BOOK REVIEWS


A major feature of contemporary corrections is the failure of correctional managers to provide stability, control, and direction to the American prison. As one commentator notes, "[C]riminal justice agencies, correctional ones among them, tend to lack the basic ability of effective organizations to gather people to do what is required." James Fox's Organizational and Racial Conflict in Maximum-Security Prisons demonstrates that control-oriented styles of prison management bear significant responsibility for the conflict between prison managers, custodial staff, and inmates. The decline of the rehabilitative ideal does not dictate that prison managers passively accept intraprison conflict as part of the new penology. Indeed, by empirically establishing a connection between intraprison conflict and management style, Fox places responsibility for the reduction of conflict upon prison managers. "Without a willingness to modify rigid, control-oriented strategies," he writes, "there is little reason to believe that management can formulate correctional change goals that will reduce (or limit) intraorganizational conflict" (p. 157).

Conflict is pervasive in the American prison. The origins of intraprison conflict can be classified as follows: (1) conflict born from the social and racial stratification present in American society and imported

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2 D. Duffee, Correctional Management 22 (1980).
3 "[T]he rehabilitative ideal is the notion that a primary purpose of penal treatment is to effect changes in the characters, attitudes, and behavior of convicted offenders. . . ." F. Allen, The Decline of the Rehabilitative Ideal 2 (1981). Allen traces the decline of the rehabilitative ideal to what he describes as "cultural events": the perception of rising crime, hostility to authority, the rising percentage of non-white inmates, and the equation of criminal penalties with oppression of black Americans. Id. at 29-31.
into the penitentiary; and (2) conflict arising from the organizational
dynamics of the penitentiary. Thomas' study of the English prison
officer illustrates how conflict can be imported into the prison. He
observed that the ascendancy of the educated middle class into managerial
positions within the national prison service injected class conflict into
the relationships between middle class prison managers and working
class prison guards. Most studies of intraprison conflict, however, ex-
amine its origins in the organizational structure and function of the pen-
itentiary. Illustrative is Cressey's finding that guards expected to
perform both custodial and treatment duties experienced role conflict.
Organizational and Racial Conflict in Maximum-Security Prisons principally
addresses this latter category of intraprison conflict. Fox's book is distin-
guished from other studies of intraprison conflict by its implicit use of
systems analysis and its ambitious data collection. Eschewing the goal
model of organizational analysis, Fox embraces the functional-systems
model. Consequently, he examines the attitudes, values, and informal
goals of organizational members—in this instance, prison managers, cus-
todial staff, and inmates. He obtained his data principally through in-
terviews and questionnaires administered to organizational members of

Fox provides penologists with the most thorough study to date of
the organizational attitudes of prison managers, guards, and prisoners. His
conclusions are well reasoned, clearly stated, and generally consist-
tent with the relevant literature. Fox's principal theme is that the dom-
inant managerial style, which he calls "restrictive management,"
promotes intra-prison conflict. This style of management, he explains, is
highlighted by custody-oriented practices and concentration of decision-
making power in prison managers. As Fox demonstrates, the effects of
restrictive management are two-fold. First, its emphasis on the control
of inmates through coercion arouses inmate hostility toward organiza-
tional policies. Fox's observations support Etzioni's hypothesis that ex-
tensive use of coercion alienates the lower ranks of the prison

6 Cressey, supra note 4.
7 The goal model is primarily concerned with the logical analysis of the formal goals and
rules of an organization. See Etzioni, Two Approaches to Organizational Analysis: A Critique and a
Suggestion 5 Ad. Sci. Q. 257 (1969). For an application of Etzioni's goal model to criminal
justice, see Feeley, Two Models of the Criminal Justice System: An Organizational Perspective, 7 Law
8 "[T]he starting point from this approach is not the goal itself, but a working model of a
social unit which is capable of achieving a goal. Unlike a goal, or a set of goal activities, it is a
model of a multi-functional unit." Etzioni, supra note 7, at 259. For an application of the
functional-systems model to the criminal justice system, see Feeley, supra note 7.
9 See, e.g., D. Duffee, supra note 2, at 71-264; J. Irwin, Prisons in Turmoil 181-213
organization. The alienating effects of coercion have historically been tempered by informal collaboration between the prison staff and the inmate power structure, but Fox's data indicates that racial and ethnic divisions within the prison population have severely fragmented the inmate power structure, thus requiring prison managers to make greater use of coercion. Second, restrictive management also alienates guards from organizational policies established by prison managers. Fox observes that the primary occupational concern of guards in maximum-security prisons is their diminished ability to influence prison policy.

Given the shortcomings of the restrictive management style, what alternative forms of prison management exist? Fox and others express interest in participatory management. In participatory management, goals are established through the collaboration of organizational members and responsibility for their achievement is similarly shared. Of the anticipated benefits of participatory management, Bloomberg writes:

The inmate acquires a psychological investment in and a commitment to the change process for he has participated in its formulation. The need for a[n] [inmate] subculture is substantially reduced, if not completely eliminated, for the inmates' role has been altered. Independence from official sanctions is no longer the goal, for the inmates themselves have become the officials; reactive group behavior has been replaced with proactive behavior. The inmate now has responsibility for the system and is able to obtain a desirable status conferred by it.

Informal collaboration between prison staff and inmates has long existed; for example, Sykes, Cloward, and McCleery observed that inmates cooperated with guards in maintaining "surface order" in exchange for tolerance of certain "under the surface" violations. Whether this informal collaboration can be expanded and formalized is controversial. Fox states that prison managers will resist organizational change and guards will oppose formal inmate participation in prison management. Moreover, participatory management that includes inmates is incompatible with the prevailing political definition of impris-

11 See infra notes 16-18 and accompanying text.
13 Bloomberg, supra note 12, at 155.
The prison of the 1980's is an institution where felons are sent as punishment and for punishment;\(^\text{17}\) the politically dominant concept of punishment requires profanations of self and is thus inconsistent with inmate self-determination, a central feature of most correctional applications of participatory management.\(^\text{18}\)

Despite a growing body of literature addressing correctional management,\(^\text{19}\) the development of managerial theory appropriate to the maximum-security prison as both a social organization and a political institution remains stunted. James Fox's *Organizational and Racial Conflict in Maximum-Security Prison* is not a primer on managerial theory for penal institutions. Instead, it undertakes the initial task of problem verification\(^\text{20}\) by providing evidence of the limitations of custody-oriented, hierarchically structured management. This book is worthy of careful examination by the managers of maximum-security prisons.

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Criminal courts are commonly cited for their flaws. There is a constant sense that they are in a state of crisis—that justice is not being properly served. While various problems in the administration of courts cannot be denied, the claims of politicians, the public, and even scholars, are oftentimes exaggerated and distorted. Unless they are based upon a full understanding of the nature and function of courts, reforms

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\(^\text{17}\) As the Supreme Court observed in *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981), “To the extent that such conditions [of confinement] are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.”

\(^\text{18}\) See Bloomberg, *supra* note 12, at 159 (“it is difficult to reconcile inmate self-determination with the punitive and retributive purposes of incarceration”).


\(^\text{20}\) Problem verification is “a necessary first step” in applied research in any field, including correctional management. *Action Research and the Consultative Process in Organizational Development* 120, 121 (N. Margulies & A. Raia eds. 1972). However, as the National Advisory Commission on Criminal Justice Standards and Goals observed, management action has lacked a consistent relationship with evaluative research. *National Advisory Committee on Criminal Justice Standards and Goals, Corrections* 442 (1973).
aimed at changing their operation will have only limited success. It is against this backdrop that Malcolm Feeley analyzes various court reforms and their effects.

Recognized as a leading authority on courts, Feeley has produced an extremely valuable and unique work that thoroughly and creatively integrates research, theory, and policy, while providing new directions for future reform efforts. Written as a report for the Twentieth Century Fund, the book begins with a general discussion of theories of courts and how various changes have occurred.

Feeley emphasizes that courts are public service institutions that are fragmented in organization, operation, and goals. Feeley then describes how fragmentation is reinforced through three basic forces in the criminal justice system: the adversary process, due process, and professionalism. The essential lesson is that courts are not merely bureaucratic organizations, but are institutions that serve as an arena for conflicting interests in which professionals are engaged in a multiplicity of games. The author points out that the seeming "inefficiency" of the courts is inherent in the very structure and theory of the adversary process itself, and is not simply the product of overloads or aberration. He also correctly notes that much of what we perceive as "failure" is related to higher standards and expectations for courts. Thus, the terms "reform" and "improvement" are necessarily subjective in nature. He calls for more realistic expectations of what courts can actually accomplish, and lays a social foundation for examining four reforms: bail reform, pretrial diversion, mandatory minimum and determinate sentencing, and speedy trial rules. In analyzing these reforms, Feeley goes beyond the traditional boundaries of studies of planned change, which concentrate on how policies are legislatively and bureaucratically developed, to focus on five stages of the change process: diagnosis, initiation, implementation, routinization, and evaluation.

In his discussion of bail reform, Feeley devotes the most space to the histories of the Vera Institute in New York City and the reform efforts in California. The efforts at change in pretrial release are thoroughly discussed, even to the point that less interested readers may find the detail a bit tedious. While pretrial release has increased in recent years, Feeley argues that on closer inspection this cannot be attributed in large measure to the direct activities of special agencies created to foster it. The evidence cited shows no conclusive proof that such programs improved the predictability of court reappearance, although as Feeley points out, reminding people of court dates will clearly reduce the failure to appear rate. Although later efforts were made to evaluate such programs, no scientifically acceptable results were produced. The great-
est impact of these programs was symbolic in nature, making officials more aware of the need to consider the rights of the accused.

In the following chapter, pretrial diversion efforts in New York, California, and Connecticut are analyzed, and similar failures are found. These reforms were quickly embraced and implemented as a way of relieving overburdened courts before the "crisis" was properly understood. As in the pretrial release movement, the greatest impact of pretrial diversion reforms may have been indirect, lending greater credence to alternatives to criminal penalties.

The chapter on sentence reform presents four case histories: the Rockefeller drug law in New York, mandating harsh minimum penalties for drug possession and sales; the Bartley-Fox gun law in Massachusetts, requiring a one-year minimum prison sentence for possession of a gun; the Michigan mandatory minimum sentence for narcotics sale and illegal possession of firearms; and the change in California's penal code from indeterminate to determinate sentencing. Again, Feeley discusses the histories and effects on court practices of these reforms, examining the political motivations for change and evaluating the reforms' overall results. He concludes that these reforms of sentencing law rarely achieved their goals, which included deterrence, standardization of punishment, and a reduction in sentence disparity. Petty offenders were often ignored, and, ironically, serious offenders sometimes fared better. In his discussion, Feeley demonstrates convincingly that sentencing is often more complex than simple changes in law anticipate, and that courts can adjust processing modes to undermine the goals of new laws. Perhaps most importantly, he observes that the actions we will tolerate are so limited in range as to make the effects of sentencing reform minimal to nonexistent in controlling crime.

In examining speedy trial rules, Feeley discusses the impact of United States Supreme Court decisions, federal and state laws, and the problem of delay. He concludes that delay should not be addressed by across-the-board time limits on processing, but by realizing that delay is a multifaceted issue, which should be dealt with by reforms aimed at specific underlying problems.

In the final chapter, Feeley effectively argues that while various reforms may not have produced their expected outcomes, they may have succeeded in unintended ways by increasing awareness and sensitivity to problems and disparities in justice. Thus, they may lead to more gradual, less dramatic changes that improve the work of courts. The major reforms examined have failed in obtaining their expected outcomes, he warns, because of a preoccupation with formal theory and logic, rather than a focus on the real details of court activities. He calls for more realism and sensitivity toward these details of administration in courts,
as well as greater understanding of how courts operate in a fragmented and hydraulic manner. Future reform efforts can then focus on concrete problems and their solutions, rather than on the symbolic nature of perceived, and often misunderstood, problems.

Malcolm Feeley has written a unique and important book that carefully examines issues related to the success and failure of various court reforms. It is a major scholarly work that is very short on scientific jargon and very long on original and interdisciplinary insights. For these reasons it should enjoy a wide readership. It is certainly important reading for a variety of courses dealing with courts, criminal justice, social policy, and law. I plan to use this book in my courses, and I highly recommend it to others.

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The Impact of Sentencing Reform is an important contribution, dealing with a complex and long-debated issue in our criminal justice system. It is an empirical study, in which the authors have made a serious effort to evaluate the impact of sentencing reform in the State of Indiana.

The intended "reform" on which the study focused was the abandonment of indeterminate sentencing in Indiana. Under indeterminate sentencing, an inmate was eligible for parole at the expiration of a minimum term less good time. The reform legislation created a structure of penalties based on presumptive terms, with consideration for both mitigation and aggravation.

The findings of this three-year evaluative study include two main components: the distribution of sentencing and related variables for both the old and the new codes, and the attitudes of judges and prosecutors regarding the impact of sentencing reform. Prior to revealing the findings, the authors provide a well organized and fairly balanced chapter entitled "Correctional Policy, Neo-Retributionism and the Determinate Sentence." They address both the societal need to abolish a
sentencing system that leads to injustice through the wide discretion granted to decisionmakers and the problems created by such a major policy reform. The authors point out that, thus far, none of the sentencing reforms which have been introduced “allow the offender to really know upon sentencing, the precise amount of time he or she will spend in prison” (p. 29). “Good time,” which effectively alters the term imposed by the judge, can essentially become “the institutional control mechanism replacing denial of parole” (p. 29). Prior to this study, other observers and analysts had indicated that the new Indiana sentencing provisions were not guided by the principle of “just deserts.” The prescribed penalties were considered rather harsh, and the mitigation and aggravation ranges too large.

Despite some of the limitations inherent in the data presented, the findings of this study indicate that in practice this was probably not the case. For example, “the most frequent sentence was to a term which falls below the presumptive level established by the code” (p. 58). While this tendency toward mitigation is indeed supported by the data, no reliable conclusion can be drawn concerning a possible tendency toward sentence enhancement for aggravation in severe cases, since the data are insufficient for this purpose.

Several conclusions are carefully drawn, based upon analyses of sentencing under both the old and the new codes. The changes under the new code are as follows: (1) no major change occurred in sentencing patterns; (2) the range of incarcerative penalties increased as a result of discretion at the judicial decisionmaking level; (3) redistribution of penalties among offense types took place in the form of increased terms for severe offenses, and proportion of time served was relatively constant across offenses; and (4) discretion was used by judges to modify the presumptive term to the degree that unarmed robbery was relatively lightly punished (p. 65).

The attempt to draw these conclusions is somewhat weakened by several problems in the data, problems which are appropriately addressed by the authors. These deficiencies, some of which are inherent in the nature of the study (i.e. comparing the old code to the new code) are somewhat counterbalanced by an attempt to evaluate the sentencing reform through judges’ and prosecutors’ attitudes. It is not clear, however, why the authors conducted the interviews with only a small sample of criminal justice officials, rather than by employing a better designed survey method with a large sample within the State of Indiana. Although the authors indicate in the summary that the “findings reveal a fairly wide base of support for the new Indiana Code as a positive reform,” one should be careful in generalizing from the responses of only twenty-nine subjects selected by a non-systematic sampling procedure.
This is an important publication in which the authors attempt to advance the understanding of policymakers and criminal justice officials on the issue of indeterminate/determinate sentencing. The book would be useful to students of criminal justice and public administration and to those officials and policymakers who are in the process of implementing similar reforms and designing evaluations of their projects.

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This rather controversial book about detective work is an observational study of detectives operating in two general investigation offices in a Canadian Municipal Police Force. In the first chapter, after a brief history of detective work in Anglo-American jurisdictions, the author describes the organization of the particular offices under study. The thrust of the chapter and of the book generally is that detectives are the "makers of crime." They proceed on promising cases and dismiss or "finesse" the less promising. The author contends that it is the organization of police and policing that leads to the specific crime defining activities of the detectives. The organization creates administrative rules that the detectives try to avoid when the rules interfere with what they see as their job. Police work is considered in the context of social organizations as defined by Silverman.¹ Also frequently cited as guiding the focus of the study is the book by Berger and Luckman.²

The first part of chapter two sets out the research strategy for the study. Here, the author tells us that the study will be "based in the epistemology of symbolic interaction" as articulated by Paul Rock.³ Under Professor Rock's view, "[v]alid knowledge is held to reside neither in the subject nor in the object but in the transactions that unfold between them . . . it represents the emerging product of active encounters

between consciousness and the materials which consciousness surveys.\footnote{P. Rock, \textit{supra} note 3.}

The rest of chapter two describes the fieldwork that was actually done to conduct the study. An incredible amount of cooperation was necessary to be able to do an observational study of detectives. The police chief, Chairman of the Board of Police Commissioners, the local crown attorney, and judges all had to agree that this project was valuable and that the researchers could carry it out. Eventually, two field workers observed 179 shifts in six general investigation units from May 1976 to March 1977. Predictably, some detectives viewed the study with hostility and suspicion and would not cooperate. For this and a variety of other reasons, the sample of detectives and observations are non-random. In this part of the book, the very real problems of sociological fieldwork are well illustrated, particularly those encountered in an atmosphere that is hostile to observers.

Chapter three examines the occupational environment of detectives, in which they are geared to the disposition of cases. The author supports his contentions in this chapter with some quantification and with anecdotal case examples.

Chapters four, five, and six provide the actual findings of the study. Here, detectives' activities are described in terms of their investigation and disposition of cases and dealings with victims, informants, suspects, and accused persons. Again, there is some quantification offered but much of the description is in the case example format. In these chapters, the description of general investigation detective work is often fascinating and informative. Among other things, the chapters illustrate how the detectives in the study manipulated people and paper. They falsified reports to meet organizational demands, and even falsified warrants with the later cooperation of a Justice of the Peace (p. 153).

The final chapter relates the theoretical interests of the author to the central question of "how social control is related to the reproduction of social order." In some ways, this is the best and most balanced chapter. It summarizes the findings of the study well and addresses the issues of "full enforcement" and professionalization of police. It rarely enters the realm of symbolic interaction of organizations.

The book's strengths are its chapters on findings and the final summary chapter. The research is interesting; it provides data that had not been available before and confirms much of what is already known about police work. The book reinforces information we have about complex organizations; in fact, it would make a good case example in a Sociology of Organizations course. While it does all of this in a Canadian setting, it indicates that Canadian detective work is very similar to
American detective work (or what is known about it), even though the legal bases of the two legal systems are quite distinct.

The major weakness of the book lies in the realm of theory. The socio-babble of Paul Rock provides interesting ideas for sociologists, but it hardly provides a basis for empirical investigation. Interpreting and reinterpreting statements and actions of police in search of true meaning seem to cloud the issue more than clarify it. Observation and description without attempts at interpretation would have been more revealing. The use to which this theoretical orientation was being put is never clear throughout the findings chapters. One is left with the feeling that the theory oriented the author’s feelings about the research, but did little in the way of actually guiding the research effort. Silverman’s approach to social organizations is, of course, consistent with the symbolic interaction (ethnomethodology?) approach. Given the descriptions in the book, however, a more traditional social organizations approach may have been more fruitful.

In terms of methodology, the author does not sufficiently emphasize the methodological limitations of the study. They are mentioned in chapter two and then ignored for the rest of the book. Findings are presented as if they were generalized even though the reader has been warned earlier that they are not. Further, the qualitative aspects of the work are not emphasized at all, although the approach is rather unique and should have been discussed.

Readers of Making Crime who are more enamoured of the theoretical and methodological approach employed than this reviewer will be more positive toward the book, but what has been pointed out so far is academic criticism and would hardly be controversial. The reader is introduced to the true controversy in Appendix A. This is the only piece of research that I know of in which representatives of the subject group are allowed to reply to the findings of the study and have that reply published in the book. Appendix A is a twelve-page response from the “Board of Commissioners of Police in the Jurisdiction under study” which concludes that “the report . . . has not adhered to the scientific rigors of reporting.” The Commissioners feel that the author has been unfair. In a convoluted manner, they point out the problems with using the symbolic interaction approach in the kind of study that was done. They feel that the reporting about the detectives’ work is negative.

5 This makes the book an interesting study for those interested in qualitative methods. Here the subject gets to talk back and the researcher then replies; it is all written down for interpretation and reinterpretation. This right of reply to the findings of the study was specified in the terms of the contract.

6 Most readers probably will find the writing somewhat negative.
the observation. They suggest that what the researchers interpreted as illegal activities on the part of police were really practical jokes being played on the naive observers. They suggest that as a part of this process, police exaggerated and falsified reports for the benefit of the observers. As a result, they argue, many of the reported observations are incorrect. The credibility of the research is certainly brought into serious question by the Commissioners.

Who is right? The researchers are rather convincing (in spite of their methodological problems), but the comments of the Commissioners do create a pall over the research. In any case, readers should be aware of the problems inherent in this study. One has to interpret the book’s findings in light of the methodological problems and the delicate nature of the subject investigated. The author was simply not sensitive enough to these issues.

Finally, the study may also have some serious implications for the future of police research in Canada. While the Commissioners’ response may not convince other researchers, it may well convince other police officials. A minor “case-example” may help to illustrate the point. Last year, I was approached by an Edmonton City police officer and asked to help design a study about sources of stress among police. The topic is of interest to me and the study was to be done locally, so I agreed. When my friend approached his superior officer with the plan, the superior officer responded, “We can’t have those University guys in here; haven’t you heard about the Ericson book?”

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The concept of legal insanity represents one of the most controversial criminal justice issues in our society. Though primarily a legal issue, it has caught the attention of those integrally involved with the criminal justice system as well as that of the public at large. Massive coverage by the media has introduced the issue to the public, thus rendering something once considered an entirely legal issue subject to a whole new perspective, questioning its function and place in our legal system. Winslade and Ross have capitalized on this national attention to mount

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7 The site is 2000 miles from the site of Ericson’s work.
a scathing attack on the plea itself, as well as on the psychiatric facet of legal proofs presented during both trial and pre-trial proceedings. From the very beginning, there is no doubt what position the authors have taken. This is more than fair to the reader, who is put upon immediate notice that there will be little, if any, rebuttal allowed to the assertions made.

The authors set forth their argument through descriptions of seven recent criminal cases in which psychiatry played a central role in the pre-trial setting and the trials themselves. The primary defense of the accused in each of these cases was the plea of legal insanity. The case histories set forth were well chosen; they are relevant to the subject matter and provide interesting facts to sustain reader interest. They each place the issue in the legal framework in which it belongs, after describing in some detail the events in the life of each accused which led to the criminal act in question. Unfortunately, the reader is not provided with any explanation of the source of these facts, leaving one only to speculate as to their authenticity.

The authors' attack is essentially seven-pronged, utilizing each of the cases to illustrate one specific argument. Their concentration on one argument at a time is an effective tool in driving home the point intended. A critical look is also leveled at the use of psychiatric testimony by the prosecution, as exemplified by a case involving a psychiatrist whose conclusions were uniformly the same regardless of the circumstances involved. Thus, by covering the full circle of the system, the authors attain the objectivity necessary to validate the premises they set forth.

The materials presented rely heavily on the reader's knowledge of contemporary individuals and events. The case example of defendant Dan White, who took the life of two political contemporaries, examines the topic of the pressure of psychiatric testimony upon the jurors' emotions. In the introductory paragraph, reference was made to the events in Jonestown. In another case example, one is expected to be familiar with the Manson murders in order to understand and reconcile the events of the trial under discussion. This dependence on knowledge of relatively current events may well inhibit the future value of the book.

The secondary theme is consistent with the primary theme. As a result of the argument raised to eliminate psychiatry from the law, an argument is made for the abolition of the insanity plea as it exists in any of its present forms. It is contended that the present practice necessitating medical testimony at trial to prove or disprove insanity, has no place in criminal law. The authors settle for a compromise alternative system in which guilt or innocence would be determined initially by the finder of fact. When a verdict is reached, the mentally ill facet of the defend-
ant's state of mind at the time of the act would be taken into considera-
tion at the sentencing hearing. This alternative, however, has major
weaknesses readily discernible if one has placed any faith in the initial
arguments set forth by the authors.

The literary style of the various case studies freely intermingles le-
gal and medical terms with material clearly written for a readership
relatively unfamiliar with the plea of insanity in its present form in the
criminal justice system. The technical material presented, both legal
and medical, is clearly accurate and precisely used. Unless readers are
somewhat familiar with the use of such terms, however, they may be left
to speculate as to the meanings of the terms within the context of the
material.

This book clearly represents a new plateau in the approach to the
study of the insanity plea. It presents intricate subject matter in an in-
teresting and readable fashion. Theorists and law professors alike might
well use this volume as recommended reading material to broaden their
students' perspective on the insanity plea. Persons with a somewhat peripheral interest in the topic could also increase their knowledge of the
specific material discussed. There are few who would argue that the
present form and status of the insanity plea is not in need of reform.
Advocates and critics alike share the belief that changes in its structure
and function are essential. Winslade and Ross offer their particular po-
sition and solution. This book should provide incentive to others to
share their perspectives with a reader audience sufficient enough in
number to make an impact upon the critical issues at hand.

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DISORGANIZED CRIME: THE ECONOMICS OF THE VISIBLE HAND. By
$17.50.

The literature on organized crime and illegal markets is rather sparse. Empirical studies are particularly lacking. Dwight Smith's *The
Mafia Mystique* ¹ and Donald Cressey's *Theft of the Nation* ² are good exam-
pies of empirical studies representing the scholarly and official versions,
respectively. In any event, assertions concerning the Mafia's control of

² D. Cressey, Theft of the Nation (1969).
illegal markets and the importance of that control to the Mafia have never been supported by any effort, either scholarly or official, at rigorous empirical testing. Peter Reuter’s *Disorganized Crime: The Economics of the Visible Hand* is the first attempt at a systematic empirical test of a series of assertions about the Mafia’s involvement with illegal markets. Drawing from police files, confiscated records of illegal operations, and interviews with police, prosecutors, and criminal informants, Reuter presents data that dispute the official account that the Mafia, through political connections and the threat of violence, has attained control of the major illegal markets.

In particular, data on bookmaking businesses (horses and sports) indicate that they are generally small, that entry into the market is not difficult, and that efforts at price fixing have failed. These findings clearly dispute the traditional view. Data on the numbers racket indicate that numbers banks are also generally small, that entry into the market is also easy and frequent, and that there is great variation between banks in terms of their profitability. This directly counters descriptions of numbers banks as strictly territorial and under the exclusive control of a single group. Data on loansharking indicate that intimidation and violence are not necessarily part of the collection process, that collateral is often taken in place of the borrower’s body, and that takeovers of legitimate businesses by loansharks are extremely rare. These findings most certainly contradict official dogma and popular belief.

What role does today’s Mafia play in the illegal markets of bookmaking, numbers, and loansharking? Simply stated, the Mafia provides arbitration services (both adjudication and enforcement) in these illegal markets. Here, too, a lack of coordination between Mafia families makes for a moderately competitive market.

Reuter suggests that “the whole concern with illegal markets as the source of the evil of organized crime in modern America may be misplaced” (p. 187). This is not to say that organized crime is not a serious problem, although Reuter doubts that it is, “[b]ut it does public policy no good to make a mockery of the term ‘organized crime’ by assuming that all crime that requires organization induces enduring conspiracy” (p. 187). In fact, Reuter’s data suggest that the “magic of the marketplace” may find its truest meaning in the distribution of illegal goods and services, where the “visible hand” of violence and corruption is often defeated by the “invisible hand” of market economics. Furthermore, “as in legitimate market places, it may be that misplaced government intervention is the most serious threat to this desirable outcome” (p. 187).

Reuter, Senior Economist at the Rand Corporation, employed the
techniques of data collection and economic analysis developed for re-
search on legitimate markets. Given, however, the well-known problems
with crime data, how valid are Reuter’s findings? Indeed, some of his
data are incomplete, some qualitative data are open to different inter-
pretations, and some data are missing. Moreover, these problem data all
come from New York, which is unique in terms of Mafia families.
Clearly, a case can be made to reject Reuter’s data as not representative
of organized crime and illegal markets across the United States. Never-
theless, Reuter has made an important contribution by comparing the
visible hand of corruption and violence with the invisible hand of mar-
et market economics. In other words, he used standard economic analysis to
further explore the relationship between organized crime and illegal
markets. In this way, formal theory, mathematization, and rational-
choice modeling will become part of the criminologist’s lexicon.

The smooth writing style of this behind-the-scenes study disguises
its academic-thesis origin. It makes for genuinely interesting reading
and will no doubt generate controversy in official circles. President Rea-
gan’s newly appointed twenty-member Commission on Organized
Crime would do well to peruse its pages. More importantly, however,
Disorganized Crime: The Economics of the Visible Hand should catapult Peter
Reuter to the forefront of academicians involved in the study of organ-
ized crime and illegal markets.

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Making Good: Prisons, Punishment and Beyond. By Martin

Making Good is a refreshing antidote to the “punitive mindedness”
currently prevalent in both Great Britain and the United States. Mar-
tin Wright confronts this mentality with ideas that are anti-punishment
and reformist. Reform proposals based upon criticism of the prison
abound and have been made throughout the history of the prison. In
contributing to this genre, Wright’s book utilizes considerable research
data—much of it cross-national—to attack carceral institutions, in gen-
eral, and to condemn the deplorable conditions in Britain’s overcrowded
prisons, in particular. Within this context, an argument against reliance
upon punishment as the rationale for penal measures is presented. Pun-
ishment, Wright argues, is flawed since it is not possible to administer it fairly, and because, in terms of its presumed effect on the reduction of crime, it harbors an inherent contradiction basic to the malaise of the penal system.

The title should not be construed as a satirical comment regarding the benefits of prisons, for the author documents the generally accepted conclusion that a great many negative consequences flow from incarceration. Rather, it is an oblique and subtle reference to the theme of the book. This theme, stated in the introduction but subsisting virtually sub rosa until the latter chapters, is that the present institution of punishment is counter-productive and should be replaced by a more adequate theoretical foundation upon which a positive means of social control can be constructed. Wright, who for ten years was the Director of the Howard League for Penal Reform, doubtless has few peers, except for prisoners and prison staff, when it comes to first-hand knowledge of prisons in Great Britain. This experience, combined with research data on penal policy and practice, provides the material for a compendium of criticism and reform proposals directed at penal measures.

The book begins with a brief review of traditional attitudes on punishment; attention is then focused on the prison as the most severe form of punishment in most western countries. Prisons in Great Britain and in the United States are crammed with petty thieves, the uneducated, and other social rejects, for whom such a sentence serves no purpose that could not be better achieved through other measures. These prisons also hold a number of serious violent offenders who require incapacitation. The all-purpose prison neither deters nor reforms prisoners, and Wright proposes that minor offenders (the first group above) be dealt with in non-custodial settings, so as to reduce the overcrowded conditions and make prisons a more manageable environment for the residual serious offenders. Wright suggests a rather conventional list of reforms for dealing with the first group, including, inter alia, community service, more exacting methods of probation supervision, decriminalization of public order offenses, and the probation subsidy program initiated in California. For those serious offenders who remain inside, a reformed, self-governing regime, such as that introduced at Grendon's therapeutic community penal program, is advocated. Sweden's "institution councils," which involve inmates and staff in the day-to-day decisionmaking process, are also cited as a feasible model. These institutions would, it is suggested, be based upon the principle of justice for prisoners, as would a release and reentry program, which would avoid the problems of the present parole system.

The case for reform presented in the earlier section of the book is obviously not particularly novel, and the question Wright raises is, why,
given the wide public support for these measures, has their introduction been so long delayed? He explains that it is not only due to the resistance that such far-reaching reforms always create, but also due to the inadequate coordination and lack of receptivity to change inherent in the British system. It is the author's contention that such systems should be modified so as to encourage evolution toward the least possible intervention in the lives of individuals; if this means less cost and greater prevention, so much the better. By way of contrast, the United States, under the aegis of the Law Enforcement Assistance Administration (LEAA) of the Department of Justice, is noted as a country where criminal justice reform is encouraged and the results disseminated. The closing of the training schools in Massachusetts is held up as an example of how LEAA funds promoted change. In this manner, Wright provides the backdrop for his "grand design" to be unveiled in the last sections of the book. Prior to that ambitious outline he notes that the present judicial system strives to attain three practical goals through punishment: deterrence, denunciation, and incapacitation. The goal of retribution is acknowledged but dismissed as non-utilitarian and morally unsound, and rehabilitation is credited only as an ideal that has gone out of fashion.

The reformist focus of Wright's earlier arguments makes them appear at first blush to resemble aspects of the neoclassical model for penal reform, which aims to make punishment fairer and more predictable. This model has evoked considerable interest in Scandanavia and resembles in crucial respects the "justice" model advocated by David Fogel and other criminologists in America. This apparent emphasis, however, is negated in Wright's final scheme, for the proposal presented in the latter part of the book finesses both the neoclassical model and "neopositivism." That is, both the deterrence and rehabilitation goals are relegated to subsidiary roles, although deterrence is subsumed under the notion of "probability of detection." In place of these traditional aims, the author proposes an informal system with one dominant purpose: restoration of the state of affairs existing prior to the offense. Mediation between the offender and victim would be the means substituted for the present formal apparatus. This obviously is a departure from the more conventional previous advocacy of a "fairer" system. The arguments against punishment of crime, when "crime" refers to so many different problems, resembles, if only superficially, Nils Christie's recent cogent criticism of the inappropriateness of punishment in the context of the

1 D. Fogel, "...We are the Living Proof...": The Justice Model for Corrections (2d ed. 1979); see also A. von Hirsch, Doing Justice: The Choice of Punishments (1976).
neoclassical model.²

This is hardly a comprehensive coverage of Wright's arguments. Perhaps one should not cavil at the realization that a reformer is unabashedly reformist, or that this orientation colors the selective use of data. Yet, the scholarly expectations one might have had wane given the deft rejection of Paul Lerman's criticism of the California probation subsidy program³ and the potential net widening effects of community corrections.

Wright's proposal to replace punishment as presently instituted is difficult to challenge since it is not fully developed and is in need of further elaboration. Although evidently grounded in his humanitarian and moral convictions, the proposal is deliberately utopian in focus. Flawed by the lack of any clearly enunciated philosophical or theoretical basis, it is devoid of any awareness of the basic changes in political and social structures that such a drastic change would involve. In the absence of a political philosophy that would question the role of the state in the present system, crucial issues are left unexamined. What kind of a political economy will be required? What will be the role of the State under this positive form of punishment?

Of course, it is too much to expect of a two chapter proposal at the end of a long book that it provide a satisfactory method for the reconciliation of the victim and offender, as well as a convincing vision of a society that has abandoned negative punishment. It seems incumbent upon the author, however, to specify in a future volume a clearer vision of the requisites for moving beyond a "just" response to criminal behavior, or risk having this hopeful scheme dismissed as visionary.

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Over the past decade, the State of New York has radically changed its approach to and treatment of delinquents. The age of criminal responsibility has been reduced to fourteen years for serious felonies. The

² N. Christie, LIMITS TO PAIN (1981).
push is toward more severe consequences for antisocial youths as this abandonment of liberal values has become a cause celebre.

_Juveniles in the Family Courts_ attempts to interpret this hardening of social values within the context of the history of the juvenile court. The volume is a case study of juvenile court practices and ideology. Unfortunately, _Juveniles in the Family Courts_ fails. Methodological flaws abound and the result is a provocative yet speculative analysis of juvenile court decisionmaking and trends.

Adopting a socio-legal perspective, Fabricant seeks to explain New York's recent reactionary outburst toward juvenile crime. The movement toward conservatism is linked to a public perception of ineffectiveness in the New York City family courts. Fabricant's primary thesis is that this perception is correct, and he attributes the problem to an "unbalanced adversarial relationship" between prosecutors and defense counsel. The author also cites other causes, including legalistic values and judicial disorganization. In general, the book portrays the movement as representing a significant step in juvenile court development.

Two principal shortcomings mar this book. First, the author repeatedly engages in unsubstantiated declarations and inferences. For instance, he begins his analytical reasoning with the assumption that "[t]he New York City family court is one of the most fully implemented examples of a legal-rights or legalist definition of juvenile justice" (p. xiii). Perhaps this is true, but the assertion is unsupported by comparative data and there are obvious reasons to be skeptical. It can be argued that the most critical element of due process is the right to a jury trial, and New York, along with nearly forty other states, deprives juveniles of this fundamental opportunity.

Similarly, in reviewing family court case outcomes, Fabricant depicts his data as unequivocal evidence of defense triumph. He bases his conclusions on a one-shot study of five hundred delinquents and status offenders appearing in the Brooklyn and Bronx family courts between 1977 and 1979. To be sure, dismissal of three-fourths of the petitions is a revealing figure, but the author's unqualified summary is shaky. Not only does the analysis forego reference to baseline and comparative data, but it also excludes systematic testing of control variables such as legal sufficiency of the evidence, filing practices, and diversionary decisions.

The other major flaw relates to research design and methodological rigor. _Juveniles in the Family Courts_ seeks to demonstrate that the legalist model, as implemented in New York City, can lead to a politically unacceptable homeostasis allowing juvenile offenders to escape social control with alarming frequency. The author attempts to correlate the degree
of legal rights implementation with the crime control performance of the family court, as well as with the political response of lawmakers toward juvenile justice.

In testing these suppositions, Fabricant relies upon too many shortcuts. First, the author does not establish discrete hypotheses separating the analytic contribution of each independent variable. Although he argues forcefully that case outcomes are the product of abysmal prosecutorial performance, which he believes results from a resource imbalance, he also implies other causes. Fabricant blames anti-prosecution legalistic values and massive disorganization within the family courts.

Additionally, the book relies on a set of correlations which neither accounts for theoretically relevant variables nor measures adequately the functioning of considered factors. Fabricant's contrasting of the outcomes of law guardian (public defender) cases with panel attorney (appointed counsel) cases shows the first sin. Eschewing sophisticated statistical methods, the author assumes comparability of assigned delinquency cases on the basis of a few elementary similarities, e.g., offense category and raw number of prior offenses.

While investigating the causes of family court determinations, the pivotal research inquiry, Fabricant fails to delve into the specific dimensions of the independent variables. If legalistic values are an influence, is it because judges are suppressing relevant evidence or are they merely siding with the defense in the subtle area of non-appealable discretionary rulings? What about judicial disorganization? Are cases being dismissed because of "speedy trial" violations or is the internal strife of the family court the true culprit? With respect to adversarial imbalance, a number of scenarios are plausible. Do defense counsel win because of sheer legal ability or are prosecutors inept or just unprepared? Moreover, what is the impact of filing decisions? This type of precise inquiry, essential to accurate understanding, is completely missing.

Fabricant's superficial command of the mainstream of the judicial process literature is also disturbing. Although he makes polite reference to the standard juvenile classics, he does not demonstrate an understanding of the lessons of benchmark court studies. The insights of Feely, Eisenstein and Jacob, Blumstein, Alschuler, Heumann, Newman, and others are nowhere to be found. What is missing is a systematic bias, giving consideration to such factors as filing practices, evidentiary values, operative legal culture, and other salient influences.

Other minor but annoying flaws characterize Juveniles in the Family Courts. Citations are inexact and occasionally dated to the point of inaccuracy. For instance, using a 1974 reference, Fabricant states that
thirty-three states terminate juvenile court jurisdiction at age seventeen, but the figure is actually thirty-eight.

This book does little to advance our understanding of the evolution of the juvenile court. Although it is obvious that something significant happened in New York to persuade lawmakers to shift direction, a satisfactory explanation is not found in this volume.

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Madness and the Criminal Law is a detailed argument in favor of the proposition that the states’ criminal justice and mental health concerns should be separated as much as possible. Using allegory, legal theory, and analysis, Professor Norval Morris, long one of the most thoughtful and forceful thinkers in the criminal law/mental health legal arena, addresses three major areas: fitness to stand trial determinations, the special plea of not guilty by reason of mental illness, and sentencing of the mentally disordered offender.

Professor Morris defines his position early in the book:
My belief is that practice and scholarship have been led astray by the following ambivalent and corruptive reaction; though he has done a criminal act, being mentally abnormal he is less guilty in moral terms; St. Peter may indeed hold him morally faultless or at least less blameworthy and so should we; but also he is different from the rest of us, strange and probably more dangerous, and therefore, since he has committed a crime, we had better for his sake and ours separate him from the community or prolong his separation, for his treatment and our protection. We are at the same time more forgiving and more fearful, less punitive and more self-protective; we wish to have it both ways.

Morris begins the book with the allegory, a story about a retarded young man raised in a brothel who rapes and kills a young woman in Burma. The story of the brothel boy is a springboard into a detailed discussion of fitness to stand trial and criminal responsibility.

The author struggles with a key issue in fitness to stand trial determinations, the unrestorable incompetent. He proposes that in cases where a defendant appears unable to meet conventional competency to stand trial standards, a six-month trial continuance should be granted, for the purpose of treating the defendant and restoring him or her to
competence. If at the end of six months, the defendant is still incompetent, Morris argues that there should be either a trial with special rules designed to compensate for the incompetent person’s limitations or that charges should be dropped and, if appropriate, the state should pursue civil commitment.

Concerning the insanity defense, Morris elaborates the position he set forth in his well-known 1968 article, “Psychiatry and the Dangerous Criminal.” Morris argues for the abolition of the special plea of not guilty by reason of mental illness. Since proof of both actus reus and mens rea is needed for criminal conviction, usual mental state defenses should be adequate for a mentally ill person charged with a crime. Evidence of mental illness, like blindness or deafness, may be used as part of a mens rea defense, but mental illness itself should not be a special plea in Morris’ view.

Professor Morris continues this line of argument in his discussion of sentencing. His position is that it is proper for mental disability to be taken into account in sentencing. Punishment for a crime should be premised on the concept of desert. If mental illness interfered with the defendant’s perception of moral fault, it should be a factor in fixing sentence.

A short review cannot do justice to the elegance of Professor Morris’ book. The writing is tight, the argument is balanced. Morris fairly details and gives credit to opposing arguments. He provides discussion of major cases concerning relationships between criminal law and mental health law powers and illustrates his contentions with references to British and American statutes and experiences. The two allegories, “The Brothel Boy” and “The Planter’s Dream,” are provocative articulations of the implications of his argument and provide a change of pace from the more formal chapters.

Legal scholars, undoubtedly, will question Morris’ analysis. There are serious constitutional questions concerning the propriety of bringing to trial a defendant who does not meet competence standards. There is also a large body of legal scholarship that argues for a special defense of insanity.

This reviewer’s perspective is that of a practicing forensic and clinical psychologist. To a practitioner who works in a maximum security psychiatric facility, attempting to “treat” both men considered mentally ill who were found guilty and sentenced, and men considered mentally ill who were found not guilty by reason of insanity, Professor Morris’ analysis and recommendations make good sense.

Mentally disordered offenders, once in custody, are made aware of their violation of society’s norms. The treatment process of such persons
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requires diminution of acute symptoms of psychosis, then gradual consideration by the offender of the harm that he or she has done, and appropriate grieving for injuries caused and harm inflicted. The offender must learn more effective coping strategies for dealing with stressful events than those utilized before the wrongful behavior.

In this reviewer's experience, social labelling of the offender as "not guilty," makes it more difficult for the patient/inmate to reconsider his or her past disordered thoughts and actions and to take emotional responsibility for present and future conduct. Recently, when asked to talk about the thoughts that led him to murder a stranger, a man found not guilty because insane said he did not think about the past. Asked how he felt about taking a life, the man responded, "The judge said I was not guilty. That's all."

Obviously, the experience of having a judge or jury proclaim guilt does not guarantee that a mentally ill person will be able to engage in a treatment process that leads him or her to re-experience and sort out the painful past. Nor does social determination of guilt necessarily enable a sentenced offender, whether or not mentally ill, to appreciate the wrongfulness of past behavior and make appropriate changes in thinking and functioning. But society's freeing an individual of emotional responsibility for behavior, through the special plea of not guilty by reason of insanity, may retard an offender's opportunity to change.

Professor Morris' focus on the sentencing phase of the criminal justice process as the major place for consideration of mental illness, however, makes sense only if there are appropriate dispositions and opportunities for treatment for mentally ill offenders. Sentencing mentally ill offenders to prisons with no provision for treatment seems both unfair and, from a clinical perspective, unlikely to achieve goals other than punishment and incapacitation.

_Madness and the Criminal Law_ is a distinct and significant contribution to the mental health/criminal justice literature. Many readers will disagree with some of Professor Morris' propositions; a few readers will disagree with most of his proposals. All readers, however, will be challenged to review and rethink their ideas concerning the proper relationship between mental health powers and criminal justice powers of the State. For this reason alone, Professor Morris' book should be widely read and debated.

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BOOK REVIEWS


A recent Washington Post article estimated that "possibly one out of every 20 of the 500,000 prisoners in the United States is mentally retarded." Due to problems in dealing with the system, the retarded are caught more easily, convicted more easily, and receive longer sentences. Therefore, the need to develop special programs for these offenders is evident.

In 1980, the National Training Symposium on the Mentally Retarded and Developmentally Disabled Offender was held to discuss problems and solutions regarding the special needs of the mentally retarded offender. The Retarded Offender is a compilation of the papers delivered at that symposium. In addition, several papers were added to provide an overview of three subject areas involving these special offenders: criminal justice, mental retardation, and juvenile justice. The purpose of this collection, in the words of one of the contributors, is "to educate and train the actors . . . to the special handling and care due to developmentally disabled" (p. 130).

The book is divided into four broad topical sections: overviews of mental retardation, juvenile justice and criminal justice system; current research and legislation; training and programming; and interagency coordination. Within each section are selections concerning both adult and juvenile retarded offenders.

Many of the articles draw heavily on the pioneering work done in this area by Brown and Courtless, Allen, and Santamour. The selections, however, move beyond mere presentation of past and current research and demonstrate how the results are being utilized in the actual service provided within the programs. Thus, The Retarded Offender is a compilation of practical "how to" program models and suggestions grounded in prior and on-going evaluative research. As such, the volume is useful to administrators as a handbook for dealing with the retarded offender.

The collection presents much information from the many areas involved in the handling of these special offenders. Some of the more complex programs described suffer from too brief a presentation, the result of presenting many topics and programs in a "broad brush" manner. The book as a whole, however, provides a valuable service. It alerts the reader to many, if not most, of the problems facing the mentally retarded at all stages in the criminal justice process, from arrest to court, corrections, and community placement. In addition, the selections highlight the special problems presented to corrections and social service personnel who handle retarded offenders.
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One of the most practical and useful articles in the collection is "Retarded Offenders: Habilitative Program Development" by Santa-mour and West. Habilitation, preferred by the authors to rehabilitation, is the process of defining a person’s level of skill and knowledge and then developing a plan to raise that level, thus raising the retarded individual’s level of independence. The authors present a comprehensive plan to accomplish this goal through a unified program of testing (this section includes a listing of the most common methods); teaching the activities of daily living (including a list of topics for the curriculum as well as methods for conducting the sessions); vocational and job placement, academic training, counseling (this section identifies necessary qualities in the counselor as well as ways to facilitate various "talk therapies" with retarded individuals); speech and language development, and medical services. In addition to the outline of this program, this useful guide identifies other sources of information and guidance which would be helpful to the practitioner.

If one removes the idea of habilitation from the correctional or institutional context and places it in the community placement setting, the factor of interagency coordination and cooperation becomes of primary importance. For example, if granted probation, retarded individuals will need more attention and tracking than most other persons on probation. Charles Walters’ article, "The Probation Experience for Adult Retarded Offenders," reports on the program operating in Pima County, Arizona. The Pima County Probation Department’s employees have been trained to look for signs of mental retardation. If such a problem is indicated, the probationer is tested for retardation. If retarded, the case is handled by an investigator who coordinates the case with a staff member on the Special Services Unit. Interagency coordination is sought in helping the individual to locate housing, education, medical services, and counseling. The success of programs like this depends on the cooperation of the mental retardation community. Such cooperation is necessary if the criminal justice system is to improve its treatment of retarded offenders. Perhaps the most important point of the collection is made by Walters when he writes: “Members of the mental retardation community can choose to work with criminal justice agencies before the offender is sent to prison, while the offender is in prison, or after the offender has served time and has been released from the prison system; or they can choose not to work with the criminal justice agency at all. They can also choose to adopt an official policy of support while going to great pains not to do anything at all” (p. 383).

Based on the results reported in the article, it would appear that the probation program in Pima County has established this necessary interagency cooperation; the ideas and resources were available in this local-
ity. Although Walker’s article states frankly that it has not been statistically proven that this program actually protects the community or helps rehabilitate defendants, it also states that “in 1978, 96 percent of offenders on probation changed their behavior to become law abiding citizens” (p. 375). It is assumed that with continued supervision the retarded probationers are achieving a success rate only slightly less than that figure.

This and other examples throughout the book demonstrate that in dealing with the retarded the problem is not a lack of technical expertise or knowledge. What is needed is a sharing of the successes and failures of programs using that knowledge to improve conditions. The Retarded Offender pulls together that knowledge and information about those programs and makes it readily available to those wishing to meet the challenge presented by the mentally retarded criminal offender.

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