and in 1972 the Court decided it did violate the eighth amendment. In 1976, a three-Justice plurality prevailed in imposing the guided-discretion approach of the Model Penal Code, because the two Justices who find the death penalty per se cruel aligned with the plurality when that alignment would result in reversal of a death sentence. Some Justices, notably Justice Rehnquist, would follow Berger's approach at least to some degree, and dissent from both of the other approaches. Thus, there is no majority position on how to deal with the death penalty, and there has not been one for more than a decade.

Yet what follows from the Court's struggle? Berger correctly perceives that constitutionally required standards are inconsistent with constitutionally required discretion. But what follows from the seeming impossibility of reconciling the need for non-arbitrariness in sentencing with the need for individual treatment? Berger thinks that what follows is that the Court should give up and let each state do whatever it wants in all aspects of death penalty imposition and administration. Others think that what follows is that the death penalty cannot be retained at all consistently with the rule of law.

The 1978 Lockett case, which Berger correctly perceives as a return in significant measure to the jury sentencing discretion condemned in the 1972 Furman case (pp. 149-51), provides support for the latter argument. But Berger's discussion of Lockett is murky. Chief Justice Burger's opinion for the prevailing plurality deserves more attention than Berger gives it. In Lockett, Burger recognized that the need for individualized decisions and the need for minimizing the risk of imposition of death on those who do not deserve it relate to the "respect due the uniqueness of the individual," and that for a state to execute someone without according such respect constitutes cruel punishment. The impossibility of achieving both the required consistency and the required non-arbitrariness may therefore mean that imposition of the death penalty disrespects individuals and hence violates the eighth amendment.

13 See Godfrey v. Georgia, 446 U.S. 420, 433 (1980) (Marshall, J., concurring); cf. C. BLACK, CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE (1974); Radin, Cruel Punishment and Respect for Persons: Super Due Process for Death, 53 S.C.L. REV. 1143 (1980). The "dilemma of discretion" is that we cannot simultaneously obtain the required individuation to render just deserts to each person and maintain the required consistency to make the punishments non-arbitrary.
Finally, a few remarks on the tone and character of *Death Penalties* are necessary. First, it is unfortunate that Berger’s book is marred by constant snide remarks about those who disagree with him, some of which are merely annoying asides or epithets, and some of which are distracting excrescences. In the former category, for example, are his references to Justice Brennan (p. 95) and Arthur S. Miller (p. 195) as “perfervid activists” or his reference to John Hart Ely as the “worshipful disciple” of Chief Justice Warren (p. 53). In the latter category are his frequent pauses to argue with critics of the positions he took in his earlier works such as the nonapplicability of the fourteenth amendment to state-mandated racial segregation and the illegitimacy of the one-person-one-vote principle, among others.

Second, the use Berger makes of the many interesting quotations he has gathered from his broad reading of Supreme Court cases should be taken with a grain of salt. For example, Berger states (p. 16 n.27) that Justice White “regards the concept of ‘ordered liberty’ as merely a means whereby a majority of the Court can impose ‘its own philosophy and predilections [sic (misquote)]’ upon State legislatures or Congress,” inaccurately quoting White’s dissenting opinion in *Robinson v. California*. In that passage, White did not say that the very concept of ordered liberty is a sham. He said:

I deem this application of ‘cruel and unusual punishment’ so novel that I suspect the Court was hard put to find a way to ascribe to the Framers of the Constitution the result reached today rather than to its own notions of ordered liberty. If this case involved economic regulation, the present Court’s allergy to substantive due process would surely save the statute and prevent the Court from imposing its own philosophical predilections upon state legislatures or Congress.

Though White here objected to the majority’s “own notions” of ordered liberty, in his opinion for the Court in *Duncan v. Louisiana*, he made clear that *some* scheme of ordered liberty is to be considered “fundamental” in the Anglo-American system of justice. Moreover, he made clear that a finding by the Court that a particular provision of the Bill of Rights belonging to that fundamental Anglo-American scheme of ordered liberty justifies the application of that provision to bind the states as well as the federal government. Thus, Berger certainly misleads the reader by saying, on the basis of White’s statement that the Court was imposing “its own notions” of the concept of ordered liberty in a 1962 case, that White “regards” the entire “concept” of ordered liberty as “merely a means” to impose the will of the Justices.

16 Id. at 689 (emphasis added).
In sum, *Death Penalties* is ill-organized and repetitive, shows signs of haste, and rehashes much of Berger’s earlier work. It adds nothing to the study of eighth amendment case law, nothing to the debate about the underlying justification of the death penalty, and little to the history of the inclusion of the Cruel and Unusual Punishments Clause in the Bill of Rights. So one is finally moved to ask why it was written. Who did Berger want or expect to read it?

Perhaps *Death Penalties* is aimed to some extent at the Supreme Court Justices, although in that case someone should tell Berger that he might catch more flies with honey than with vinegar. More clearly, the book is aimed at Congress. In Chapter 7, Berger urges that the remedy for the mess the Supreme Court has made of the death penalty is for Congress to withdraw the Court’s jurisdiction over these cases. The book is thus a political tract, and that explains a great deal about its structure and tone. Those who seek debater’s points may find something useful in these pages. Those who seek knowledge or enlightenment should seek elsewhere.

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This book is a revised version of the author’s original Hungarian edition, completed and published after his death by Arpad Erdei. The central focus of the book is the question of whether the criminal law is the appropriate means for responding to violations of traffic regulations. Viski argues that the mass application of the criminal law to traffic offenders leads to a reversal of the traditional ideas of rule and exception. He theorizes that traffic offenses involve a special situation brought about by the relationship between the psychological nature of the driver and the technological nature of the automobile. The driver is bombarded by any number of demands: environmental stimuli, density of traffic, road conditions, and so forth. Thus, the driving public realizes that there is no longer the traditional “us versus them” relationship which would normally distinguish the “good” citizen from the “criminal.” In this situation, anyone can be a criminal, since driving is virtually a universal behavior, and traffic violations are commonplace. Traffic law must not become overly broad, therefore, extending to tech-
nical advances that leave one with little or no chance of avoiding certain rule infractions.

Viski, supported by the bulk of the relevant literature, concludes that the traffic offender is not really a criminal in the classic sense. There is still justification, however, for applying sanctions to persons who violate the traffic laws. Many accidents are caused by people who habitually break traffic rules; such accidents do not result from chance, but are the product of a pattern of behavior. Sanctions contribute to the creation of customs which, in turn, eventually become norms. Thus, punishment is important because it serves to "develop a readiness to follow the norms" (p. 56). Other aims of punishment include special prevention, general prevention, and retribution. Viski places little faith in the general prevention function because of the routine use of the automobile by the masses, technological demands, and the limited likelihood of identification and apprehension. The other two aims, he feels, are more attainable: special prevention, because punishment is directed toward an individual already identified and apprehended, and retribution, because of the need to "repair the damage to the legal order" (p. 95).

Viski's next step is to determine which punishments should be applied to which violations. The sanction with the "gravest and most defamatory legal consequences" (p. 101) is, of course, loss of freedom. This punishment is appropriate for violations causing serious results: fatality, grave bodily injury, mass injury, and substantial material loss. For less serious offenses, however, even short term loss of freedom (less than one month) should not be used "owing to its harmful effects" (p. 104). The fine, even though it hits the poor man harder than the wealthy, is the most appropriate punishment for the majority of traffic offenders. Other sanctions could include disqualification from driving, but only as a supplementary, and not primary, punishment. Finally, Viski voices strong support for the use of official warnings for minor offenses and compulsory medical treatment for persons found to be insane or intoxicated.

Having concluded that traffic offenders are not really criminals, yet are deserving of punishment, Viski moves to the question of how to identify the violators who should be punished. The small percentage of drivers who cause a large percentage of accidents are characterized by low intelligence, antisocial and aggressive personality, poor attitude toward work, and "immature psyche" (p. 147). Still, Viski believes that the research is too inconclusive for us to rely upon personality as the distinguishing factor when determining the proper form of punishment. A better approach is to weigh factors which can be objectively measured, such as degree of harm done and recidivism. The combination of these factors would then determine the proper level of punishment for
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each violator. For instance, "[d]runken driving with no harmful result, when committed for the first time does not call for loss of freedom punishment. On the other hand, the law should provide for loss of freedom punishment irrespective of the result if the drunken driver is a special recidivist" (p. 161).

Viski concludes that traffic offenders should be dealt with by means of a traffic criminal law which would be separate from, but similar to, the regular criminal law. This would end the confusion caused by trying to determine which traffic offenses are criminal and which are not. Thus, "[t]he term ‘traffic criminal law’ in this case would mean the body of law sanctioning traffic violations and consolidated into a unity by the common subject of law" (p. 164).

Although this is a relatively short book, it is anything but short in terms of philosophical argument. Viski is completely thorough in his examination of automobile driving, use of sanctions to influence behavior, types of sanctions, and sanctions appropriate to traffic rule violations. He begins with the general and painstakingly moves to the specific. Citing such a volume of literature that he at times almost overwhelms the reader, the author goes to great lengths to provide complete supporting evidence for every line of reasoning and each conclusion. Sometimes it is difficult however, to separate Viski’s thoughts from those of the scholars being quoted.

Of course, the product of such a laborious effort is a well-documented, articulate, and elaborate argument leading to a conclusion that defies attack. On the other hand, the reader who lacks a background in the subject matter is apt to miss much of this argument and never reach the conclusion. Fortunately, Viski provides a ten page summary which draws together the main points of his thesis and spells out the key recommendations in terms unhindered by philosophical rhetoric. The final statements are so clear and concise that one is left wondering if the previous 160 pages amount to “much ado about nothing.”

Another problem with the book is its verbose and stilted text. The language is often difficult to follow, as though something has truly been lost in the translation. For example:

In Hebenstreit’s opinion, the ‘reliability’ of the driver is the most important factor. This reliability is present when the vehicle driver is capable of dominating the endo-thymous modes of life actualized by driving, above all overcoming tendencies towards over-estimation or uncriticalness arising from the utilization of mechanized force (p. 44).

An excellent observation, no doubt, but surely there is a better way to express the same thought.

A final distraction is the heavy reliance upon Hungarian law and Eastern European research to illustrate the various points. However, it
must be remembered that this is a translation of a book written for a specific audience, which justifiably utilizes information which that audience would understand. This is to say that *Road Traffic Offenders and Crime Policy* will not likely find its way to the average living room coffee table or the average professor's bookshelf. The book is perhaps best suited to the student of comparative law, or to a scholar with a special interest in traffic offenses. Otherwise, the narrow scope of this work will limit its readership to only the most diligent or the most curious.

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The central goal of the editors in presenting this collection of articles, to apply American (or Western) societal values to the criminal justice and corrections systems, seems naive and impossible of realization. Fortunately, some of the individual articles in the collection present a more realistic view.

The editors are academicians; Schmalleger is a sociologist with interests in criminology and criminal justice and Gustafson is a philosopher with religious concerns. They have jointly written a short preface, the first editor an introduction, and the second editor the last two articles in the collection; the latter of these is a summarizing conclusion. Of the remaining nine articles, six are written by academicians (including sociologists, psychologists, political scientists, and difficult-to-identify others) and three are written by practitioners.

The editors' preface cites a need for improved ethical awareness and calls for an infusion of American ideals of justice and fairness into the "mechanistic" American justice system. Schmalleger's introduction continues this strong idealistic flavor by defining what justice and ethics would be under a reformed justice system, bemoaning the current sacrifice of ideals to technological efficiency, and using these ideals as standpoints from which to summarize the remaining articles of the collection. A similar set of ideals, offered as seven norms, is presented in the second to the last article, by Gustafson. These ideals, consistent with those of
Kant and other moralists, form an ethical system for both society as a whole and the criminal justice system. In contrast is the concluding article of the collection, also by Gustafson, where he summarizes and realistically evaluates the feasibility of implementing the views expressed in the articles preceding his own.

Perhaps the sense of naiveté, unreality, and idealism in much of this collection is encouraged and buttressed by the vagueness inherent in the study of values and ethics generally. A second problem is created by the difficulty of delineating the values of American society and Western civilization, and then translating these values into justice and fairness relevant to the worlds of crime and corrections. A third problem is the implicit belief, evident throughout the collection, that crime can be severely reduced or, in principle, even eradicated. Those who believe this could profit from the outlooks of Emile Durkheim and Robert Merton that a certain degree of crime and deviance is normal and functional for society. Relevant in another way is the view of George Vold that crime, morality, and justice are defined and enforced by the dominant groups of a community or society.

The article by John P. Matthews and Ralph O. Marshall exhibits this high idealism in that it calls for criminal justice organizations, which are usually primarily concerned with their own organizational needs, to focus more on service to clients. This is to be accomplished by rewarding the "problem solvers"—those police, parole officers, prosecutors, and judges who act ethically by taking risks in relation to their clients. Paul Murphy and T. Kenneth Moran are even more unrealistic, anticipating a New York City police scandal before the end of this century and calling for redoubling efforts to eradicate the "cancers" of corruption, skepticism, cynicism, secrecy, and anomie in all police departments. This is to be done through educating and motivating police officers to follow the Code of Ethics of the American Academy for Professional Law Enforcement. Both articles demonstrate an insufficient appreciation of social structure, the former through hoping to change organizational priorities, the latter by an expectation of changing individual attitudes and overcoming the already existing and spontaneous group solidarity that is further reinforced by continuing external threat.

A mixture of realism and naiveté is found in John Jay Douglass' treatment of prosecutorial ethics, in Carolyne H. Stevens' call for ethical restructuring of corrections, and in the focus on prison ethics au-

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bored by David B. Miller, Mostafa M. Noury, and Joseph J. Tobia. Douglass, in a long and thorough article, rightly points to the continuing temptation for prosecutors to use unethical methods even for good reasons, to the conflict between fair trial and freedom of the press, and to problems especially characteristic of the situation faced by part-time prosecutors—conflicts of interest, low salaries, and moonlighting. While he neither advocates nor expects strict adherence to relevant American Bar Association codes, Douglass naively falls back in reliance on a strong personal code of conduct for prosecutors; perhaps there is no other feasible alternative.

Stevens, with psychological training and a career in corrections and welfare administration, decries both the criminal justice system’s adversarial depiction of “offenders” as enemies and the public’s hypocritical and simplistic vacillation between pro-punishment and pro-correction views. Believing international interdependence and universal humanity to require a pan-ethical, rather than a conflict, model, she proposes a slow step-by-step, painful but innovative process through which practitioners and public alike can develop such a model. Throughout, Stevens seems to believe that problems can be solved, or at least managed, by reinforcing appropriate behaviors.

A problem related to those presented by Douglass and Stevens is discussed in Miller, Noury, and Tobia’s article recommending decentralized community programs (such as halfway houses or intensive treatment projects) as intermediate measures between probation and parole, on the one hand, and prison confinement, on the other; prisons as “total institutions” with “contraculture” “we-group” subcultures frustrate rehabilitation within any conceivable societal system of ethics. As with some of the other articles, the authors resort to community programs as a desperate hope. They make good use of ideas from Erving Goffman, Milton Yinger, and William Graham Sumner but could benefit from a Vold intergroup conflict perspective, as could Douglass and Stevens.

More akin to a Voldian perspective, and in line with the Miller-Noury-Tobia emphasis on prison contracultures, is the contribution of sociologist Ralph O. Marshall. He advises parole boards to take into account the criminal’s “counter-culture” (and counter-ethic), as well as society’s values, and then to use a utilitarian approach considering which parolees are likely to do the greatest good for, or least harm to, society. An equally pragmatic approach is presented by Lawrence Bennett, psychologist and Program Evaluation Director, National Institute of Justice, who proposes judging evaluation research in terms of its consequences, actual or anticipated, for human values. He develops a number of ethically informed principles that should make researchers aware of the multiple ethical implications of all phases of their research,
ranging from problem and sample selection to post-research policy, as well as practical suggestions for decisionmakers.

The two articles with an international concern reflect the variation in the rest of this collection. André Bossard, secretary general of Interpol, recognizes the complexities and problem involved in developing an international code of ethics for crime investigation. His approach seems apt in that it stresses respect for national laws, sets some limits for all police systems (such as excluding offenses that are primarily political, military, religious, or racial in character), and encourages police to act in a socially (i.e., culturally) acceptable manner. But his approach is not very cross-cultural or universal insofar as he recommends that 127 national police systems should balance individual rights and freedoms, on the one hand, with societal requisites and order, on the other; nor insofar as he expects police to obey the law "in every respect," to avoid "corruption," and to be impartial.

Charles L. Johnson, a political scientist, and Gary D. Copus, a sociologist, attempt to apply Merton's "anomie" modes of adaptation, and (with more success) Leon Festinger's "cognitive dissonance" theory, to the gulf between the international police code of ethics ("idealistic" and largely ignored) and police "attitudes/assumptions" that reflect their actual occupational experience (their "real" environment or subculture). Consistent with Festinger's approach is a proposed middle-ground solution of modifying the code of ethics in the direction of legitimate police concerns, so that observance of the modified code by police is cognitively consonant with their occupational reality.

It is easy to criticize this collection by asking how the article authors were chosen, how much they were told about the purpose of this collection, why their names are not listed with their article titles on the "Contents" page, why their disciplinary areas are often not supplied, why there is no index, and why two summaries of the articles were needed. Poor typesetting and inadequate proofreading also indicate that the collection was put together carelessly.

Gratifyingly, some practical proposals for dealing with ethical issues in criminal justice and corrections are offered by this collection. However, there is much here that is impractical, naive, and ill-informed from a social science perspective. Many of the articles, by practitioners and academicians alike, tend too much toward philosophic and moralistic exhortation and catharsis. This collection may prove useful for college classes in criminal justice, criminology, corrections, and perhaps ethics, and to practitioners in those areas, but only where tempered by
some knowledge and appreciation of cultural heterogeneity and of social power and conflict.

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INTRODUCTION TO CRIMINAL EVIDENCE (2D ED.). By Jon R. Waltz.

Jon R. Waltz, law professor and author of numerous books and materials on evidence, has written for those in law enforcement a very readable second edition of Criminal Evidence. Evidence may be viewed as a procedure-related course of do's and dont's, a body of prohibitions, or rules for communicating a mass of data in a courtroom.

Jurisprudence professors love evidence. Earl Stanley Gardner was first an evidence professor before the case-scripts went public. The author of the “case method” (the use of appellate decisions to teach law), Dean Thayor of Harvard Law School, was an evidence teacher. The subject has been taught in various ways: using only a treatise; using a casebook; through the problem method; through real trial scenarios; using video tapes, or using stand-up actors. The subject is vast and complex: it merges law as substance with law as procedure, joining rules with process and trial histrionics with a quest for the truth.

Only Waltz and Imivinkelried have attempted short works on criminal evidence, and both works contain early admonitions that they are intended primarily for layman. Indeed, in his preface, Waltz quotes an exasperated Prime Minister Balfour, who silenced his critics by shouting, “I am talking English, not law.”

With that caveat in mind, Criminal Evidence has much to recommend it. It covers most areas of evidence, uses primarily criminal illustrations, and laces the rules with refreshing dialogue and scenarios. Over a hundred pages are devoted to an excellent introduction to scientific evidence in criminal cases. A useful bibliography is included as well.

The book, however, is not without its shortcomings. Despite Waltz' disclaimer of the need for cant or jargon, some subjects such as “making the record” and “objections” are covered in the book even though they have no special relevance to non-lawyers.

Not content with discussing primary sources of law or an overly long chapter on privileges, Waltz tackles the search and seizure areas in sixty pages; this subject is an unreasonable pit far too vast and compli-
cated for a book of this kind. On the other hand, Waltz' chapter on identification and pretrial identification procedures is very useful and practical. He should, however, have included a little something on pretrial discovery. Since most criminal cases are settled or compromised in a plea of guilty, an evidence-related perspective on that process would have been most useful.

For readers interested in a short evidence treatise addressed to evidentiary problems in criminal cases only, this book is probably about the best available. What is needed (and missing), however, is one book or many small ones addressed to the recurring evidence problems associated with specific criminal offenses, each of which has unique problems endemic to that particular offense. Clearly the patterns of proffer, proof, trial, and instruction in an armed robbery case are different from those associated with a comparatively quaint moonshine or gambling case. An effort should be made to relate trial anatomy, evidence problems, and instruction on a strictly one-offense basis. The subject of presumptions, for instance, is unimportant in a battery case but may be critical in a receiver or gun possession prosecution.

The courts' great mistake in the law of search and seizure was caused by extending a single reason to varying situations, such as an airport, auto, or a submarine, each having unique crime and search geography. This problem is replicated in the evidence area. The worst offenders are most law schools, which squeeze into one curriculum offering—usually a three- or four-credit course marked simply "Evidence"—the slip and fall evidentiary problems of civil actions and take a broad brush swipe at the criminal area. Hopefully, the publication of books such as Criminal Evidence will prompt in professional schools a new day for an evidence course marked only "Criminal."

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The Ethics of Law Enforcement and Criminal Punishments.

Edward A. Malloy of the Department of Theology at the University of Notre Dame provides four "bare bones" outline-form essays on ethics. He examines two police issues—the use of force and corruption—and two corrections issues—imprisonment and capital punish-
ment. Within this small volume—ninety-two pages including footnotes, references, and cover pages—lie the beginnings of a true examination of the application of ethics to the field of criminal justice.

In his first essay, Malloy almost succeeds in stating the issue about police (and criminal justice) that is to be examined:

I remain convinced that the most serious deficiency at the present time is the absence of a sustained and coherent "professional ethic"—a body of knowledge with a clear assertion of the priority of certain values and the presentation of workable principles and rules which protect these values in practice. One of the reasons why the task of developing such an ethic is imperative is that American police are given the kind of judgmental discretion in the lives of others that is normally reserved for the learned professions (p. 7).

What Malloy apparently means, but leaves unsaid, is that even the few meager attempts made to structure police discretion have been based on technical (e.g., caliber of pistol, type of nightstick) and legal (e.g., fleeing felon, life in danger) grounds, with little thought given to ethical or other moral considerations. For example, if a hierarchy of moral values was established and a code of ethics drawn from it, would police ever endanger the life of a property thief through the use of potentially deadly force? Would police endanger the lives of anyone—pedestrians, other drivers, or the fleeing suspect—in a car chase? Without stating the issues clearly, Malloy does arrive at conclusions on these and other points: for example, force is to be used only when the "common good" (whatever that is) is served and then only in proportion to the force being counterbalanced; guns should be fired only to protect the life of a police officer or someone else; the form and level of force should always be based on the priority of persons over property; electronic surveillance by police should be carried on only with explicit court approval; torture is never justified; and interrogation must "maximize consciousness of the rights of the accused" (p. 23).

The second offering, "An Ethical Perspective on Police Corruption," is quite different from the other three essays in that it provides a review of the literature of typologies of police corruption while providing little "ethical" analysis. Malloy’s suggested remedies—improve the salary scale, eliminate unenforceable laws, improve police training and cultivate a sense of professional responsibility, and form civilian review boards to examine and prosecute charges of police misconduct—offer nothing new in the way of advice or procedures. Above all, they offer little in the way of the promised "ethical perspective." Again, discussion or development of a code of ethics and axioms that would be pertinent to such a code would have been welcomed.

In the corrections field, Malloy’s approach is more effective as he
incisively destroys the basic rationalizations for imprisonment—retribution, deterrence, and rehabilitation—and declares that the only justifiable reason to take a person's freedom is the need for "special deterrence" or "isolation;" and then imprisonment should be used "only [for] those criminals who constitute a significant threat to the common good by way of 'propensities for impulsive and predatory aggression' " (p. 64). Malloy could have clarified his point by stating simply that deterrence and rehabilitation are dubious justifications for imprisonment, both practically and ethnically, while the retribution (i.e., "just deserts") value is difficult to assess, and only incapacitation of the dangerous and antisocial recidivist for the protection of society can be justified ethically.

Regarding capital punishment, Malloy argues that while he does not rule out the possibility of a situation in which the "common good" would demand the death penalty, "[i]n the United States at the present moment of history, there is no legitimate reason for invoking this power. Even the danger associated with terrorism, assassination, and premeditated or mass murder is not a sufficient enough threat to warrant its use" (p. 90). He also suggests that a "greater good" would be served by eliminating capital punishment.

As a theologian, Malloy is clearly more at home in the arena of punishment than in the murky field of police standard operating procedures. Still, his overall knowledge of police practices is impressive despite minor flaws, such as his reference to "Sir George Peel" as the founder of the London police department (p. 32).

With a suitable coauthor who had knowledge of the criminal justice system, and proper attention to development of an organizing principle as suggested above, Malloy could possibly have written a first text or monograph for the burgeoning interest area of ethics in criminal justice. In this work, however, he has provided only some thought-provoking observations; for, while each item is highly structured in a formal outline format, there is no unifying principle to tie the four essays together into a coherent whole based on a clearly stated ethical concept.

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Control in the Police Organization is an ironic title for a collection of essays that dwell upon the absence of this quality in police organizations. Unencumbered by the recipe-like nature of the professional police management literature, this potpourri of conceptual and empirical studies provides much-needed relief from the typical menu of prepackaged Theories X, Y, etc., that benighted the field. These essays affirm the dominant theme of the last decade's research, which discredited so many assumptions about what police can accomplish. The contributions, separately and together, do not offer an integrated theory of police control, but they should serve the editor's purpose of stimulating further research.

The volume contains fourteen essays culled from papers delivered in a 1980 international seminar at Nijenrode, the Netherlands School of Business. Half of the essays deal with police organizations outside the United States, providing a distinct cross-national character to the volume.

Egon Bittner's introductory essay distinguishes two criteria for control: legality and workmanship. Legality calls for compliance and operates through regulatory supervision; workmanship calls for mastery over events occurring under uncertain conditions and operates through accountability. Bittner suggests that police lack systems for nurturing and transmitting workmanship; this deficiency creates an overreliance on legal criteria and ultimately causes a degeneration of performance to the point where officers merely attempt to keep their records trouble-free. By implication, police accountability—the more demanding control mechanism—can only be achieved when the agents of control are immersed in the context of the work itself. The uncertainty of the work environment produces a you-had-to-be-there stance, or at least, a you-have-to-know-what-it's-like-to-be-there view. Most of the major empirical evaluations of police performance of the last decade—part of the control process themselves—focused on the alleged accomplishments of police workmanship (especially crime control), but they failed to make an adequate accounting of the workmanship which was believed to produce those accomplishments. If researchers take Bittner's formulation of accountability to heart, they must begin with painstaking scrutiny to peer into the black boxes that transform inputs into outputs and outcomes. Some of the essays in this book begin to do just that.

Although all of the chapters show sensitivity to the immense complexity of controlling police, several make their principal contribution by developing our appreciation of obstructions to control. Robert Rei-
ner explores the recent efforts of British police to manipulate the political environment through pressure group activism, thus altering their traditional nonpartisan image. A comparison of Reiner's case study of Britain with political systems both more and less fragmented systems (e.g., the United States and France) could provide a useful analysis of the role of political structure in constraining police political activism. This is the sort of research called for by David H. Bayley in his review of the state of our ignorance of police. Peter Manning's comparison of the communication systems of two police departments (American and British) responds to Bayley's summons. Manning explores the limits of technological gadgetry for controlling the incident-by-incident discretion of police in dealing with calls for service. Manning finds that even though the communications technologies of the two departments differ, managers and supervisors in both pay more attention to the internal logic of their systems than the ability of these systems to make useful representations of environmental complexity. By focusing on what the technology does well (e.g., rapid transmission and recording of coded information) and leaving virtually unmonitored the key boundary-spanning decisions of street-level personnel (e.g., crime classification decisions), these organizations have constructed "mock bureaucracies," that bear little relationship to the realities of policing. Given Western police departments' infatuation with technological solutions to problems, it would be interesting to apply this form of analysis to other recent innovations, such as computer-based performance analysis and planning.

Two chapters do a great deal to deflate the widely accepted wisdom that secrecy and loyalty cement police officers into a solid police culture. In Amsterdam and New York City, senior officials were found to be at odds with the rank and file. The schism surfaced in a corruption scandal in Amsterdam and was manifested in line officers' responses to the development of a scientific management ethos among police administrators in New York. Those who have advocated the dismantling of the "monolithic" police culture as crucial to the enlargement of police accountability will not find these studies reassuring, for they conclude that the fragmentation of police culture not only magnifies the organization's internal stress, but also produces two warring factions, neither of which can give positive direction to the organization.

Michael R. Chatterton's analysis of British arrest practices in assault cases shows that simple interpretations of occupational culture fail to produce a complete explanation of the officers' use of arrest powers. His study shows the key role played by the interaction of an officer's working philosophy (style) with his skill in manipulating available resources to achieve the desired outcome for his style (competency). The severity of charges filed depends upon the subtleties of circumstance
which often bear no relationship to the law and are inaccessible to those inclined to analyze arrest statistics. This excellent essay joins a growing literature that points out the difficulty of interpreting official data without understanding the social processes that created them.

John Van Maanen examines the extent to which first-line supervisors contribute to the control of police work. In a lucid and vivid analysis, he maps the contours of the police sergeant's power and vulnerability. The sergeant's concentration on procedural minutia belies his or her substantive influence. That this influence is too frequently exercised in ways that render only the appearance of legality and workmanship (as in arrest reports and activity "stats") reflects on the inability of top management to forge stronger bonds with sergeants. To the extent that managers are able to secure sergeants' commitment to managerial norms, they may reduce their sergeants' capacity to govern. Although Van Maanen does not appear sanguine about the prospects of forging these links, his research indicates a few opportunities for managers to harness their sergeants' potential.

Two contributors, both with extensive experience in quantitative evaluation and experimental design, derive modest policy implications from their research. Lawrence Sherman finds that it is possible to use public criticism generated by "critical events" to unfreeze undesirable policies and practices, such as excessive police gun use, provided that administrators are willing to seize these opportunities and pursue reform with determination. Sherman is rightfully cautious in assessing the extent to which critical events can yield organizational change. For example, the urban cataclysms of the 1960's appear to have generated little real reform at the street level of police work. George L. Kelling's review of police accomplishments leads him to a similar judgment for police patrol reform. Despite his skepticism of police ability to overcome resistance to innovation and to reduce crime, Kelling finds a silver lining in the pessimism of the previous decade's evaluative research. He argues that absent satisfactory demonstrations of police capacity to reduce crime, police should focus their efforts where they have demonstrated a capacity: reducing fear of crime and improving police-community relations. Kelling's are among the strongest policy assertions in the book, and while this reviewer finds them appealing, a whole-hearted endorsement of this new direction is premature. First, the sole foot patrol experiment by which his assertions of police effectiveness hang is a slender thread indeed. Second, one would expect greater skepticism about the value of a police force that judges its performance according to its ability to manipulate the public's fear of crime. If fear of crime were to assume the central role that crime rates now serve in directing the police mission, what assurance do we have that the same organizational
pathologies that distort the crime control process would not influence attempts to reduce fear of crime? Finally, we need to question the limits to which governments may go in manipulating the appearance of public safety if research tells us that it bears little relationship to the reality. A little—or a lot—of anxiety about crime may be very functional under certain circumstances.

The essays in the "comparative perspective" section of the book deal with macro-level developments of policing in Western Europe, particularly in the Netherlands. The contribution of these chapters to the literature on control of police is secondary to the exposure they give to policing outside the United States.

In a treatise distinct from all others in the volume, Albert Reiss, Jr., reflects on how organizations are policed. Some circumstances call for deterrence strategies (designed to punish offenders); others call for compliance strategies (designed to gain obedience without punishment). Compliance strategies are usually employed where organizational violations have high costs for society, and detection and punishment are complex or protracted. As more organizational life assumes this quality, Reiss believes that private security systems will appropriate a larger share of the responsibility for organizational enforcement. Ironically, the criterion that Bittner finds so inadequate for producing an accountable police force—compliance with the law—is the very standard which Reiss expects will eventually dominate the control strategies applied to other organizations.

The book makes no pretensions to comprehensiveness, but three omissions are regrettable. The first is an in-depth consideration of the extent to which the quantity and quality of control of police organizations has changed throughout history. The second is an empirical evaluation of the role played by the institutions formally assigned to govern police (e.g., mayors, local legislators, and city managers). The current wisdom is that these officials have abdicated their responsibility to govern, but a systematic test of this hypothesis is lacking—except in the most ungovernable of cities. This may not be the case in suburban, small town, and rural areas. Third, it would be useful for the development of a more general control theory to have a sense of how controlled police are, compared to other public and private human service industries—education, health, and welfare.

The volume will be of principal interest to police researchers and scholars, although administrators willing to wade through occasional, but dense, thickets of social science dialect will find their efforts rewarded. Many of the empirical pieces, particularly those by Chatterton and Van Maanen, are suitable for undergraduates and are likely to become "classics" in their areas. In addition to the strengths of the indi-
vidual contributions, the work taken as a whole displays a coherence all too rare in edited collections. The authors’ topics and approaches vary greatly, but the editor’s organization and prefatory comments minimize the discontinuity among works. The major criticism offered—that more is needed—is inevitable with a topic of this scope at this exploratory juncture.

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Armstrong’s The Home Front: Notes from the Family War Zone presents a different perspective on the important problem of family violence. This book may be most appropriate for the newcomer to the field of battered women and sexually abused and battered children. Early in the book, Armstrong raises the issue of why behavior which would be considered “against the law” if committed outside of the family home is described as “only a domestic disturbance,” or is dismissed by saying “children have great fantasies,” since no “normal” parent would do such a thing. She writes from the perspective of one filling the need for enlightening the unenlightened. If the reader has little experience or knowledge in the area of family violence, then this book would be informative and a good addition to one’s library. It is easy to read, and it would be appropriate as a supplemental text in a course examining family violence.

The Home Front is concerned with the abuse that occurs in the family setting, perpetrated by men against their wives and/or their children. Many pages are devoted to child sexual abuse and the dilemma of the mother who, while unable to find support from “the system” to stop the abuse, is made to feel guilty for her husband’s transgressions, both against their children and against herself. Armstrong also focuses on society’s legitimization of abuse toward women and children while examining the role of state intervention in extricating a child from an abusing home. At the same time she discusses the major reasons why the perpetrator’s sexual assault and physical abuse in the family home is not treated as criminal behavior.

Using the case study method, Armstrong critically examines responses to the recent discovery of family violence, and uses the same
method to critique Freud's discussion of children who fantasize about sexual encounters with their parents. Finally, Armstrong pointedly notes that the accepted social norms of parenting in Freud's time were actually quite abusive toward children.

An underlying thesis throughout the book is the two-sided dilemma in which women seem to find themselves. Armstrong argues that women are blamed both for their being battered by their husbands and for the husband's molesting of their children. She identifies the problem as a failure to hold men accountable for female or child battering. She argues that the breakdown of the family is viewed by society as due to women's failure to do their "duty to society" as the "saviors of men." She further documents the political concept of using women to restrain individual men from their baser instincts, and she argues that women are actually kept on a political leash by a society which urges them to higher commitment to the family. She then concludes that male household violence is generally viewed as a natural cost of purchasing social tranquility.

Armstrong spends several chapters discussing, both from an historical and a current perspective, problems of state intervention in family violence which she views as "therapeutic" use of authority by the state. Again adopting the case study method of Parnham v. J.R. and J.L., she discusses state abuse of children by placing them in mental hospitals, juvenile halls, and orphanages in the absence of a demonstrated problem other than that the family simply did not want them.

Armstrong concludes by arguing that each individual has a right to equal protection under the law; she succinctly suggests that what is needed is the protection of the person and rights of the individual, rather than the protection of "family harmony."

In attempting to cover both child sexual abuse and wife battering in a single volume, Armstrong may well have diluted the importance of what she is saying. This reviewer is familiar with the extensive literature in this area and yet found the book confusing in its many transitions between sexual abuse and wife battering. Peculiarly, Armstrong criticizes state intervention to stop the sexual abuse of children while at the same time indicts the state for not intervening in wife abuse cases. She seems to want "due process" in the family, apparently not realizing that due process is itself a contributor to the adversarial position, which further increases the likelihood of not recognizing problems in the family. No alternatives were suggested as possible solutions to this important problem, a disappointing omission. Perhaps a major reason for this omission is the narrowness of the sample, which seems to have centered

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in New York. This reviewer is not convinced that Armstrong did not come to her conclusions prior to the selection of her data.

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Studies of homicide tend to focus on either the legal consequences of the act, or the offender's proclivities, rather than on the act itself. Nettler draws upon diverse studies to investigate the homicidal act by identifying what he believes are the causes or conditions that lead to homicide at both the aggregate and individual levels.

In attempting to identify why acts of homicide are not universally deplored, Nettler describes some of the obvious moral dilemmas faced by those who would argue for a universal definition. As he points out, definitions of homicide are saturated with ideas of appropriate and inappropriate moral behavior, permitting styles of deadly quarrels to be identified without allowing them to be adequately classified. The definitional breakdown occurs because homicide is the result of contingencies; these contingencies may be defined as the lack of training in inhibition, or training to value moral codes that indoctrinate violence.

Killing, then, may be ascribed to the desire for money and power, disinhibiting influences, and culturally proscribed behavior. While these reasons are the prime motivators, they are not the only reasons why people kill. There are disinhibitors which permit the relaxing of control. Nettler mentions several categories of environmental disinhibitors—frustration, relative deprivation, the notion of entitlement, relativism and nihilism, useless youth, fragmented families, residential and occupational mobility, and comforting chemicals—but ignores many situational factors that can facilitate or impede deadly action. For example, Luckenbill and Sanders,¹ Toch,² and Wolfgang³ found that the victim's behavior plays an important role in facilitating or impeding violent behavior. Similarly, Bard⁴ found that the presence of bystanders

1 Luckenbill & Sanders, Criminal Violence, in DEVIANTS: VOLUNTARY ACTORS IN A HOSTILE WORLD (E. Sagarin & F. Montanino eds. 1977).
3 M. WOLFGANG, PATTERNS IN CRIMINAL HOMICIDE (1958).
can escalate a confrontation, as can the presence of a weapon, as noted
by Wolfgang and Berkowitz.

Nettler lists eight major routes to homicide. These include self-de-
defense, love, lust, lunacy, psychopathy, wealth and power, and terrorism. Taxonomies of murderers by Jesse, Guttmacher, Glasser and others show that these routes to homicide have long been recognized. But regardless of whether routes to homicide are identified, or taxonomies developed, we still do not know whether or not various murderers differ with regard to their etiology or personal dynamics, nor do we know the true extent to which disinhibitors contribute to acts of homicide.

Terrorism, as an occasion for homicide, is artificially separated out by Nettler for special treatment. Hacker classifies terrorists as criminals, crazies, or crusaders. Criminals, he believes, are motivated primarily by the desire for material gain. Crusaders, on the other hand, are rebels with a cause. Crazies merely act out their mental aberrations. Based on this typology terrorism could have been discussed in the chapters on wealth and power, lunacy, and psychopathy.

Unlike others, Nettler defines terrorism as “the conscious use of cruelty and killing to spread fear through a population as an instrument of power” (p. 226). Most definitions of terrorism avoid the use of term “cruelty” and recognize the fact that terrorism is a political act and as such has a political goal. Nettler’s definition seems to be aimed at governments rather than individuals or groups.

The central theme of Killing One Another is that moral philosophies are prime determinants of behavior. Kohlberg and others have attempted to assess the effect of moral thought development on attitudes toward law and legal justice, but few criminologists have displayed much interest in this area. It is to Nettler’s credit that he addresses the importance of moral development in identifying the routes to homicide.

The book succeeds as a description of homicide. The descriptions are both general and specific, and employ secondary sources that allow the reader to focus on reasons or occasions for killing. The text is well-

\[\text{\footnotesize 5 M. Wolfgang, supra note 3.}\]
\[\text{\footnotesize 6 Berkowitz, Impulse, Aggression and the Can, 2 PSYCHOLOGY TODAY 18 (1968).}\]
\[\text{\footnotesize 7 F. Jesse, Murder and Its Motives (1952).}\]
\[\text{\footnotesize 8 M. Guttmacher, The Mind of the Murderer (1960).}\]
\[\text{\footnotesize 10 F. Hacker, Crusaders, Criminals, Crazies: Terror and Terrorism in Our Time (1976).}\]
written and the cases provided are timely and interesting. The author
displays an extensive familiarity with the subject matter and the work
represents a skillful integration of materials.

There is little doubt as to where Nettler stands on the issues dis-
cussed; his subjectivity and biases are evident throughout the book. His
treatment of the materials, however, is generally well balanced and his
personal opinions are usually held until the end of each section where
they do not detract from the text.

This book provides the reader with a basic descriptive introduction
to reasons for or occasions of homicide, and as such would be of consid-
erable value to the novice. In this respect, it fills a significant gap in the
literature and should prove to be both interesting and informative to
readers desiring a convenient compilation of reasons for homicide. An
extensive bibliography is provided and should prove useful for those de-
siring to pursue a more in-depth treatment of the topic.

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Controlling the Offender in the Community. By Todd R. Clear
xvii, 189. $29.95.

This volume is a worthwhile contribution to the field of risk predic-
tion and offender control through community supervision. While this is
a rather narrow topic, the authors have successfully integrated it into
the broader areas of corrections and, more generally, punishment. It is
difficult to say that this book fills a void in the literature, for there is
relatively little scholarly interest in the risk posed by offenders in the
community. Nonetheless, the authors have done a good job in assessing
this topic.

The authors state that their "fundamental aim is to develop a fair
system of community protection in which incapacitative and treatment
measures designed to control risk are employed rationally" (p. 27). In
this work, they seek to develop guidelines which balance the traditional
concern for community protection with offender needs. This is to be
accomplished within a "just deserts" framework. This topic is treated
with a good deal more sophistication than is usually the case. The com-
plexities of risk control are dealt with in a manner that pays particular
attention to the interrelated nature of the processes of classification, interaction, and management. A particular strength of Controlling the Offender in the Community is the attention given to line-level and managerial tasks, as well as the interaction between the two.

The authors have targeted this book at practitioners as well as those who study the field of community supervision of offenders. Thus, the book emphasizes practical considerations such as implementation, classification, and management, in a framework professionals involved in the field would find valuable. For this reason, those in academia may find the book of little utility. The authors adequately confront these issues, though in a fashion that is valuable primarily to those faced with the day-to-day task of community supervision.

The primary goal of the authors in writing the book was to effect change in community criminal justice systems. They seek to do this in a context that is sensitive to a three-pronged emphasis on 1) controlling the social control net, 2) guaranteeing due process, and 3) sustaining the capacity for change. Clear and O'Leary suggest that sensitivity to these three principles can prevent the negative consequences often associated with change. Although these concerns are clearly expressed early in the book, the authors fail to integrate them sufficiently into later chapters. A further shortcoming of the book lies in its emphasis on risk. The concern for risk is not adequately balanced against its opposing concern, reintegration. Arguably, Clear and O'Leary's book is guilty of an overemphasis on control and inadequate concern for the welfare of the offender.

The book is written and organized in a clear and straightforward manner. Concepts are well-defined and logically interrelated. This is particularly true of the author's core concept of risk control. The book presents a series of cases that make the concepts presented clearer and more valuable. The material is organized in such a fashion that those marginally knowledgeable about community corrections can readily follow its presentation.

One of the more difficult tasks for academicians is to provide scholarly analysis of programs that can be readily implemented in actual settings. Clear and O'Leary have done an excellent job in this regard. While the book will be of interest to a limited readership, those involved in community supervision will welcome this as a valuable addition to the literature of the field.

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Although the corpus of American legal and criminal justice historiography has expanded in recent years, significant gaps in our knowledge of the origin, development, and impact of agencies of social control remain. The operation of the colonial criminal justice system, in particular, remains enigmatic. Bradley Chapin’s Criminal Justice in Colonial America, 1606-1660 attempts to fill this intellectual void by exposing “the lost world of early American law.” More specifically, Chapin analyzes the origins of colonial substantive and procedural law, the development of unique court structures, and the nature and extent of crime in specific jurisdictions. Primary emphasis is placed upon exploring the English roots of colonial reform and assessing the explanatory power of “reception theory”—that is, the notion that the colonial criminal justice system was a simplistic, arbitrary, and even crude modification of English law and methods of control.

A sophisticated, cross-cultural analysis linking the differential development of legal systems in specific colonies—Virginia, Plymouth, Massachusetts Bay, Maryland, Rhode Island, Connecticut, New Haven—with English judicial roots is employed to achieve this end. Chapin’s analysis of colonial criminal justice systems is grounded in an analysis of extant primary sources—legislative and judicial records, commentaries, manuals, law texts, pamphlets, and tracts—as well as in other miscellaneous documents and secondary sources. The development of each colony’s criminal justice system is interpreted within the context of its social structure.

Chapin’s thesis is unequivocal: colonial criminal justice systems were not simplistic, crude adaptations of British criminal law, as reception theory posits. Each colony adapted English law to fit unique economic, political, cultural, religious, demographic, and social conditions. Virginia’s criminal justice system reflected its founders’ aim of creating “a contemporary English agrarian society”; New England colonies (with the exception of Rhode Island) developed a system of justice which would reflect a God-fearing “Israelite society.” Chapin concludes that colonial innovations were generally rational, intelligent reforms which humanized and simplified English criminal law. In essence, colonists, unencumbered by an entrenched political system, factional politics, and professional lawyers, were able to implement progressive change before English legal reformers. Thus, the settlers merely “carried” English law into the New World.

Chapin’s analysis of colonial substantive and procedural law (chap-
ters one and two) and court structure (chapter three) substantiates this thesis. A content analysis of twenty-nine colonial laws reveals that New World substantive law generally followed English precedent (57%), but that much of the law had indigenous (25%) or Biblical (18%) origins. The colonists modeled English practice in formulating crimes against persons, and used Biblical and ecclesiastical precedents in shaping sex offenses, but colonial property offenses were grounded on indigenous and less sanguinary (e.g., theft was not a capital offense) philosophies. The colonists also eclectically transported the functional aspects of English procedural law—e.g., the right to reasonable bail, to a speedy trial, to confront accusers, and to know charges—but abandoned benefit of clergy and attainder leading to property forfeiture and corruption of the blood. As compared to the English experience, Chapin concludes that colonial procedural law moved in the “direction of fairness.” The most obvious examples of this trend, however, were colonial reforms in court structure. Colonists replaced the cumbersome Kings Bench and courts of assize, quarter sessions, and leet with structures suited to each jurisdiction’s philosophical orientation and social structure. The result, concludes Chapin, was a simplified and rational system of justice.

Chapin’s analysis of colonial crime (chapter four) is also informative. Analyses of court records and other sources reveal that crime was not a serious problem and recidivism was “virtually nil.” The small size of colonial villages, close family ties, low unemployment, the scarcity of material goods, and a variety of other factors combined to create an environment not conducive to theft, homicide, robbery, and other serious offenses. Colonists did, however, make a concerted effort to control sex-related offenses (fornication, adultery, bestiality, sodomy, lesbianism) and misconduct (sabbath violations, drinking and tobacco use, profanity, apostasy, gambling). Perceptions of “deviance” and “dangerous groups” also varied significantly by colony: Puritan oligarchs in Massachusetts and the Calverts of Maryland were concerned with seditious behavior while those governing Virginia were concerned with labor discipline, idleness, and the maintenance of tobacco profits. Colonial courts, then, primarily heard civil suits, probate matters, and problems related to public administration.

This study does, however, suffer from a number of theoretical, methodological, and analytical limitations. The scope of the work, in places, seems too broad; can a comparative study of seven legal systems covering a fifty-six year period be completed in 149 pages? Moreover, Chapin’s interpretations sometimes lack depth. He concludes, for example, that legal developments in a number of colonies were shaped by economic considerations but does not pursue the linkage between material conditions and methods of social control. His analysis might have
been made more penetrating if he had adopted a social rather than a legal historiographic orientation. Chapin’s discussion of colonial crime is, however, particularly susceptible to criticism. The author’s disclaimers and caveats about the weaknesses of his data are well-placed; systems processing data should not, however, be used to measure “crime,” irrespective of its accuracy. Chapin sits on the proverbial “limb” by using the same data to conclude that recidivism rates were “virtually nil.”

Despite these limitations, Chapin’s *Criminal Justice in Colonial America, 1606-1660* is a significant contribution to the literature. Legal historians should profit from descriptions of colonial criminal justice systems, interpretations of their unique origins, the identification of primary data sources, and the study’s comparative, cross-cultural methodology. Nonlegally-oriented readers may gain a better sense of the roots of America’s seemingly archaic criminal justice system, a system which was once a logical response to unique social conditions and which served the needs of its time.

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