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Book Reviews

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BOOK REVIEWS


In 1962, the authors of the Model Penal Code suggested that "civilized societies will not tolerate the spectacle of execution of children." As of 1986, however, thirty-seven persons convicted of committing crimes when they were fifteen, sixteen, or seventeen years old sat on death row awaiting execution. If their sentences are carried out, they will join the ranks of the 281 others who have been put to death in this country for crimes they committed as juveniles.

Death Penalty for Juveniles offers a carefully researched, painstakingly detailed, and often chilling look at the history of capital punishment for children in America, beginning with the execution in 1674 of Benjamin Gourd for the crime of bestiality and ending with Jay Kelly Pinkerton, who was executed for murder by the State of Texas on May 15, 1986. This book, however, is more than an historical account of the application of the death penalty to juveniles. It also stands as a forceful and persuasive statement in favor of ending the practice of putting children to death for their criminal acts.

In Part I, author Victor Streib, who has written extensively on juvenile law matters, presents an overview of the history and philosophy of juvenile justice in the United States. A separate legal system for children who commit crimes has developed from a longstanding assumption that a minor lacks an adult's capacity to control behavior, to form moral judgments, and to appreciate the full consequences of his or her actions. For these reasons the juvenile court system has traditionally treated and rehabilitated children rather than demanded retribution from them for their deeds. Imposition of the death penalty stands as a stark exception to this general rule.

Due to its harshness, capital punishment is a rarity in juvenile cases. According to Streib, only 0.4 percent of juveniles arrested for murder in the ten-year period between 1975 and 1984 received the death penalty. He concludes that this small number refutes the ar-
gument that the imposition of the death penalty can serve as an effective deterrent to juvenile crime and proves that the decision to sentence any given juvenile to death is "arbitrary, capricious and freakish."

This conclusion seems borne out in the statistics and case studies Streib presents. No clear patterns emerge as to when a juvenile who commits a violent crime will be sentenced to death. Factors wholly unrelated to the nature of the crime, however, do appear to play a significant and troubling role in determining who is sentenced to death. For example, only twenty percent of juveniles executed since 1900 have been white. Of the fifteen percent of juveniles executed for rape, all offenders were black and all but one of their victims were white. Males constitute the overwhelming majority of those executed. Finally, over sixty-five percent of all juvenile executions have occurred in the South.

Streib argues that the only fair and reasonable way to eliminate the arbitrariness inherent in the present system of allowing courts and juries to impose the death penalty on a case by case basis is to adopt a policy outlawing capital punishment for anyone under the age of eighteen. Although recognizing that the process of maturing into adulthood takes place over time, he notes that eighteen is the age of legal majority in most jurisdictions. It is the age at which the Constitution assumes that an individual has developed the capacity to participate in the democratic process. It is also the age most commonly chosen by both states and nations which prohibit capital punishment for children.

Part II of Death Penalty for Juveniles is devoted primarily to case studies of juveniles executed in the United States. The pace is resolute. In case after case the reader is provided with the facts surrounding the commission of the crime, sentencing and execution. Streib presents the story of Willie Francis, who was sentenced to death, strapped into the electric chair, and survived unharmed because a wire had burnt out in the chair. Unmoved by arguments of double jeopardy and cruel and unusual punishment, the courts permitted his second execution several months later on June 7, 1947. Streib tells the story of George Stinney, who, at age fourteen, was the youngest child executed in this century. He was five feet one and weighed ninety-five pounds, barely big enough to fit in South Carolina's adult-sized electric chair. The book also contains a chapter surveying the attitudes of children as they sit on death row awaiting execution and one which profiles those currently under a sentence of death.

The publication of Death Penalty for Juveniles purposefully coin-
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The issue before the Court in Thompson is whether imposition of the death penalty on a minor convicted of a crime committed when he was fifteen violates the Eighth Amendment's proscription against cruel and unusual punishment.

Even if the Court does not find a constitutional limitation on the power of the states to impose the death penalty on juveniles, Streib argues that there are clear indications that American society has reached a point where capital punishment for children is no longer compatible with what the Supreme Court has termed "the evolving standards of decency that mark the progress of a maturing society." Of the thirty-six jurisdictions which allow capital punishment, fourteen expressly prohibit its application to juveniles. Fifteen additional jurisdictions do not have a death penalty statute. Thus, a majority of legislatures have now rejected the practice of capital punishment for minors.

This legislative trend parallels jury sentencing patterns which reflect a substantial decline in the number of juveniles sentenced to death since 1982, a period during which adult death sentences remained stable. Additionally, recent public opinion polls indicate that two-thirds of those polled oppose the death penalty for minors. Perhaps the United States is prepared to join with more than three-quarters of the nations in the world, including all those in Europe, and set eighteen as the minimum age for the death penalty. In any case, Death Penalty for Juveniles makes an important contribution to the ongoing dialogue over this important public policy issue.

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The Arbitrariness of the Death Penalty was published a few months before the United States Supreme Court handed down McCleskey v. Kemp, the case challenging the imposition of capital punishment in

McCleskey v. Kemp, 107 S. Ct. 1756 (1987) was decided on April 22, 1987. The five member majority, in an opinion by Justice Powell, held that the death penalty did
Georgia on the basis of a comprehensive statistical study conducted by Professor David Baldus and his colleagues at The State University of Iowa. The five member majority in *McCleskey* rejected a statistical offer of proof of racial discrimination based upon a sophisticated analysis of over two thousand homicide cases. Why, then, do we need another study of capital punishment in yet another jurisdiction? Isn't it all now beside the point? The United States Supreme Court has rejected once and for all the argument that statistics can prove that the death penalty is applied arbitrarily. Hasn't this case ruled out statistical arguments that race is a significant factor in death penalty decision making? The answer is yes and no.

*The Arbitrariness of the Death Penalty* is a study of North Carolina homicide cases from June 1, 1977 to May 31, 1978, the first year of the reimposition of the death penalty in North Carolina. The statistical analysis begins with 604 identified defendants and proceeds to analyze 489 defendant-victim case units. There were eight death sentences in the group. Barry Nakell and Kenneth Hardy contribute an entirely new data set and a fresh statistical approach to the constitutional questions addressed in *McCleskey*. A different state, a different time period, a somewhat different methodology, and a totally independent research team are some of the factors unique to their study. Yet the conclusions do not contradict the Baldus study. Race of the victim and race of defendant and victim combined were not insignificant effects.

There now have been a number of totally independent studies finding a race of victim effect in capital case processing. This book summarizes the evidence presented. Researchers first studied Florida, Georgia, and Texas, all of which reinstituted the death penalty early. Researchers later examined sentencing patterns in Arkansas, not violate the defendant's constitutional rights under the fourteenth and eighth amendments. In dissent, Justices Brennan and Marshall reiterated their long standing position that the death penalty is in all circumstances cruel and unusual punishment and, hence, violates the eighth and fourteenth amendments. These Justices went on to detail how the Baldus data proved a racially discriminatory effect. Justices Blackmun and Stevens concurred with all parts of the dissent except the conclusion that the death penalty was in all circumstances unconstitutional. Justice Blackmun's separate dissenting opinion, which was joined in part by the other dissenters, concluded that the imposition of the death penalty in the circumstances of this case violated both the eighth amendment and the fourteenth amendment's equal protection clause. Justice Stevens separately stated that the offer of proof in *McCleskey* indicated a presently operating system, which was constitutionally intolerable, but that a death penalty applied only to certain categories of extremely serious crimes, would not necessarily be constitutionally impermissible.

Mississippi, Oklahoma, and Virginia. Studies are in progress in New Jersey and California. Independent researchers examined different states, different stages of the process, and different jurisdictions, using a wide variety of methods. Neither individually nor cumulatively does this research describe decision-making institutions that are neutral with respect to race.

This study has an additive and cumulative effect, but is exceptionally careful and well documented. The methodology is particularly valuable for its inclusion of variables that attempt to measure the degree of culpability, the strength of the evidence, the seriousness of the case, and the defendant’s criminal record. These variables are typically cited as the immeasureable explanation for the consistent race effects found by researchers. While others may objectify these variables differently or quarrel about the scaling, the attempt to quantify what everyone knows is important is commendable. Controlling for these variables did not eliminate significant and unexplained differences for race and jurisdictional boundaries. Race and judicial district persist as significant factors in the decision to seek the death penalty.

Does the Supreme Court opinion in McCleskey mean that lawyers and social scientists are no longer going to consider statistical evidence in death penalty cases? I hope not. There were other courts, some with the authority to strike down all death sentences within a single statewide jurisdiction. Although few think it likely that Justice Powell will be replaced by a justice opposed to the death penalty, there will be other capital cases before the United States Supreme Court. The McCleskey opinion will be modified; it will be clarified. The dissenting opinions in McCleskey provide new ammunition for those who continue to contend that race and other impermissible factors enter into the decision of whether to seek the death penalty. The courts have not put this issue to rest. Will other appellate courts take the position that it is advisable to ignore facts and statistics in deciding what is just? The McCleskey Court seemed concerned about the implications of reversing McCleskey’s death sentence. Indeed, at the time of the Court’s decision, over 1800 individuals were on death row. In all likelihood, a significant number of these individuals would have challenged their death sentences if the Court had reversed McCleskey’s sentence. The majority of the Court undoubtedly considered those statistics very seri-

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ously. When the Warren Court declared all pending death sentences unconstitutional in *Furman v Georgia*, only about 600 people were awaiting execution.

This book is valuable to teachers in a variety of criminal justice related disciplines, because it combines sophisticated social science material with knowledgeable legal analysis. It is truly interdisciplinary in the best sense. The death penalty decisions and the political and philosophical debates which surround them offer an all too vivid example of the contradictions and confusions of the American legal system in the context of our present culture: we want justice, but we also want retribution. We are scared of crime and distrust our courts and legal system, but we believe that a person is innocent until proven guilty. We want to punish, but only after a full adversarial trial.

This book's organization suggests that Nakell and Hardy designed it for use in a variety of courses at both the undergraduate and graduate professional level. The empirical model is described in detail in one part, the discussion of United States Supreme Court opinions in another. Most valuable is the opening description of capital case processing with decision makers identified at each case processing stage. Nonlawyers will find that it makes the criminal system comprehensible. Lawyers will see their world from a systems perspective. Another useful section summarizes the results of statistical studies in other jurisdictions. If anything, the book is a bit too fragmented in its organization. The results of the empirical study are described in a section which is too self contained. Similarly, the section on the law is too compartmentalized. The findings of the empirical study are relevant to the discussion of the constitutional principles and the individual opinions. These deficiencies may be corrected by later academic commentators and by those trying to persuade courts to postpone or forestall death sentences. In the classroom or out, the authors' exposition of the procedural stages of the death decision making process is a real contribution. For those who like charts, the discretionary stages are outlined in boxes. For those who prefer their explanations in prose, the myriad and complex factors which combine to finally produce a death sentence are described neatly, completely, and accurately in the book's opening chapters. In sum, it is a fine teaching tool for inside the classroom and out.

State criminal justice systems are institutions with thousands of actors, beginning with the first police officer who arrives on the

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crime scene and ending with the final juror who accedes to the death verdict. This description does not even include the Byzantine process of appeal and commutation. When the majority in *McCleskey* relied upon the autonomy and sanctity of jury verdicts, they deliberately ignored all but the final stage of a long and porous process. The *McCleskey* majority held that in order to meet the standards of the fourteenth amendment, racial discrimination must be purposeful. Actual or inferential intent to discriminate must be established. An intent to discriminate must be found or inferred. In addition, the discriminatory intent must be lodged within the head or at the hands of an identified individual actor. The *McCleskey* majority, backed into a corner by its own far from inexorable logic, found that the State legislature would be the place where that discriminatory intent must originate. To imagine the collective body of the State legislature as the sole, responsible decision maker in the criminal system, however, is to beg the question. The segregated and segregationist state legislatures of the not so recent past would not meet the standard announced in *McCleskey*, as long as the statute was race-neutral on its face and no legislator publicly announced racist intentions.

This book will not turn supporters of capital punishment into abolitionists. The position of the supporters is not necessarily to deny the arbitrariness, but simply to say arbitrariness or unfairness is either irrelevant or justified by other considerations. Indeed, the baldness of such statements in *McCleskey* shocked many soldiers in the field: Justice Powell: “At most, the Baldus study indicates a discrepancy that appears to correlate with race,”5 “Any mode of determining guilt or punishment has its weaknesses and the potential for misuse. . . . There can be no perfect procedure for deciding in which cases governmental authority should be used to impose death.” This apparent discrepancy which is correlated with race in fact showed that blacks who killed whites were twenty-two times more likely to be sentenced to death than blacks who killed blacks. The capital sentencing rate for all white victim cases was almost eleven times the rate for all black victim cases. In fact, when other variables were controlled, the race of the victim was almost as significant a predictor of a death sentence as the statutory aggravating factor of the defendant’s previous convictions of murder. The race of the victim was more significant than whether the defendant was the “prime mover” in the homicide. When the data were separately analyzed for murder during the course of a robbery, the racial differ-

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5 *McCleskey* v. *Kemp*, 107 S. Ct. at 1777-78 (internal citations omitted).
ences were even more pronounced.  

One irony of *McCleskey* is that inferring racial discrimination in jury selection and in hiring and promotion is now easier than inferring racial discrimination in the application of the death penalty, where past racial discrimination has been proved by overwhelming evidence. Our federal jurisprudence now stands for the proposition that while it constitutes cruel and unusual punishment to inflict certain fines and corporeal punishment, but not to kill a man. Our federal courts can digest reams of complex statistics in the area of asbestos and anti-trust. Courts can calculate to the penny the value of a woman's life, including the value of her sexuality, to her husband, but our highest court has refused to accept as a reliable fact that a black defendant is more likely to be sentenced to death in Georgia if the victim is white than if the victim is black. Other contradictions abound. Can those who want executions to be carried out maintain that their position is not influenced by the fact that over 1800 persons are on death row? The *McCleskey* majority assures us that no innocent persons will be executed. Although he continuously asserted his innocence, Edward Earl Johnson, the first inmate put to death in Mississippi in four years, was executed on May 21, 1987, shortly after the *McCleskey* decision. It is a statistical certainty that some fraction of those 1800 people on death row are indeed innocent of the crimes for which they have been convicted. This has always been the case, and it will always be so. No institutionalized system of decision-making is completely without error. Would we trust our lives to the computers of the Internal Revenue Service? Perhaps the most valuable contribution of statistics is the concept of measurement of error, the ability to estimate inevitable error. Those numbers are only statistics, the critics of social science say. Yes, they are only approximations of error, or probabilities. Yet, is there anything better? Such evidence is relied upon in a variety of contexts where life and death are at issue, from highway safety to drug testing. Why shouldn’t we not rely on such figures for justice? Is it better to rely on our ignorance and prejudice?

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7 In the words of Justice Blackmun, "The court today seems to give new meaning to our recognition that death is different." *Id.* at 1796 (Blackmun, J., dissenting). The result in *McCleskey* is especially difficult to square with the same court's holding in *Batson* v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 (1986). In *Batson*, the Court did not allow the exercise of preemptory challenges on the basis of race and referred to increasing efforts to eradicate racial prejudice from our criminal justice system.

The debate over capital punishment in America is hardly over. It will not be settled by this book, although the introduction of a new data set and another independent study reinvigorates the discussion. The *McCleskey* opinion only adds fuel to the fires, opening up new and productive lines of argument. *McCleskey* teaches that social scientists and lawyers cannot work at arms length. A variety of statements in the *McCleskey* opinions indicate that the lower courts were exceedingly frustrated by the statistical evidence before them, and these courts frequently misinterpreted the statistical results laboriously presented to them. If courts are to be allowed to ignore social science data and strong empirical studies such as this one, the fault is not merely with the statisticians and academics. The numbers cannot speak for themselves. Lawyers must make the methodology comprehensible to judges. Lawyers must translate the numbers into meaning and give figures a context. *McCleskey* places studies such as this one at the center of the debate, where they will stay for several decades. The issue is not going away. The debate will simply be addressed to audiences other than the United States Supreme Court, for the time being.

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**Corporate Crime Under Attack: The Ford Pinto Case and Beyond.** By *Francis Cullen*, *William Makestad*, and *Gray Cavender*.  

In the early 1970's, the Ford Motor Company knowingly marketed an automobile with a gas tank that would explode in flames if impacted even at low speeds from the rear. Ford decided not to recall the automobile after comparing the cost of repair to the cost of human life as estimated by the National Highway Traffic Safety Administration. The figure given ($200,000) was used in an internal company memo arguing that it would be more profitable to leave the tank in a dangerous condition than to spend about $12 (actually $5.80) per car to insert a rubber bladder inside the tank. On August 10, 1978, three teenage girls were killed when a rear-end collision caused their Pinto to burst into flames. About a month after the incident, an Indiana grand jury indicted Ford on three charges of
reckless homicide. *Corporate Crime Under Attack* constitutes an attempt by two criminal justice professors and an attorney to analyze the Pinto trial and assess its meaning for the overall study of corporate crime.

The book is an important contribution to the corporate crime literature for several reasons. First, the book’s thesis is that there is a social movement against corporate crime. The fact that Ford was brought to trial is viewed as proof that this movement continues unabated, even in the conservative eighties. At the very least, those who disagree with the book’s contention will have to explain why by 1980 the State of Indiana decided to indictment major corporation on a charge of reckless homicide.

Aside from this important question, the book contains additional valuable information that makes it important reading for anyone interested in the areas of white-collar and corporate crime policy. The volume itself is divided into two parts. Part I serves largely as background; Part II constitutes a detailed account of the Pinto trial itself.

Part I consists of three chapters relating important historical and contemporary facts regarding corporate crime. Chapter 1 explores the social movement against white-collar crime and argues that the movement is a portion of the legitimation crisis of late capitalism. What is at stake is the legitimacy of the legal state and the neutrality of its laws. As corporate scandals plague the land, the dominant liberal ideology that drives the capitalist state must respond by passing ever more reforms, thus constantly lagging behind ever innovative elite crimes. Within this framework, academic criminology is rightly criticized for approaching white-collar crime on a case-by-case basis, removed from its organizational context and the political economy that shapes its essential nature. Moreover, much socially harmful behavior is neglected due to the legalistic definitions utilized.

Chapter 2 provides extensive information concerning current corporate wrongdoing. Facts concerning corporate harm such as physical injury, monetary loss, and declining public confidence are arrayed in splendid detail. The chapter is essential reading for those seeking to understand the scope of the problem. Chapter 3 is a history of corporate criminal liability and is useful in explaining why corporations are so rarely charged with violent crime.

Part II details the tactics and evidence involved in the Pinto trial itself. It is written with a minimum of legalistic jargon. Chapter 4 documents the pretrial publicity surrounding the Pinto trial as well
as the essential facts involving the accident that resulted in homicide charges being brought against Ford. One paradox here is that Indiana is a conservative state, not given to the kind of innovation necessary to initiate homicide charges against a major corporation.

Chapters 5 and 6 detail the pretrial maneuvering, including a change of venue, and the trial itself. Especially interesting are descriptions of the resources Ford expended on the trial; millions of dollars, computer studies of potential jury members most likely to look favorably on Ford’s position, and an all star cast of legal talent. The prosecutor’s team was so economically disadvantaged that the mere fact that a trial ever took place was a great achievement in itself. Thus, even though Ford was found not guilty, an important precedent had been set. Indeed, the book’s final chapter details eleven post-Pinto incidents where criminal charges have been brought against major corporations.

The final chapter also deals with future key issues regarding corporate crime. First, the Reagan Administration has severely cut resources devoted to white-collar crime at the federal level. Despite these cutbacks, corporate criminal activity has been codified in twenty-two states and positive public opinion of corporate and governmental elites and institutions is now at its lowest ebb since Watergate.

Sadly, many obstacles remain in the fight against corporate crime. Interagency cooperation is often necessary in prosecuting corporate crime cases. Such cooperation, however, is not always easily obtainable. The authors admit that the movement against corporate crime remains “diffused and uncrystalized” (p. 334). Cullen and colleagues reveal a central contradiction in liberalism; namely, its loss of vision. That is, liberalism, as a product of the enlightenment, was utopian in its optimism concerning human rationality, self-improvement, and self-government. These and other utopian notions have been replaced largely by pessimism and cynicism in recent decades. The authors attempt to partially overcome the malaise by noting a growing number of cases wherein corporations have been charged with crimes; existing laws have been enforced. No new reform proposals are made by the authors. Indeed, reform, they argue, smacks of a game of catchup in the capitalist state’s legitimation crisis.

In the end, we are left with a question of values. Reforms lag behind the reality of new forms of elite crime and deviance that are increasingly interconnected. The social movement against white-collar crime is by the authors’ own admission of uncertain future. Can corporate crime be meaningfully controlled within such a polit-
ical economy? I doubt it, and those agreeing advocate a social movement for economic democracy. This volume constitutes a useful starting point in such a debate.

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Women Guarding Men relies on interview data to describe the processes by which women become and act as guards in men's prisons. Zimmer interviewed seventy female officers, almost 100 male officers, some thirty-seven inmates, and an unspecified number of prison and correctional service administrators in New York and Rhode Island in an attempt to describe the specific occupation of female prison guards and to contribute more generally to the study of gender effects in occupations and organizations.

The central thesis of Zimmer's work is that women perform guarding tasks by adopting one of three strategies. In their "institutional role," women guards adhere closely to all prison rules, assert their ability to perform the job on an equal basis with men, but lack the same degree of flexibility. In their "modified role," women avoid guarding tasks that require inmate contact or that are particularly dangerous, view their female status as an occupational disadvantage, and rely on male co-workers for protection and backup. In their "inventive role," women guards believe that their superior communication skills provide them an advantage over their male counterparts. They rely on inmates for support and often form close relationships with them.

This classification has intuitive appeal but does not seem to apply exclusively to females. Perhaps Zimmer views these roles as exclusively female because, through interviewing only the females, she has come to attach female motivations for adopting each role to her typology.

For example, Zimmer argues that women adopt inventive roles and use "the female qualities of intuition, nurturance, understanding, compassion, and even femininity..." in order to perform their
job tasks (p. 141). Ignoring whether women have a lock on these characteristics, those who have spent time in prisons know well that many male guards also perform their jobs by depending on inmates for support and developing close relationships with them. Male officers may adopt such a strategy because they feel isolated from the support of superiors, because superiors issue contradictory or impossible demands, or because, like some of Zimmer's women, they want to help inmates. In other words, if motivations are eliminated from Zimmer's typology and only the role performance conditions are considered, the analysis might have broader applicability.

Zimmer argues that male guards and administrators have been opposed to sexual integration of the guard force, the reaction of inmates to female guards has been mixed, and unions have been supportive only because of their cherished system of seniority. These reactions are not news, but Zimmer lets the protagonists to this debate offer their own words, thus presenting a vivid portrait of their sentiments.

*Women Guarding Men* is important to the literature on females in traditionally male occupations because, unlike the study of female physicians or accountants, the study of female prison officers focuses on the heart of male-female differences. While the feminist movement has perhaps nudged society past old assumptions about gender differences in intelligence, it has not, and perhaps should not, move us past the recognition of differences in physical abilities between the sexes. Guarding sometimes requires strength, aggressiveness, and physical confrontation and herein lies the primary reservation about women guarding men.

Zimmer's book reflects the culture's own confusion over this issue. She alternately argues that these attributes are necessary for only a small part of guarding, that other more female attributes attenuate the need for their use, that female guards should get special training in self defense, that we should screen physical abilities in hiring male and female guards, and that there is no evidence anyway that females cannot be effective in a fight. In the end we are left without a clear answer as to how to deal with this problem, putting us exactly where the corrections community has been. If Zimmer's book does not provide us with an answer, it does bracket the issue very well.

The book is perhaps weakest, as Zimmer acknowledges, in the discussion of the impacts of women in the prison. Zimmer's only data on the impact of women are the perceptions of the females interviewed. Measurement of real impact is a critical factor in provid-
Zimmer tries hard to avoid taking the women's testimonies as gospel and the men's as biased. Still, her portrait of the male corrections officers is unflattering. They are depicted as rigid male chauvinists, clinging to a picture of themselves and their jobs as masculine, and harassing or ignoring females at every opportunity. Perhaps this description is accurate. Yet, until we have some definitive answers to whether their concerns about female performance on the job are justified, perhaps we should tread lightly.

Zimmer ends her work with a good discussion of current theory on women's occupational experiences and how her data on prison officers suggest modification of this theory. She argues that women's prior sex-role attitudes influence how they approach and perform guarding tasks, and, thus, individual variables should be added to current organizational theories. It is important to remember that Zimmer's data are cross-sectional and not longitudinal. While her suggestion may be correct, her study does not provide the kind of data needed to truly test that hypothesis.

These minor quibbles should not detract from what is generally a careful and useful discussion of women guarding men. The book should be read by both male and female prison officers and administrators, and would make an excellent case study for any class on gender issues or occupations. Most importantly, Women Guarding Men should lead to the quantitative testing of Zimmer's hypotheses and thus to the advancement of both our practical and theoretical knowledge on this topic. Perhaps it will also inspire researchers to finally take up the difficult but essential task of determining just how well women prison guards really perform their tasks.

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MASTERLESS MEN: THE VAGRANCY PROBLEM IN ENGLAND 1560-1640.

Masterless Men presents the results of an exhaustive analysis of criminal records documenting vagrancy problems in England during the years 1560 to 1640. As these records are largely taken from a variety of criminal courts outside of London, Beier's work consti-
tutes, among other things, an impressive addition to the growing body of publications addressing the interplay between law and society throughout early modern English society.

In the best tradition of modern social history, Beier rightly perceives the kernel of his task as the understanding of what the phenomenon addressed meant to the people and institutions of the time. From this point, he develops a well-reasoned and carefully documented analysis linking perceptions of vagrancy to attitudes toward its potential as a source of social disorder. He clearly relates the rise of vagrancy, and of punitive attitudes toward it, to a new social phenomenon, the emergence of a rootless class, largely youthful and male, driven from the land by enclosure and other developments reducing the demand for agricultural labor. In documenting the existence and origins of this class, Dr. Beier suggests strongly that other interpretations of the vagrant in early modern England, such as the vagrant as a product of demographic trends or as spill-over from a criminal urban subculture, need to be modified substantially.

In the body of the narrative, there are perhaps too many points documented with purely illustrative examples. Apart from this, the striking feature of this work is the great volume of court data analyzed. Using this data, the author demonstrates the questionable accuracy of popular perceptions of the vagrancy problem. Beier shows that contemporary images of the vagrant as a member of a highly organized criminal underworld had enough truth in them to render them superficially persuasive. As the author demonstrates, however, such images do not square with those drawn from the details of vagrancy cases brought before the criminal courts. In most of these instances, vagrancy was rooted in economic dislocation with the world of the vagrant having no necessary or usual connection with any criminal subculture.

Much of this book is devoted to documenting vagrancy as a rural as well as an urban phenomenon and identifying the demographic and other social characteristics of the vagrants. In separate chapters, the author documents the origins, family relationships, movements, and occupations of this population.

Of particular interest is the chapter addressing the changing substance of vagrancy law. Beier gives a rather sketchy overview of the relevant legislature, which is surprising considering that the law

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1 The assertion that "masters' sons raped and seduced female servants" (p. 25), for example, is documented by references to only two criminal cases. If the literature of the eighteenth century is anything to rely on, the point could have been made more cogently through the use of published contemporary observation.
of vagrancy in England in that period has to some degree, caught the attention of the mainstream of sociological theory. William J. Chambliss' analysis of the development of the law of vagrancy in England between the thirteenth and eighteenth centuries was first published in 1964, and later republished, with interesting revisions. Chambliss' analysis has been widely cited as a classic instance of the application of conflict theory to criminal law. It has also been criticized both for its methodology and its factual content. Strangely, Beier does not refer to Chambliss' article or to the controversy surrounding it.

Beier's contribution to legal thought lies in his assertion that the creation of a machinery of justice adequate for enforcing vagrancy law in the sixteenth century and beyond actually served to strengthen and extend the overall power of state authority. In an interesting off-shoot of this thesis, the author suggests that the bridewells of the sixteenth century developed as "protol-penal" institutions, with the express mission of rehabilitating vagrants. From this perspective, the bridewells of this period were significant, though ultimately ineffective, pre-cursors of the modern prison.

The enduring legacy of the vagrancy laws of Tudor and Stuart England is, therefore, its contribution to a more powerful state, with a more efficient and extensive mechanism for enforcing its laws. This intriguing argument is, to a legal historian, perhaps the most interesting aspect of this book. Unfortunately, Beier does not pursue this argument in great detail.

In his final chapter, Beier suggests that the amelioration of the vagrancy problem after about 1660 was, in part, due to a more sophisticated system of relief for the poor. This effectively shifted the problem of vagrancy from the criminal courts to the parish. Selective distribution of public funds replaced the threat of prosecution as a means of controlling the vagrant. The reader must form his or her own connections between inadequate law reform, the vagrancy problem, and the development of the modern state, for Beier does not make these connections explicitly.

*Masterless Men* is essential reading for anyone concerned with any of the many legal and social issues raised in the historical study of vagrancy, even though such issues are not given adequate attention in it. It should, however, be read in conjunction with those works which give the historical study of vagrancy more of an institu-

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Given Dr. Beier’s tremendous use of primary sources, it seems a pity that his book includes no detailed discussion of them, especially when he refers to manuscript sources which no one else appears to have used. Such discussion can be extremely valuable to others in the field. The inclusion of an extensive appendix entitled “Notes to Sources” was, at one time, a standard feature in historical works of this kind. Its omission in this book, and in other recent books, may be attributed to the mysterious political economy of publishing. The author’s interest in his data is quite apparent, as is his extensive and insightful use of it.

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Academinicians and criminal justice practitioners have focused considerable attention on issues pertaining to elderly crime victims and elderly offenders during the past decade. Alston’s Crime and Older Americans is an excellent overview of information on the elderly and crime. The author concisely summarizes current information from official crime statistics, such as the Federal Bureau of Investigation’s Uniform Crime Reports, and victimization surveys, such as the Census Bureau’s National Crime Panel Surveys, including research from the fields of gerontology and criminology. The flaws in these sources of information and the inadequacies of the research instruments are also discussed.

The two major weaknesses of this text are its organization of the table of contents and its limited information on elderly offenders. Readers seeking information on elderly offenders will encounter difficulty because such offenders are labeled “deviant” in one chapter and “offender” in another chapter (pp.xx). Furthermore, the two chapters on offenders, Chapter Five and Chapter Seven, should be in sequential order. Concluding comments pertaining to programs and policies for elderly offenders are buried in the final chapter. In addition, Chapters Four and Six, which address the ef-

fect of crime victimization and the response of various programs to elderly victims, also should have been in sequential order to facilitate the logical flow of information.

Despite the confusion in the ordering of chapters, the strengths of the text outweigh its weaknesses. The author’s use of opportunity framework theory assists the reader’s understanding of criminal motivations, which play an important role in determining the victimization potential of elderly persons. The strongest sections are those which focus on the consequences of victimization, the responses of the criminal justice system, victim assistance programs and restitution programs for elderly victims of crime.

Many researchers exploring the consequences of victimization have assumed the existence of a linear relationship between the consequences of victimization and the subsequent behavior of elderly victims. Alston examined the literature and concluded that available research instruments were not sophisticated enough to test this assumption. She then proceeds to skillfully dissect the adequacies and inadequacies of the criminal justice system, victim compensation programs, restitution programs, and community crime control programs. The heterogeneity of the elderly population causes Alston to conclude that a variety of responses are needed for elderly victims of crimes.

Despite the weakness in organization Crime and Older Americans provides an excellent overview of elderly crime victims in America. The text would be useful to scholars, practitioners, and students who seek to understand elderly victimization in America. It is useful for gerontologists, criminologists and human service personnel. However, I would caution those seeking information on elderly offenders that there are limitations in the text in this area.

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Flowers’ Children and Criminality takes a very broad approach in focusing on crimes involving children. The author departs from traditional works that limit discussions of children as victims and offenders to matters of child abuse, neglect, and delinquency. In-
stead, he draws sharp attention to the grim reality that children are victims, to a large extent unknown, of Part I and Part II crimes, as well as child abuse and neglect by their parents or guardians. Flowers argues that children who commit delinquent acts should also be viewed as victims because the causes of delinquency are rooted in societal and cultural problems. From the author’s perspective, issues pertaining to children as victims or as offenders should be viewed as two aspects on a continuum of child mistreatment. This book is arranged accordingly into the two main subdivisions: child as victim and child as perpetrator.

The definition presented to capture the continuum of the victimization of children, while amorphous, is indeed a provocative one: “Any acts toward children (as defined legally, usually age 17 and under) that in the eyes of the law or the social majority constitute criminal or deviant behavior or are detrimental to the development and well-being of children” (p. 3). Although this definition clearly needs to be operationalized to be useful, conceptually it is broad enough to include acts to which the child is a witness as well as acts in which he or she is clearly identifiable as a victim. Too often children are exposed to horror, the effect of which goes unnoticed, because the children themselves are not the target of the abusing agent. Flowers makes this point graphically when he recognizes Jewish children who survived the Holocaust as victims because they experienced the nightmares and resultant psychological problems of seeing their parents killed by the Nazis.

In describing child victimization in Part II, the author notes the lack of uniformity of definitions of child abuse and neglect. Unfortunately, he does not critically evaluate the existing definitions and propose adoption or refinement of any of them in the book. The reference consulted on current laws on abuse and neglect is far too dated. In stating that less than half of the states had defined child abuse, thereby making mandatory reporting difficult, Flowers is relying on data published in 1980. It is hard to believe that the situation remains the same today, as the text suggests (p. 18).

Flowers draws from three data bases to provide incidence data on children as victims of crime: Uniform Crime Reports (UCR), victimization surveys, and various surveys specifically targeted at child abuse and neglect (ch. 2). Although it is short-sighted of the author to limit his analysis of UCR and victimization data to one year, 1983 and 1981 respectively, in general his analysis is comprehensive and evaluative. Some of the charts and tables reprinted by the author are excellent sources for reference. The citing of data indicating a 121 percent increase in child abuse reporting from 1976 to 1983,
followed by a brief discussion of the problems with child abuse statistics, makes this chapter among the strongest in the author's arguments for refining methodology and broadening intervention.

Flowers puts the problem of child abuse in perspective by looking at the phenomenon both beyond and within the family. The author cites three levels of the manifestation of child abuse: in the home, in the institutional setting, and under the policies and practices of the public welfare system (ch. 3). In looking closely at maladaptive responses in the family unit itself, the author provides a brief overview of the literature on family violence, making it clear that child abuse is only one form of violence possible in the home (ch. 4). Thereafter the author presents a good compilation of existing material to depict the characteristics of the abusing parent and the abused child (ch. 5).

The author's treatment of sexual victimization (ch. 6), is traditional, being restricted to types of acts where victimization is overt, such as incest or pedophilia, child prostitution, and involvement in child pornography. No mention is made of the effect of covert sexual abuse in which the child is exposed to sexual issues that are age-inappropriate, such as viewing pornography as a child with parent or sleeping in the same bed with opposite sex parent as adolescent. Because of its masked nature and the confusion it creates, covert sexual abuse can be as damaging to the child as overt sexual acts.

The author's depiction of current trends in the victimization of children (ch. 7) is innovative and comprehensive. It recognizes child snatching, including "parent kidnapping," and institutional victimization of adolescents occurring in hospitals, correctional settings, and the military. The author mentions the growing body of literature supporting an association between chemical dependency among parents and child abuse. He points to child abuse as a societal problem rather than a strictly familial one.

The review of the short and long-term effects of child maltreatment (ch. 8) and the discussion of current responses to the victimized child's plight (ch. 9) only skim the surface. However, they do show the scope of the problem and serve as a fitting backdrop for the model statute proposed by the author (Appendix 1).

The five chapters addressing the juvenile as perpetrator are weak in comparison to those dealing with the child as victim. In examining the incidence of juvenile delinquency (ch. 10), Flowers reports only 1983 UCR statistics. He makes no mention of the picture of juvenile crime that emerges from self-reported data or from cohort studies. The author fails to note the apparent decrease in
juvenile crime in the late 1970's and 1980's. In addition, the author does not address violent or chronic juvenile offenders and, when reviewing approaches in delinquency control, makes no note of legislative changes that enabled juveniles to be tried and sentenced as adults (chs. 11, 13, and 14).

The chapters dealing with the causes of delinquency (chs. 12 and 13), like those pertaining to the causes of child neglect and abuse (ch. 3), are generally weak. The author does not present a clear and comprehensive overview of the theoretical approaches. The author classifies various theorists in unconventional ways; that is, he apparently does not see certain theorists as endorsing major perspectives of other theories. Of particular concern is the absence of some of the major crime and delinquency theorists. For example, Eysenck and Mednick are not mentioned with regard to the biogenic perspective, and Hirschi is not referenced regarding social control.

As Children and Criminology draws to a close, it is particularly alarming that Flowers did not explore the extensive body of literature investigating the linkage between child abuse and subsequent delinquency. The book leaves this reader with the belief that the author has not documented "the very real association" between the child as a victim and as an offender as promised (p. 3).

The concluding chapter explores existing federal legislation on children from 1974 and onwards, and ends by making some excellent recommendations, particularly for research methodology. Some of the suggestions, however, encompass cross-purposes. For example, Flowers calls for stiffer penalties for child abusers on the one hand, and then asks for recognition of society's fault and obligations in creating child maltreatment on the other hand, and that family members be encouraged to report abuse.

"A Model Statute to Study Child Victimization and Provide

2 Katlin & Bernard, JUVENILE JUSTICE, 8 LAW & POL'Y 4 (1986).
Treatment for the Child Victim” is presented in Appendix 1. It is very broad in its present form, but truly thought-provoking. What would it take to fine-tune, tone down, and put into action? I would like to see this statute in the hands of the most capable and committed scholars, agency practitioners, and policy-makers.

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Justice for Women describes a case study that was carried out between 1980 and 1982 at a magistrates’ court on the edge of London (p.99). The author observed only criminal courts and used a daily court roster to select and observe only those courts which heard the majority of cases involving female offenders. Because the author was concerned with judicial discretion and how the treatment of men and women might differ, the study focused on cases in which the defendant was present in court (p. 104). Notes were taken on the formal and informal proceedings of the court, and various courtroom personnel were questioned about their attitudes and opinions on the issues of the particular case. In addition to questioning the personnel immediately concerned with the cases of a specific court, the author arranged numerous formal interviews with both probation officers and judges. Based on these interviews and observations, the author concluded that “the court is operating from a perspective which defines women as different and subordinate” (p. 98). She further concludes that the court endorses the “dominant model of the family” and, thus, “endorses the gender-roles which impel women and men into separate and unequal spheres” (p. 98).According to the author, society believes that women are family oriented, and in turn, the court reinforces this subordinate role of women through its differential treatment of male and female offenders. Unfortunately, this proposition is oft made but seldom supported.

Although the goal of “understanding the way in which gender differences are reinforced by summary justice” (p. 10) is a commendable one, the methodology used to achieve this goal can hardly be called commendable.

First and foremost, the author makes statements with no sub-
stantiation and bantered about terms with no definition or apparent limitation. For example, on page forty, the author notes: “In interviews many magistrates said that they would be influenced by the presence of children if the defendant was responsible for childcare.” Just how the magistrate is influenced is unclear. Does this statement assume that magistrates would be easier on a person because that person is responsible for children? Does it mean that magistrates would be harsher because individuals with criminal tendencies should not be allowed to supervise children? Another example is the discussion concerning the use of social inquiry reports and the help offered to a woman by a probation order. The discussion was followed by the statement: “[the] help was proffered because of her role within the family rather than her identity as female” (p. 52). It is unclear how the author knew this. Later text also provides no support for this assertion. In addition, the “identity as a female” might tie women to the “dominant model of the family” which is discussed in the conclusion. The book failed to define this “dominant model of the family,” or state how “gender-roles” or “identity” might be categorized. Although definitions could probably be deduced from the remainder of the text, requiring the reader to construct his or her own definitions from someone else’s variables is not a very accurate way to examine an issue.

There are also problems with the way in which the judges and probation officers were approached and questioned. The author interviewed each probation officer who wrote social inquiry reports in sessions ranging from thirty minutes to two hours “depending on the degree of discussions elicited by the topics raised” (p. 109). An open format is fine, but why the wide range of times? Was the interview environment a factor in the “degree of discussions elicited?” The reader will never know because the author failed to discuss the interview procedure. Eaton does not describe what kinds of questions were asked and how she probed for more information. Four main topics of discussion are listed in the book, but there is no elaboration on how the author posed the questions or what aspects of the topics she pursued. One of the topics was described as “women as defendants and clients” (p. 109). What about them? Does the officer like or dislike them as defendants or clients? Do they treat females in a different way than they treat males? Again, what kinds of questions Eaton asked and what line of questioning she pursued we can only guess.

The author was only slightly more thorough in contacting and interviewing judges. The author interviewed thirty of the ninety-three judges in the court, a rather large number considering the re-
luctance of judges to discuss the racial or gender practices of the court system. A business meeting was held for the judges in the area and, after the business issues were resolved, the author explained the purpose of her research to those individuals at the meeting. Fifty-eight judges did not attend the meeting, and there was no discussion in the book as to whether the author contacted these individuals and they refused to participate or whether the author simply ignored them. Why should these judges be excluded? Would the author have obtained different answers from the individuals interviewed if those individuals had not known the purpose of the study? Suddenly, the thirty out of ninety-three judges interviewed does not sound like such a great effort.

There were other problems with the work but none so great as the methodological problems already discussed. The author tended to alternate between reviewing the literature and reporting her results. Just when the book reached the meat of the study, it reverted back to discussing past studies. Better organization would have remedied this situation.

The author also had a tendency to criticize the results of works from the United States while she used results from British studies to support her arguments. Comparison and criticism is important, but dissimilar results from different studies in different countries at different times does not seem astonishing.

Over-all, Justice for Women is not suitable for instructional purposes. Although interesting in parts, the book leaves the reader too confused with unsubstantiated statements to really gain an understanding of how a magistrate's court reinforces gender differences and contributes to the subordination of women.

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Appearing for the Crown is a heavily detailed book that presents the historical development of the criminal law in Canada, with special emphasis on the prosecutor's role and authority. In the process it conveys a great deal of information about the historical develop-
ment of Canada as a society and of its governing institutions. As someone who has taken on the task of developing a working understanding of the comparisons of the criminal laws and criminal justice practices of Canada and the United States, I found this book to be a storehouse of information. Not only the technical aspects of the criminal law, but also how it evolved is of great assistance in furthering understanding of the reader as to the different practices in the two countries.

The average reader, however, will not be so eager for so much detail about the intricacies and technicalities. * Appearing for the Crown will probably be seen as a gem for some legal historians, law professors, and academic criminologists. The book may even be appreciated by a few legal and Canadian history buffs. However, this book will probably not appeal to the general public. Although it is a scholarly work based on the highest research quality, it is neither easy nor entertaining reading. Quite simply, the book transmits substantial and detailed legal knowledge.

The author uses an over-generous amount of quotes from case opinions rather than explaining the opinions in lay terms. Although this approach may be valuable for law students learning how to analyze cases, it is simply too much for the average reader. In addition, readers from the United States lacking extensive training in the Canadian system will require further interpretation. Indeed, the average Canadian reader not steeped in the legal tradition would have some difficulty following the author's reasoning. The book would be more comprehensible if the author paused occasionally to summarize the technical descriptions for lay readers and those trying to gain expertise in the area.

On the other hand, this book is a veritable gold mine of information for legal historians and criminologists interested in comparisons of the Canadian and United States legal systems. It is also useful for individuals engaged in re-writing the Canadian criminal code or interested in the relationship between the Canadian prosecutorial system and the Canadian criminal justice system.

The book's organization is appropriate. The first section of the book concentrates on the historical development of criminal law, with emphasis on the prosecutorial role in the developing stages of Canada as a colony and on the confusing array of practices, including those of the Hudson Bay Company. The second section brings the reader up to date on modern prosecutorial authority, while the last section deals with present and future accountability and control of prosecutorial authority. Apparently, the Canadian and U.S. pros-
ecutors enjoy similar discretion in bringing charges and influencing sentences by the plea bargaining process.

In the final section, the author discusses possible reforms of prosecutorial authority. Again, only legal scholars will be interested in this discussion. This is the book's biggest failure. If a broader group of readers could understand its descriptions and implications, the book's social impact on government and criminal justice practice reforms would be greater. It would give more Canadian citizens an entry into understanding and participating in the legal practices and in possible desirable legal reforms, which the author is obviously interested in himself.

In summary, Appearing for the Crown is a fine scholarly work and will undoubtedly be greatly appreciated by a small, highly educated and specialized group of readers. With a different style of communicating legal knowledge, the author could have reached a much broader audience. Such a result might have served the author's own implied purposes better. For the purposes of the readers of this Journal, however, it is an appropriate and helpful book and a good addition to one's legal library, especially for those interested in the developments and differences in legal processes within the Anglo-Saxon tradition.

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In June of 1964, in Kalamazoo, Michigan, Ralph Ray Searle was captured without a struggle; soon thereafter he confessed to five murders. Seven years later, his defense attorney won a retrial on the grounds that Searle had been denied the right to counsel. At his second trial, he pleaded guilty in return for, among other things, being allowed to change his name to Luke Karamazov. Prior to his retrial, four young women were gruesomely murdered. A short time later, police arrested Searle's older brother for these murders. Though claiming his innocence, he was subsequently convicted. Conrad Hilberry, an English teacher at Kalamazoo College, arranged to interview the two brothers and others. Luke Karamazov,
the product of those interviews, focuses primarily on the younger brother.

The story Hilberry tells is one of abuse and rejection of the boys by the father. Encouraging sibling rivalry, he beat and tormented his four children, as he did his wife. Finally moving to Florida, he refused to have anything to do with his children, who were raised by an apparently ineffectual mother. The boys' lives became seemingly chaotic. At fourteen, the younger Searle spent his nights with an older married woman while her husband was at work. At seventeen, he entered the army under duress from a judge who gave him the choice between enlistment or incarceration for car theft. At eighteen, following a general court martial, he returned to Michigan and began his crime spree.

Hilberry characterizes Luke as a psychopath; the only remorse he feels is for the families of his victims. Hilberry's analysis, however, is influenced more by the notions of Ernest Becker and Otto Rank than by those of Cleckley and others who have written on psychopaths. The central theme of Becker's concepts is that each individual confronts the fear of his own death by devising fictions. One fiction is to see oneself as a hero of such importance that one survives life's limitations. The other fiction is to shrink the outside world into manageable proportions. Luke's behavior is presumably a manifestation of these fictions.

There are, of course, a number of comparable case studies such as those of Ted Bundy, Edward Gein, and Charles Starkweather. There is always need for more such studies, but this one is somewhat wanting. Though it is rich in edited quotes from the interviews, the picture of Luke is incomplete. The reader does not have a sense of the psyche that lies behind this serial murderer. Luke is puzzled too. He cannot understand why he killed, for he claims that he does not like to hurt people.

Hilberry organizes his material by topics, such as the relationship between the brothers, the relationship between Luke and Julie (his brother's wife to whom Luke wrote love letters and married when she divorced Luke's brother), and Luke's hitchhiking around the country. What this organization fails to yield, however, is a chronological story of Luke's life. Although the reader is left with vivid impressions, he or she is left without all the pieces necessary to complete the puzzle. What kinds of trouble did Luke create as a youngster? How often and when did he get apprehended by civil authorities and for what kinds of conduct? What about the periods of his life when he was presumably making it, working at two jobs
and staying out of trouble? What was he like then? Many such questions remain unanswered.

Hilberry further characterizes Luke as controlling, both of himself and others, and as manipulative. In Hilberry's portrayal of Luke in prison, this description is unobjectionable. At the same time, however, Luke's impulsive criminal behavior creates some doubt in the reader's mind. What this suggests is the following: Luke, and others like him, are controlling, calculating, and manipulative but only in a highly regimented environment, such as prison. Free from such an environment, they become far more impulsive. Whatever inner controls they have can only be summoned forth while in a highly restrained setting. In some fashion, excessive external restraint seems to elicit inner restraint.

Another problem with this book is the rather loose analytic scheme that informs the reader of Becker's theories on the drive to be heroic. As with many psychoanalytic ideas, this one does not seem capable of being refuted, for any behavior can be reasonably interpreted as a seeking of the heroic. Such an idea seems more complex than necessary. Luke was brutalized by a rejecting and undependable father. That fact alone seems sufficient to explain why Luke could have impulsively killed five people. Other individuals, however, have also been brutalized. Understanding why these individuals did not become mass murderers and Luke Karamazov did is not furthered by claiming that there is a putative drive in all of us to be heroes, which is presumably as ubiquitous as the sex drive.

Hilberry is not a social scientist. His only other writings are apparently books of poetry. His training and background give this book some attractive features, such as his somewhat unbridled impressionistic interpretations. The book's scattershot description of Luke's life, its consequent failure to provide a full picture of him, and Hilberry's questionable interpretation of the psychodynamics of Luke left me dissatisfied. Though *Luke Karamazov* may not claim a place on the bookshelf of the social scientist or the criminal justice practitioner, a quick reading of it may provide useful additional information on serial murderers.

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