REVIEWS

CRIMINAL LAW: *Problems For Decision In The Promulgation, Invocation, And Administration Of A Law Of Crimes.* By Richard C. Donnelly, Joseph Goldstein and Richard D. Schwartz. The Free Press of Glencoe, New York, 1962. Pp. 1169. $15.00.

CRIMINAL Law is something more than a body of rules to be learned by rote, continually modified, enlarged or diminished by the often contradictory interpretations of the courts. To the perfunctory beholder it may appear as a static magnitude, devised by the wisest of men, endorsed by the ages and applied by learned judicial specialists who are guided by the so-called average conscience. Unswerving in their objectivity, these judges extract the Truth from carefully gathered and presented evidence. This is the ideal — not to be found outside the fictions of those pious epochs wherein the ordeal revealed the judgment of an unerring deity. Then, there was no contradiction of experts, no equivocal reading of the lie detector. But that "golden age" is gone and now we have to settle for man-made criminal law and the deficiencies of a process where "to err is human."

We cannot, of course, teach introductory criminal law without resort to the pedagogical artifice of simplification, nor should we lift too early the curtain behind which the intricacies lie in ambush. Yet neither should we send the law student into the professional world without a foretaste of the puzzling problems that will confront and confuse him throughout his career. Without this mindful initiation he is apt to quiet his conscience, to come to arrangements with reality and to grow cynical, although life, honor and property are given in his charge. Whoever would permit the rising generation of legal minds to fall into complacency, routine and hardness of heart would inflict injury on his fellow beings and himself.

The volume under review is a bold and stimulating effort to counter the stagnation toward which the legal mind is tempted. Science and technology persist in remodeling the world about us, creating new potentialities for colliding interests and conflicting demands — and new types of crimes and criminals. Old customs and taboos are growing "unseaworthy"; what was once a breach of law may now be only a breach of morals or a break with conformity. Parts of the criminal law are ripe for reconsideration and reworking. How can we modify our insufficient therapy unless we know the nature of the new phenomena of life and the significance of their implications?

This brings us to the substance of this bulky, yet lucidly ordered, book. I approve of the variety of unorthodox approaches the authors use to make their points. In a chapter dealing with the differences between civil and criminal law consider, for example, their use of Samuel Butler's satirical parody,

in which a man is accused of the crime of "pulmonary consumption," to illustrate, by comparison, the ambivalence of modern laws governing tuberculars.[1]

After the judge admirably sums up, the jury retires for not more than ten minutes and the foreman returns with a verdict of "guilty." The "felon" has a police record, having led a "career of crime." He had been convicted earlier of "aggravated bronchitis" and on no less than fourteen occasions "for illnesses of a more or less hateful character." One is tempted to smile until confronted in the succeeding pages of *Criminal Law* with the Florida statute providing for compulsory confinement in Tuberculosis Hospital.

The section on sanctions,[2] including discussion of the use of force by police, the problems of capital punishment, confinement and parole, covers material which is ordinarily excluded from the study of criminal law, although they are important links in the chain of its operation. Problems widely scattered in the systematic treatises on criminal law are collected in this volume under the heading: "What Provoking Events Negate or Mitigate What Crimes?" Here, attention is given to such seemingly diverse topics as police entrapment, killing of "ghosts" by superstitious people, manslaughter and provocation, and brainwashing.

The most impressive part of this book is the material which constitutes the Dr. Martin case.[3] Dr. Martin was a pediatrician accused of performing homosexual acts upon the disturbed children who were his patients; he sought to defend these acts as therapeutic; offering as evidence his substantial success in cases where more conventional treatment had failed. The treatment of the case is a brilliant introduction to the criminal process, drawing, as it does, upon sociology, psychology, psychiatry and statistics to erect a solid basis for the study. None of the forces set in motion by the respected Doctor's deviation from accepted professional and social paths is omitted: the case is traced from the complaining citizen, through prosecutor's information, newspaper reports, pleas, trial, conviction, public reaction, confinement and parole.

The long story is followed by a rewarding discussion of the homosexual issue. The authors collect the results of legislative and medical investigations, remarks of homosexuals and professional blackmailers together with the well known Wolfenden Report of 1957. I might add here, that the art of the defense and criminal statistics could be given greater consideration — minor deficiencies which could be corrected in future editions.

In conclusion, I would not suggest that the abbreviated way of teaching criminal law has lost its use; but I do believe that this new approach to the rules and statutes, studied against the background of changing human needs, technological transformations and fluctuating social consensus and prejudice, is a great step toward a brighter future for teaching and learning. Thus pre-

1. Pp. 253-55.
2. Pp. 255-58.
3. Part One.

pared, our young lawyers should enter the clock-work of society better equipped to carry out their important function in the face of increasing complications.

HANS VON HENTIG†

THE work published by Professors Donnelly, Goldstein and Schwartz is of such novelty and remarkable interest that it is necessary to examine the extent of their enterprise. I should say that I embrace this task not only as a criminal lawyer with a Latin and continental background, but also as a comparative lawyer who is striving to go beyond his first training in order to become familiar with the great currents of modern criminal policy.

From this double point of view, the importance of *Criminal Law* is readily apparent. The authors have had the desire to do something new, the care to present all points of view and the imaginaton to present new perspectives. They exhibit a will to make comprehensible that which exists and that which could exist. Yet while one is struck by the novelty and even the audacity of this undertaking, it is clear that the authors do not try to present a doctrine, but to suggest a method of study, and it is primarily for that, that their effort deserves attention. We must content ourselves here with a few reflections, first on the basic conceptions of the authors, then on their method, and finally on the concrete execution of concept and method.

Three basic conceptions appear to underlie the entire work. Unlike so many lawyers who view criminal law as a kind of technique, Donnelly, Goldstein and Schwartz believe that criminal law constitutes a true science and should be treated as such. Furthermore, it is a social science: a procedure for the control of human behaviour. Thus it constitutes a social phenomenon in itself and cannot be considered as a mere logical ensemble of abstract rules or commandments. Finally, this science of criminal law is only one of many interrelated social sciences.

We consider two consequences of these basic conceptions to be especially significant. First, the authors react against the isolationism of classical penal law — the view that the separate domains of each social science can be isolated and examined without reference to the others. They attempt to demonstrate in the most persuasive way the bonds which unite penal law to other great disciplines, specially to sociology. One could almost say that the work is as valuable for the training of sociologists as for the training of lawyers. This view of criminal law is both broad and flexible, and, in our opinion, singularly exalting.

Secondly, these basic conceptions result in the constitution, or the reconstitution, of a multi-disciplinary criminal science. For a quarter of a century

†Professor Emeritus, University of Bonn.

there have been ardent debates over the relation of penal law and criminology to each other. Lawyers with a classical background have tended to ignore criminologists, and have in turn been ignored by them. The authors have indicated the relations between the neighboring disciplines of criminology, penal law, penology, and criminal policy without attempting to impose any kind of hierarchy on them.

The method by which Professors Donnelly, Goldstein and Schwartz have chosen to study penal law reflects their concern for the living law, that is, applied criminal law. They devote much attention to the "decision maker," and the concrete problems with which he is confronted.

We would have to discuss the entire table of contents point by point to give a complete picture of the broad range of questions treated. Suffice it to say that the selection is extremely rich and varied. However, there are eight fundamental questions which the authors consider particularly important.[1] If the law is a method of social control, what goals should be attributed to it? What special function is to be assigned to criminal law, and what means can be furnished to achieve these ends? One must also determine what situations or acts can be designated "criminal" and what consequences should be officially drawn from such a designation. But who will have the qualifications to pose and resolve these questions of method and designation? It is also necessary to consider to what extent conditions such as culture, race, family, and physical or social state should be taken into account in defining the crime. What elements or what acts will serve to justify acts committed or diminish their criminal character? Finally, on the level of criminal policy, what data are at the disposal of the decision maker, whether he is the legislator formulating penal rules or the judge applying them, or the parole board which in practice determines the length of sentences.

This framework explains the choice of materials treated and their distribution into three essential chapters. The second chapter is particularly rich. All aspects of the legislative and procedural problems are treated, leading up to a questioning of the nature, scope and legitimacy of a penal code, and the social, human, and moral nature of crime. The authors also explore the legal definition of crimes and the need for such definitions, the nature and goals of the penal sanction and its application in particular circumstances. In the third chapter the authors make a new and particularly interesting effort to examine criminal law in relation to social groups and the influences these groups have on our conceptions of penal responsibility and the definition of crime.

One realizes the novelty of this work when one examines the types of materials selected. The authors attempt to include materials which will shed light on all of the relevant issues and points of view in the discussion of each of the questions they have chosen. One finds the texts of essential statutes, the principal cases, the opinions of scholars in the various social sciences, official reports which clarify and criticize the texts, and legal debates which

1. Pp. 2-3.

give an accurate picture of the penal process in action. On occasion even statements which purport to be representative of public opinion are presented.

Such diversity threatens to present a grave danger, that of dispersion. The reader might become lost in the mass of readings provided. However, the authors have been skillful in selecting materials that will interest and hold his attention. Certain striking selections are arranged to illustrate both the concrete case under discussion and the theoretical problem to be resolved. No effort was made to reach easy solutions or to oversimplify the problems; the authors require of the reader a constant effort of reflection and assimilation.

The presentation of the case of Dr. Martin illustrates this method.[2] This affair is followed in all of its developments, from the small local scandal which originated it, to its complicated legal, sociological, medical and criminological ramifications. At each step the authors show that there was a responsibility to be taken, and each decision is subjected to a serious critical examination.

We turn now to examine the presentation of the basic conceptions and scientific method. In a work whose greatest value is its originality, it is not surprising that the critical reader may, from time to time, differ with the authors. First, however, let us point out some of the great advantages of this presentation.

As we have mentioned, the authors are particularly concerned with the decision maker and have presented him in the different situations in which he must formulate or apply penal law. They examine in turn the case of the legislator, the judge, the expert, the legal commentator, and the sociologist confronted with the same problem. This multiple exposure is original and conforms to the basic conceptions of the book. Another virtue is the concrete method of exposition utilized. Nearly 250 pages are devoted to the Martin case, which confronts the reader with criminal law in action. In the same way, the Garcia case is discussed in all its complexity along with its ramifications on the doctrinal level and with respect to penological experiments.[3] In connection with the discussion of the insanity defense, it is good to see the *M'Naghten* case of 1843 reproduced in its entirety[4] instead of merely cited for its famous rule. Such thorough treatment of complex cases is very helpful for the law student.

The authors present an exhaustive, precise, and lively analysis of such diverse doctrines as the voluntary character of the incriminating action, the notion of an act as opposed to a state of being, and the sanction of the deprivation of liberty. They deserve congratulation for their daring in putting into issue problems which criminal lawyers have a tendency to consider settled once and for all. For example, they ask whether a system of criminal law is indispensable or even necessary and if it is really possible and useful to define a crime. They also question the significance of a criminal code in the 20th

2. Pp. 8-249.
3. Pp. 377-434.
4. Pp. 734-37.

century, and whether it should be a code of crime, of punishment, a system of rehabilitation, or a code of some other nature. They examine the how and why of penal law in the light of diverse experiments. Criminal science and criminal policy will undoubtedly gain in scope and efficacy if they dare to reëxamine these problems that the old dogmatic statements are no longer adequate to resolve.

The personal position of the authors is another excellent feature of this work. Although one is always conscious of their presence in the demonstrations and discussions, they retain a certain anonymity in that they never seek to propose, or still less to impose, a doctrine on the reader. In this respect the work may be more useful for the experienced criminal lawyer than for the law student.

Criminal Law was a task undoubtedly too large to be fully realized and yet in a work that attempts to explore every aspect of criminal problems, certain omissions appear regrettable. For example, Professors Donnelly, Goldstein and Schwartz indicate in their introduction that they do not intend to discuss delinquents as a unique classification. To some extent they even consider a mode of analysis based in such distinctions as obsolete, or as tending to give an inexact picture of criminal problems. We concede that in the first half of this century criminal typology was abused. Nevertheless, to exclude the problem from a work which seems to be complete is to expose it to numerous criticisms. From Lombroso to M. di Tullio, considerable efforts have been made to classify delinquents. From Dinberg to Sutherland other attempts have been made to provide criteria for these classifications from different perspectives. It seems unfortunate that the problem should be deliberately neglected here.

Further, although the authors have striven to reconsider penal law from the standpoint of social groups, it must be recognized that their third chapter dealing with the problem is less satisfying than the other two. The material presented is interesting enough, but it seems to defy examination. Whether because of lack of time or a sense of the relative unimportance of the topic, the problems seem to be less thoroughly grasped than those in Chapter II.

On still other matters it is surprising that the authors, so disposed to complete developments, seem brusquely to limit themselves to rather superficial indications. For example, the presumption that the accused is innocent until proved guilty is noted only by a simple reference, a quotation from Bentham [5] which far from exhausts the question. For Bentham, the presumption was a question of common sense and a simple direction to the judge. He even seems to have had some hesitation about that. Now, there is no doubt that this principle dominates the penal process, at least in the Western systems. But it does not consist of a merely simple statement of judicial psychology, and it is not presented in the same way in procedural systems which recognize or

5. Pp. 268-69.

do not recognize the institution of the examining magistrate *(juge d'instruction)*. Furthermore, one can either conceive of the presumption as a simple rule of proof or make of it a principle of general public law which dominates the entire penal process. That is a question on which fuller exposition would have been desirable.

Another example of a significant omission relates to the problem posed in Chapter II, part 7: Is it really necessary to define the crime?[6] Twenty or thirty years ago this problem was extremely controversial, and certain people at the time proposed incrimination by analogy. It is curious that the authors include only one unusual treatment of the subject relating to the old free city of Danzig.[7] We think it would have been more useful to contrast Article 16 of the Soviet Penal Code of 1926 with the National Socialist Law of 1935, and then to ask whether there could not be still a third type which was more compatible with the principles of Western law, such as that authorized by the Danish Penal Code of 1930. It is particularly important for countries in the English legal tradition to be aware of the possibilities in this area since they must deal with the problem of the recognition of common law crimes. And wouldn't it have been more useful to insist more upon the differences which may exist between American, Canadian, or Australian law and modern English cases?

Another subject which has been given unduly hasty treatment relates to the sanction of deprivation of liberty. The discussion of prison methods appears rather thin considering the attention the subject has received recently from criminologists.

Finally, the authors have recognized the need for comparative studies but they have undertaken them in a sporadic fashion and the selection of materials is occasionally dubious. With respect to the function of punishment, the authors were right to include the text of the Yugoslavian Penal Code of 1951 [8] although it was revised in 1959. However, they also include a Puerto Rican project [9] which is perhaps of special interest to American readers, but whose import is rather limited. Similarly they have included the law of 1958 on the fundamental principles of Soviet penal legislation,[10] but without the complementary materials needed to give an accurate picture of the context and socio-economic milieu in which the Soviet laws operate.

In general, the authors have too easily ignored the point of view known in Europe as *la politique criminelle*. This problem of criminal policy underlies the entire work, and an adequate treatment of the subject would do much to clarify the new perspectives that the authors give. A future lawyer should be invited to address the issue.

6. Pp. 883-917.
7. Pp. 885-87.
8. P. 519.
9. Pp. 520-22.
10. P. 645.

These omissions are indeed regrettable, particularly since they are seen against the background of a book which has the merit of not avoiding difficult questions. It is the originality and scope of the work that makes a reviewer all the more demanding. Yet the occasional failure to meet these demands does not detract from the conclusion that it is fortunate that such a work was undertaken and realized. It does honor to those who are connected with it as well as to American criminal science in general.

MARC ANCEL†

NOT since Beccaria published his *Crimes and Punishments* exactly two hundred years ago has the conscience of the western world been so stirred about the criminal law. The reasons, as might be expected, spring not from our knowledge but from our uncertainties. Why are the children of our "best" people delinquent? Can it be right, when we stigmatize war and genocide, to take a fellow citizen's life under any circumstances? We also ask, with our enfeebled grasp of property, with the mounting number of public welfare offenses under regulatory statutes and administrative law, and with the awareness that rapid social change can turn wise provisions into absurdity, whether most traditional crimes are not errors to be corrected, rather than affronts to be punished.

On this last point, some have no doubts: they know: they are the large body of psychiatrists and sociologists who have, as it were, dabbled in crime, and whose voices are growing louder in the courts and public prints. Between these experts, who know by science, and the public, which doubts from moral scruple, there can be no real debate. But there is a third party, the practitioners and theorists of the law, who are bound to bring their own expertness to bear on the so far confused issues. They have, of course, been at work for some years on a Model Penal Code. But it is also noteworthy that the last year has seen the appearance of two important textbooks on the Criminal Law. The first, by Monrad G. Paulsen and Sanford H. Kadish,[1] reflects the social criticism of the law by interposing at relevant points some admirably concise discussions of the issues raised by the political and behavioral scientists. But the treatment of the main subject is classical in the sense that the law stays in the foreground, well-ordered and intelligible as human institutions go.

The second textbook, by Richard C. Donnelly, Joseph Goldstein, and Richard D. Schwartz, is built on a different plan. The forepart of its subtitle suggests what this plan is: "Problems for Decision"; and the caption ends

†*Conseiller a la Cour de Cassatius de France*; Director of Criminal Law Department of the Institute of Comparative Law, University of Paris.

1. PAULSEN & KADISH, CRIMINAL LAW AND ITS PROCESSES xiii, 1182 (1962).

with, not *the* criminal law, but *"a* law of crimes." The authors, it is clear, wish to throw tradition and principles back into the melting pot and begin again as if we, they, their students, were contemplating *de novo* the promulgation (this is their word, too) of a code. What should we then think about? learn? bring to bear? The scheme is manifestly pedagogic — at least as modern schooling understands pedagogy, which is a confronting of the young with problems — preferably monumental — to exercise their wits and create, through bewilderment, a bond with their teacher.

The "problem approach" is of course "scientific," and so are the contents of the new text. It aims throughout at replacing, or perhaps it would be fairer to say, enlarging, legal thought by the methods and deliverances of science. The argument for doing this is not new. It goes back at least as far as the great (though neglected) sociologist Cooley. In our day, Roscoe Pound, Karl Lewellyn, and David Riesman have urged the desirability of treating legal questions, both theoretical and practical, with the aid of empirical tests and of the new knowledge gained by sociology, psychology, and anthropology.[2] And only two years ago an interesting beginning was made by F. James Davis and others under the title *The Sociological Study of Law.*

But the textbook under review goes much farther and takes the question out of the realm of merely interesting ideas: in reading the book one has the feeling of being tried under an alien code, of being questioned and sentenced and paroled by officers, not of the law, but of the institutions that have grown up in the market place to cope with the confusions of technology—personnel managers, social workers, marriage counselors, and college admissions officers. These are not of course present as such, but this is the impression given; and it is sustained by the great variety and discontinuity of the reading matter. The characteristic theme of the first chapter — to which I shall return — is treated by taking the student from the facts of the *Martin* case, including the pleading and sentencing, to newspaper letters, a report on children with atypical sexual experience, a cognate case, a sociologist's view of homosexuality, the decision of the Sentence Review Board, three cases suggestive of judicial remorse, opinions on the treatment of the victims, a trial judge's view of sentence review, and so on through half a dozen other extracts, all related to the original "problem," which was: "Official and Unofficial Community Responses" to "The Disturbing Event" of a homosexual doctor's practicing his vocation and avocation together.

Such a textbook obviously requires a great deal of teaching. Most of the views, reports, and cases are excerpted, and the fragments are short. Though the sequence of ideas is clear enough from one subhead to the next, at the end of a series the coherence is not always so plain. The authors moreover believe what they profess about decision-making and therefore juxtapose contrary views on the same point, without suggesting their own or a reconciliation of disagreements. I have no doubt that a student who reads his assign-

2. THE SOCIOLOGICAL STUDY OF LAW (F. J. Davis ed. 1962).

ments faithfully will at the end of the year know a great deal about the contemporary disquiet concerning crime and punishment. How much criminal law he will know is problematical. For in the first part of the book especially, the reports of cases are few and the sociology of "the disturbing event" and "response" are kept to the fore. In the second part, the differences between civil and criminal law and the criteria of crime are discussed, but with an admixture of "decisions" to be made about the need for a law of crimes and the purposes of sanctions. Finally, in the third part, this same pair of questions just cited is re-examined in the light of group interests — business, labor, political parties. This last chapter is perhaps the best organized and certainly the most "legal."

The contrast I draw between law on one side and science or sociology on the other may seem arbitrary, not to say obscurantist. I remember arguing the point several times with the late Judge Jerome Frank when he was a fellow editor of *The American Scholar*. Neither of us managed to persuade the other, though I think I felt in the end more sympathy with his legal "realism" than he supposed. The fossilization of the law is always to be feared and it can be corrected only by reconsidering it as simply one institution among others. Social philosophy can then lead the chorus of critics. But to concede this periodic necessity does not mean that the law is not also a very special institution, with a characteristic mode of thought and a long history of peculiar wisdom. And if this is true, then hybridization is as much to be feared as fossilization, especially if the proposed partner in this mixing is science.

Nearly all the extracts from outside the law in the textbook before us could serve to demonstrate the radical difference of outlook between science and the law. To put this difference abstractly, the law has in view persons while science deals with objects. It follows that in science inquiry knows no restrictions — all available evidence must be brought to bear and exclusionary rules are merely silly. Likewise, in dealing with nature all stratagems and devices are permissible. But the law forbids this catch-as-catch-can. It does not inquire by any and all means. Having no instruments, it understands the fallibility and the impressionability of the human mind and it protects the accused by limiting what shall come within the purview of judge and jury. It does not even grant the accusers an unlimited right to question, for fear that this right would establish a presumptive right to the desired answer.

Scientific investigation in the shape of the psychiatrist feels no such scruple. In *People v. Leyra*,[3] as Paulsen and Kadish tell us, the psychiatrist obtained a confession after saying: "I want to see if I can help you" and repeating at least forty times during the interview: "I'm your doctor."[4] Again and again Donnelly, Goldstein and Schwartz, the "men of science" and the judges who (as one of them says) "want to be advanced" disclose assumptions and beliefs

3. People v. Leyra, 302 N.Y. 353, 99 N.E.2d 553, 556-57 (1951).

4. PAULSEN & KADISH, *op. cit. supra* note 1, at 868.

that violate not only the law, but also equity and common sense. One asserts that a plea of guilty shows a contrite mind and deserves leniency. Another believes that a delinquent youth who is not a slum child but has "had all the advantages" is the more culpable. Still another wonders "whether sentencing will ever become an exact science." In the murky purlieus of the *Martin* case the question arises whether "scientific research" can be admitted as a defense. Elsewhere, experts disagree on the figures of recidivism among sexual offenders.

Still further on, a psychoanalyst explains that "the example of a criminal has a stimulating effect on our own repressed impulses," because "before the Superego was set up, our unbridled impulses kept us always in a state of painful conflict with the world." Hence we want to punish crime so as to keep down our impulses and reinforce the superego. By the side of this "science," it is only fair to say, we have but little of what usually goes with it: the polygraph, the truth serum, and the tape recorder. There is mention, however, of the "experiment" financed by the Ford Foundation to find out how a jury works by secretly planting microphones in the room. And we are given a glimpse of the ethics of social psychologists through an extract from their code: "Only when a problem is significant and can be investigated in no other way is the psychologist justified in giving misinformation to research subjects or exposing research subjects to physical or emotional stress. . . . The psychologist seriously considers the possible harmful after-effects and removes them as soon as permitted by the design of the experiment."[5]

The point of quoting is not to look askance at psychology, but to show that its conduct is not that of the law. Consequently the infiltration of the law by psychology does not promise a nearer approach to justice. This conclusion is confirmed when, in keeping with its plan, our textbook devotes space to the problem of individualizing punishment. Here science seems to give up its detachment toward "research subjects" and to be hugging the person in a warm, humane embrace. But the shift is deceptive. "Individualizing" necessarily means getting all the facts, the background, the psychiatric reports, the testimonials of neighbors, employers, and friends, and out of this jumble framing a clear idea of the convicted man's deserts. Even if this were a rational possibility, what has it to do with the law? The law with all its faults maintains the ideal of treating comparable offenses in a comparable manner. Short of divine omniscience — or Hamlet's impartial proffer of a whipping — who can decide what a man's deserts are? As Mr. Justice Avory long ago remarked about killing after provocation, if distinctions of character are to be made, the bad-tempered man should get away with manslaughter, whereas the good-tempered man will be charged with murder. This would not be justice, for justice involves — as the scientific party refuses to admit — the law's predictability.

5. DONNELLY, GOLDSTEIN & SCHWARTZ at 85.

The only rejoinder to this and other ancient principles is seldom made openly: it is that justice can go hang. Justice implies responsibility which implies free will which science cannot sanction. Most criminals, says the empirical social worker, cannot help themselves; they are patients not offenders. To save these patients from the criminal law, he invokes the social expediency of restoring them to a useful life. But it should be noted that this therapeutic doctrine still reserves for its cases the rights that the accused now enjoys under the law. And this is fortunate for the patient, because social expediency can work both ways: it can declare that for the good of the community the sick, the halt, and the useless should be eliminated. And if by that time justice *has* gone hang and the law courts have become the playground of psychiatrists and electronic engineers, the individualizing of the punishment will not comfort, much less save, the individual.

Meanwhile it will be an excellent thing if the issue laid out by the new textbook in our hands receives in the law schools of the country the discussion it deserves. I am not sure how much "decision-making" can be elicited from classes whose knowledge of the criminal law depends on what they can read, quite literally, between the lines of Dr. Kinsey and Margart Mead and the unreadable Professor Talcott Parsons. I am not even sure that the "problems" elaborately set forth are not rather perennial difficulties and causes for debate. But this will not matter to the recruits of a profession that respects the adversary mode of reaching truth — the mode which protects our civil and political rights, which governs our intellectual life, and which science itself must adopt when rival theories dispute the field.

JACQUES BARZUN†

†Dean of Faculties and Provost of Columbia University; Seth Low Professor of History. Mr. Barzun's publications include, among others, THE HOUSE OF INTELLECT. His next book: SCIENCE: THE GLORIOUS ENTERTAINMENT will be published in March.

ADDITIONAL ERRATA: Volume 72.

Page 1486, Line 29. For "transferor" read "transferee."

Page 1499, Line 7. For "If" read "It."

Page 1501, Line 42. Delete "also be viewed as intangible property."