

1986

Book Reviews

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Book Reviews, 77 J. Crim. L. & Criminology 237 (1986)

This Book Review is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

BOOK REVIEWS

CRIME AND HUMAN NATURE. *James Q. Wilson and Richard J. Herrnstein.*
New York: Simon and Schuster, 1985. Pp. 639. \$22.95.

Crime and Human Nature is a tour de force in modern day criminology. Excepting critical theory, the book examines virtually all of the important explanations of criminal behavior. It presents them honestly and identifies their strengths and weaknesses judiciously. All this in the midst of a display of awesome scholarship. The book makes use of an overly simple theory of behavior to explain crime, it provocatively examines the role of constitutional factors (i.e., race, gender, age) in crime, and it advances our theoretical insight into crime little if any. Despite these problems, it will be the standard in criminology for years to come.

The benchmark for these explanations of criminal behavior is the authors' own theory—a behaviorist theory that focuses on the decision-making processes of egoistic offenders. A number of psychological factors affect the decision to commit a crime: the quality of the rewards both primary and secondary, the conditioning that preceded the decision, and the relative delays of rewards and punishments for the crime. Not all rewards and punishments need be material; symbolic rewards can also play a big role in some crimes, e.g., John Hinckley's attempted assassination of President Reagan. When all is said and done, however, the crime problem comes down to an individual's decision among a range of alternatives for crime. The crime rate of a community, a state, or a nation is basically an aggregate of these decisions. Societies differ in terms of their opportunities for crime, in the values they confer upon crime, or in the conditioning they afford potential offenders; but ultimately it depends upon a multitude of decisions by individuals.

Wilson and Herrnstein are fully aware of all the socio-cultural inducements to delinquency and accept the likelihood that even "... weakly attached boys will commit more offenses than they otherwise would, especially those [offenses] that are chiefly reinforced by group-based rewards. Organized inner-city gangs may well have a much stronger effect on individual crime rates; certainly, they have

many violence-prone and defiant members . . . ” (p. 299). The authors also recognize that the culture of the inner-city ghetto is relatively accepting of exploitative criminal behavior, but they are interested in these socio-cultural factors only insofar as they shape the thinking and decisions of individuals.

In the slum, some persons may attach not simply a low value to reinforcers available from outside their neighborhood but a negative value. “Straight jobs” are for “suckers,” outsiders who are robbed or assaulted “deserve what they get,” and having an arrest record is a badge of honor and a measure of one’s toughness How common such views are, we cannot say, but it is plausible to assume that the provincialism of slum life, when intensified by racial or ethnic cleavages, will lead some residents to invert the value normally assigned to the well-being of others (p. 304).

Clearly, the most controversial aspects of the authors’ work is the attention they give to constitutional factors and the family as causes of crime. According to Wilson and Herrnstein, it is easy to see how constitutional factors could affect the decisions of individuals regarding criminal behavior. Low intelligence, particularly low verbal intelligence, affects criminality, because individuals with a higher verbal IQ will be inhibited by their ability to keep in mind a broader range of possibilities—many negative—and thereby will be insulated against the more immediate inducements to crime that present themselves. The impulsivity that Wilson and Herrnstein see as characteristic of offenders is easily explained as the absence of this ability.

Much the same argument is advanced for the role of the family in the development of offenders. Basically, Wilson and Herrnstein suggest that the family is crucial in the ways in which parents bond with their children and sanction negative behavior. Ideally, parents will form strong bonds with their children and consistently punish anti-social behavior, but weak parental bonds or parental indifference to misbehavior will negatively affect the balance of rewards and punishments surrounding anti-social behavior and shape the individual’s decisions accordingly. Parents with a weak ability to perceive the negative consequences of arbitrary treatment—i.e., parents with low verbal IQs—will tend to raise misbehaving children. In this fashion, then, weak parents beget weakened children.

The real strength of *Crime and Human Nature*, however, is the masterful way in which the evidence is marshalled to defend the book’s propositions. The authors cite studies by Hooton, Sheldon, the Gluecks, Epps and Parnell, Gibbens, and Cortes and Gatti to support their propositions on crime and constitutional factors. Wilson and Herrnstein carefully review nine major twin/adoption stud-

ies in this country and in Europe in support of the notion that genetic inheritance is associated with crime, and they examine the evidence for and against the XYY chromosome as crimogenic. Each cited study is explained carefully and its methodological strengths and weaknesses are examined thoroughly.

The authors attempt no general assessment of the overall significance of a constitutional basis for criminality; they make only a claim as to its validity. To buttress this claim the authors turn to gender, age, and crime. Again after carefully reviewing a wide range of evidence, Wilson and Herrnstein view the crime differences between males and females as expressing a basic difference in their aggressiveness, and age differences are explained in terms of an

awakening of major sources of reinforcement for delinquent behavior—money, sex, and peers who value independence of, or even defiance of, conventional morality. At the same time, the growing child is becoming literally, as well as psychologically, independent of powerful adults . . . who might enforce conventional standards. Given energy, strength, potent new sources of drive but few legitimate means of consummation, a lack of economic and social skills, and peers who are similarly vigorous and frustrated, the adolescent years are destined to foster a rise in delinquency (p. 146).

Not much is new here, but the way the authors blend together a large number of studies to support a rather exotic explanation of crime is certainly a fine example of careful scholarship.

From a rather focused discussion of constitutional factors, Wilson and Herrnstein digress to considerations of crime and the economy, television, drugs, and cross-cultural and historic crime patterns. They argue with much supporting evidence that a general societal unemployment simply aggravates a more primary, individualistic tendency toward unemployment (regardless of societal rates) which in turn harks back to decisions shaped by constitutional, psychological, and social factors. Within the inner-city the authors see a bifurcated labor market in which most of the work available to inner-city residents are dead-end jobs that “produce low returns, high turnover, and no prospects” (p. 333). This secondary labor market is not closely linked to the primary one, mobility between the two is rare, and unemployment rates nationally are not closely linked with crime rates in the inner-city. The secondary market breeds a sense of depression and futility independent of the status of the primary market, and street crime and quasi-criminal hustling are common outgrowths regardless of the level of unemployment in the national economy. Wilson and Herrnstein do not apply this theory immediately to minority crime, nor do they give the theory an unqualified endorsement, though its relevance is obvious. Instead, they raise

the possibility that black crime rates may reflect such "constitutional" factors as youthfulness, intelligence, and temperament; and such social factors as economic deprivation, family life, and subcultural deviance. The authors are very cautious here; nevertheless, to even raise such questions will seem a red herring to many, and cloud the overall appraisal of Wilson and Herrnstein's work.

To Wilson and Herrnstein's credit, however, they give the issue of black crime only secondary emphasis, for in reality all of the issues raised to explain black crime apply to non-minorities as well. They make it clear that the variations within the races is much greater than any inter-racial variation, and in any case "the evidence that black-white differences in crime rates have a constitutional basis is limited, and the explanatory power of such constitutional factors as have been identified is largely unknown" (p. 469).

What is lacking in *Crime and Human Nature*, however, is some statement that black/white differences in offense rates very likely are seriously compounded by lower class/middle class differences. The authors cite William Julius Wilson as endorsing this viewpoint but "given the sensitivity of any discussion of black crime . . . no theory will be saved from controversy merely because it is eclectic" (pp. 485-86).

But if the discussion of race and crime is peripheral to the authors' overall thesis, why do they even raise it? Possibly, they do so to broaden the prevailing ethos in American (but not European) criminology that crime is basically a social, economic, and political phenomenon and not a physiological or hereditary phenomenon. In an effort to extend the range of explanations available to criminologists, however, Wilson and Herrnstein inevitably run headlong into the controversy that such discussions always raise. Only scholars of their stature could raise such issues with impunity, but this debate predates their arrival and will survive long after their departure.

The relationship between race and crime is a political issue touching the very heart of American egalitarianism, and in the last analysis it challenges such basic American ideas as an individualistic basis of merit, freedom of opportunity, and even *mens rea*. If we cannot shape our own future in terms of our own character strengths, and if we are not to blame for our weaknesses, much else also falls by the wayside. Americans, white and black, middle- and lower-class, do not like to hear that they cannot escape their past, because of psychological or constitutional limitations which parallel class or racial stratification. As long as Americans believe that they can succeed by virtue of enterprise, perseverance, and discipline, the sug-

gestion that some are condemned to a lower-class status because of fundamental defects will be unwelcome.

The two major flaws in *Crime and Human Nature* are the authors' simplistic theory of personality and crime, and the absence of a clear understanding of the interplay between idiographic descriptions and theoretical explanations of crime. According to Wilson and Herrnstein, the decision to commit a crime depends on the ways in which a potential offender evaluates the immediate and delayed benefits and costs of the crime. The immediate benefits usually outweigh the immediate costs, so that the final decision often depends upon the long-range consequences. The authors argue that non-offenders tend to have a better awareness of long-range consequences, or at least give them more weight and thus decrease impulsiveness.

But rationalistic explanations of behavior that reduce decision making to a series of formulae, are poor substitutes for theory because they offer little insight into the psychological forces that are actually at work shaping decisions.¹ Wilson and Herrnstein suggest that primary and secondary reinforcers, both immediate and delayed, influence decision-making. In order to learn who is likely to commit a crime, therefore, measurements of these variables are necessary. Certain broad categories of people—e.g., those with a weak sense of secondary reinforcements (with weak pangs of conscience) and with little awareness of the long-range negative consequences of criminal behavior—would tend to become offenders. But such information would provide little specific insight into the motives, drives, or emotions that also propel individuals toward crime. One man's impulsiveness is another's risk-taking or spontaneity. Not everyone who is relatively insensitive to the long-range implications of unconventional behavior is unintelligent or, for that matter, bent on criminality. To understand what risk-taking means regarding any given person, we must also have some concept of the type of personality of which risk-taking or impulsiveness is simply one facet.

Behaviorism has been around a long time, but it has not proven very useful in classifying offenders for any purposes whatsoever. Such formulae do fit certain rationalistic recommendations regarding what to do about crime (e.g., intensify punishments and increase their certainty). But they also divert our attention away from the psychological dynamics of offenders to features of the social environment, i.e., the consequences of behavior. The social environ-

¹ See also Denzin, "Behaviorism and Beyond," *CONTEMP. SOC.* 15 (1986) at 553-56.

ment is certainly not irrelevant, but to assume that you can define eccentric or anti-social behavior in terms of rationalistic models is clearly an over-simplification.

A better way of proceeding is to differentiate offenders in terms of personality type. In this way an individual's impulsiveness can be weighed in terms of his sociability, aggressiveness, intrapunitiveness, or extraversion. Impulsivity coupled with intrapunitiveness and sociability implies a different pattern of behavior than impulsivity coupled with extraversion and aggressiveness. No single personality trait has a clear relationship with either the social environment or criminal behavior; the meaning of each trait shifts as the balance of its psychological context shifts. Patterns of traits, however, do have enduring relationships among themselves and with the social environment. Consider, for example, the numerous psychological schemes for classifying institutionalized offenders in terms of their programmatic needs. Single trait theories of crime have long since lost their usefulness.

Wilson and Herrnstein's failure to utilize personality patterns as their primary concept of behavior also closes off another useful approach to the study of crime. If offenders can be usefully classified in terms of personality types, it follows that different types will respond to situations idiosyncratically. The task, therefore, is to identify the patterns of interaction that appear between personality type and situation. Peers are a factor with some delinquents but not with others.² A social psychology of offending that identifies criminogenic combinations of personality type and situation is more likely to provide insight into the natures of a broad range of offenders than behavioristic formulae that orient us simply to a consideration of the social consequences of possible offenses.

A sound theory of criminal behavior, then, depends upon finding the meaningful relationships that emerge between different personality types and different social situations, and inferring from these relationships the dimensions of a theory of action. This theory of action, in turn, may offer insights into the nature of personality *in* society (e.g., concepts of ego-identity and moral development tap this aspect of personality). The theory may also point to ways in which personality in turn helps to shape social structure (e.g., as the parents shape a family or the leader shapes a group). It is the fusion of personality with social structure that forms the basis of social ac-

² See Warren, "Delinquency Causation in Female Offenders," in *JUDGE LAWYER VICTIM THIEF, 194-96* (Rafter & Stanbo eds. 1982).

tion, and it is this problem that a theory of criminal behavior must solve.

Idiographic studies of individuals *in situ* are the immediate bases of such a theory, just as theories of personality and of social structure are its foundation. But the aggregated actions of individuals cannot offer insights into a theory of action, because the interactions between individuals and their environment are dominated by the one or two strongest themes of this interaction. Thus, only socially prescribed action patterns can appear as recognizable themes in aggregated behavior. Idiographic studies, much as the ethno-methodologists have developed them, seem to be the most likely path to a genuine theory of personality in interaction with its social environment. As the ethno-methodologists have found, however, their theory and their methodology have some distance to go before they can become the basis for a sound theory of action.

Wilson and Herrnstein's *Crime and Human Nature* stands as a fine example of traditional scholarship. Nevertheless, it seems that the authors are plowing the wrong furrow and have framed many of the issues in such a way that some criminologists will be tempted to argue and investigate peripheral theoretical models and political issues for the foreseeable future.

THEODORE N. FERDINAND

CENTER FOR THE STUDY OF CRIME, DELINQUENCY AND CORRECTIONS
SOUTHERN ILLINOIS UNIVERSITY AT CARBONDALE

THE PROSTITUTE AND HER CLIENTS: YOUR PLEASURE IS HER BUSINESS. By *Lewis Diana, Ph.D.* Springfield, Ill.: Charles C. Thomas, 1985. Pp. xxiv, 222. \$24.75.

Personal interviews—conducted over a 25-year period—with 487 professional prostitutes, 53 amateurs, and 501 clients provide the data base for Professor Diana's treatise on the "world's oldest profession." Six separate chapters describe the organization of prostitution, social/psychological characteristics, lifestyles and sexual responses of prostitutes, amateur prostitutes, and the prostitutes' clients. The final chapter explores the "functions and consequences of prostitution" as a seemingly institutionalized, but devalued, social exchange.

For those readers who reside near the locations of prostitution described by Diana, there is some intrigue in the attempt to surmise

the specific establishments involved (see pp. xii, 42). The book also contains some interesting information on how prostitutes recognize out-of-uniform police officers and why federal officers present problems (see pp. 6, 19). An overriding impression given by this volume, however, is that Diana has made an ineffective presentation of what must be nearly a career-long passion.

For example, despite the fact that the information spans a quarter of a century, there are few attempts to maximize the value of such historical perspective. Diana states that “[h]otel-motel prostitution continues to exist but probably not to the same extent as fifteen to twenty years ago. The more readily accessible and visible massage parlors have again depleted another market” (p. 25).

Similarly, a frequency table is provided on the “Location of Prostitution in Sample by Category” (p. xii), but there is neither a breakdown by time period for the interviews nor a hint that the sample may have been derived from anything other than personal preference. This table also incorporates two different units of analysis: the frequency of some types of prostitution is listed by establishment, while it is listed by number of prostitutes for others. Conclusions regarding the relative prevalence of different types of prostitution, then, are questionable in terms of the information Diana gives the reader.

The value of *The Prostitute and Her Clients* for tracking patterns over time is compromised further by statements such as “The prostitute must return all her earnings to her pimp—at least a minimum of \$200 for each night on the street (at the time of the study)” (p. 8). Which time of the study? 1960? 1972? 1984? Diana draws conclusions regarding the relative income levels of prostitutes, yet uses “family [of origin] income” as an indicator for professional prostitutes (p. 45-6), family of procreation “income” for amateurs (p. 155), and states that “[t]he figures have not been adjusted for inflation for the 25 years covered by the study but brothel data were the earliest collected” (p. 45). Undoubtedly, Diana kept detailed records of his interviews. It would have been a small task to frame his descriptions with appropriate time periods, thereby increasing their utility to the scientific community as well as the merely curious.

There are other areas in which attention to detail would have enhanced Diana’s presentation. For example, inconsistencies abound between the text and the tables. Some are trivial, but noticeable: the text on page 68 indicates that prostitutes held 120% of skilled jobs; the 9.6% on page 82 is 1.6% in Table III-2; 59.8% is described as a “vast majority” on page 93. Other inconsistencies are more substantive and bothersome, especially when categories

are discussed that do not appear in the tables (see pp. 34, 56-8, 182).

The bibliography appears to be limited and dated. Few of the sources were published after the 1960s, with only two articles published as recently as 1977 and one book in 1980. Perhaps more telling is the fact that 39% of the articles listed are from newspapers and trade magazines. This lack of current, professional sources may help explain some bothersome aspects of *The Prostitute and Her Clients*.

Diana's attitudes regarding sex roles are unclear. While he seems sympathetic to prostitutes, Diana regularly makes statements such as the following:

Indeed, except that the client pays (and doesn't he in any event?) the kind of sex he gets is essentially what he gets in a conventional situation (p. 28).

I use the term forced sexual intercourse rather than rape. In most instances intercourse did not come about as the result of a sudden and unexpected attack In some cases the offender did literally force the issue but usually by virtue of his greater strength. This was generally the situation with boy friends and acquaintances when intercourse followed kissing and petting (p. 64).

But they have also picked up, at first intuitively, how exploitable and manipulable are men as well. Women have something so special, so much a prize, that men will do almost anything to possess it (p. 79).

Especially when admitted, such sentiments per se are not necessarily damaging to the author's thesis. They are questionable here, however, because Diana goes on to evaluate the mental health and social adjustment of prostitutes and their clients.

The upshot of *The Prostitute and Her Clients* perhaps is best stated in the author's introduction: "The study offers no startling findings about the nature and causes of prostitution" (p. xix). That alone would not constitute an indictment against this work; certainly, corroboration, clarification, and replication are essential to our understanding of any phenomenon. But Diana's treatment of prostitution falls short of such standards, however loosely defined. While *The Prostitute and Her Clients* is not totally bereft of provocative findings, it has so few well-substantiated ones that their praise must be left to readers more generous than I.

DRETHA M. PHILLIPS, PH.D.
CHAIRPERSON, HISTORY, POLITICAL SCIENCE, AND SOCIOLOGY
ROANOKE COLLEGE

PATTERNS OF POLICING: A COMPARATIVE INTERNATIONAL ANALYSIS.
By David H. Bayley. New Brunswick: Rutgers University Press,
1985. Pp. 263. \$28.00.

After nine years, the author of the now classic *Forces of Order: Police Behavior in Japan and the United States* (1976), has written another comparative text on police. In his latest book, *Patterns of Policing: A Comparative International Analysis*, David Bayley informs us that the purpose of this volume is to construct general propositions about police functioning on the basis of comparative contemporary and historical information; specifically, evolution, functions and politics (p. 1). Great Britain, France, India, Japan, Norway, the Netherlands, Singapore, Sri Lanka, and the United States were the sites of Bayley's research from 1976 to 1978. His study was funded by the National Science Foundation with additional support from the Earhart Foundation and from the Graduate School of International Studies at the University of Denver.

Bayley lays the foundation for his book on three features of modern policing which help trace the evolution of all forms of policing. These features include publicness, specialization and professionalization. Setting a standard definition of police as "people authorized by a group to regulate interpersonal relations within the group through the application of physical force" (p. 7), Bayley discusses the structure of policing (centralization and decentralization), presents reasons for the variation in police strength, and describes police activity by examining police assignments, situations police become involved in handling, and the actions taken in dealing with situations. From his comparative analysis, Bayley foresees several changes in policing. These include a trend toward privatization, the approaches countries will take to achieve control will vary according to incidence of collective violence, and the range of police work will not change substantially except for crime connected to technological development.

There are several caveats for readers of *Patterns of Policing*. Professor Bayley himself indicates that

[b]ecause the information available about the historical evolution of police is patchy and varied in quality and my own understanding of changes in social circumstances historically in all these countries is necessarily uneven, the propositions developed cannot be considered conclusive (p. 16).

Admittedly, the history of policing is limited. However, had Bayley focused on fewer, i.e., three or four countries, rather than seven to nine countries (the number fluctuated depending on the

topic), a more comprehensive discussion of the traditions, culture, police structure, strength and work would have been possible for each country studied.

Another caution is Bayley's statistical analyses. One of the book's major flaws is the author's lack of description of the data. He informs the reader that he uses data from other studies and relies on "reasonably reliable information" obtained in the countries where he did research (p. 75). However, there is no mention of what the other studies were, and the countries he researched "represent targets of opportunity and not a scientific sample of the world" (p. 75). His "Appendix" (which he describes as a "capsule description of the forces studied") (p. 75), is a scant four pages long, clearly indicating that his purposive sample was based on available data compiled from station diaries, command-and-control computer systems, logs of telephone calls, and police activity sheets. Bayley acknowledges the incomparability of data collected by police departments, the difficulty of observing characteristics of interpersonal relations, and matching units of data collection (pp. 134-35); thus, generalizations cannot be made. (For example, for the United States data were collected from five locations in Colorado and, for England, from Suffolk County.)

The inability to distinguish exactly what Bayley's data represent is reflected in his tables which offer no explanation for the source of the data used (see Tables 4.3 through 4.7, pp. 83-6). The reader is informed that the data were: "official statistics" (p. 82), "collected from rural and urban locations in several countries around the world" (p. 115), "collected as part of intensive fieldwork in nine countries that involved collecting reliable information from official records, rather than by observation, . . ." (p. 115). In at least one example, a chart was displayed that was absolutely unnecessary since the overwhelming majority of the chart's entries contained "N.D." (meaning "no data") (p. 91).

Occasionally, Bayley contradicts himself. In Chapter Six, "A Theory of Encounters," he argues that as society becomes more industrial and less agrarian, police will deal more with service and fewer crime-related requests. This contradicts his previous statement in "Police Work" (Chapter Five) that

[t]he data show that except for Britain, Norway, and Singapore, police work is overwhelmingly law-related In the United States, two-thirds to four-fifths of the situations that can be unambiguously classified are crime-related. In India and Sri Lanka the proportion is even higher. These findings, especially for the United States, are surpris-

ing. It has been considered proven that most of the situations that police encounter are not law-related (p. 126).

While Professor Bayley is to be commended for assuming the awesome task of studying comparative policing, *Patterns of Policing* suffers from his reliance on statistical analyses based on incomparable data collections. The book is difficult to decipher and the reader finishes with little comprehension or distinction of "patterns of policing" in the countries that Bayley studied. *Patterns of Policing* would have greatly benefitted from the participant-observation method that Bayley used so well in *Forces of Order*.

With all these caveats considered, however, the book clearly depicts Bayley's wish that others "with more extensive knowledge of these countries or familiar with experience elsewhere will amend or even refute these findings. These propositions mark the beginning rather than the conclusion of a dialogue about the historical evolution of police" (p. 16). Finally, those contemplating international research on police should consider two problems Bayley acknowledges at several points in *Patterns of Policing* the availability and comparability of police data, and the considerable expense involved in conducting comparative policing research.

DONNA C. HALE
UNIVERSITY OF BALTIMORE

MIRANDA: CRIME, LAW AND POLITICS. By *Liva Baker*. New York: Atheneum, 1985. Pp. 463. \$10.95.

In the midst of the due process revolution, Anthony Lewis completed his paean to the Supreme Court, *Gideon's Trumpet*.¹ The book describes the history of a popular Warren Court decision, *Gideon v. Wainwright*.² *Miranda: Crime, Law and Politics* is written in the genre of *Gideon's Trumpet*. Liva Baker, a journalist (like Lewis), describes Ernest Miranda and the Supreme Court case that represents the epitome of the due process revolution. Yet the two books are very different. *Gideon's Trumpet*, published the year after the decision, is confined to the history of the issue of an indigent accused's right to counsel and of the case it lauds. Baker's book is more far-ranging and more critical of the Supreme Court. Completed nearly fifteen

¹ A. LEWIS, *GIDEON'S TRUMPET* (1964).

² 372 U.S. 335 (1963).

years after *Miranda v. Arizona*³ was decided, *Miranda: Crime, Law and Politics* is a history of the entire tide of law and politics into which Ernest Miranda was swept and of the controversy his case engendered. Twenty years later that controversy has yet to die.

That portion of Baker's book devoted to Ernest Miranda and his case is modeled after *Gideon's Trumpet*. The differences between Miranda and Gideon are most striking. Gideon was an innocent folk-hero; Miranda was a "coddled" criminal. Ultimately, Gideon was acquitted of charges of breaking and entering with intent to commit a misdemeanor. After his Supreme Court victory, Miranda was reconvicted of rape. The historical currents flowed strongly in Gideon's favor; Miranda was swept into the cross-currents of a liberal activist Court eager to protect individuals from official lawlessness while the public grew increasingly frightened of rising violent crime rates. For the most part, the media and the legal community praised *Gideon*; *Miranda* was reviled by a majority of the bar, law enforcement officials and the media. *Gideon* was subsequently expanded to entitle misdemeanants⁴ and felons to counsel at all critical stages in an adversary proceeding;⁵ *Miranda* was the beginning of a revolution that never happened.

Baker departs from Lewis' model in the portion of the book devoted to the "counter-revolution." She describes the developments on two fronts—national politics and the Supreme Court. The political tide began to build against the due process revolution two years before *Miranda* when Barry Goldwater seized upon law and order as a campaign issue. Richard Nixon exploited fear of crime to win the presidency in 1968. He blamed crime on decisions like *Miranda*, which allegedly forced prosecutors to free guilty criminals. Nixon promised to return the balance of power to law enforcement by appointing strict constructionists to the Supreme Court and enacting tough anti-crime laws.

Baker chronicles how, once elected, Nixon set out to fulfill his campaign promise. Her explanation of the process by which the Nixon bloc was created is fascinating. But Baker's explanation of how the Burger Court dealt with *Miranda* falls short. Baker, who is not a lawyer, seems to be as confused about *Miranda's* meaning as the Burger Court.

The *Miranda* Court stated that because custodial interrogation was inherently coercive it was impossible to confess voluntarily even

³ 384 U.S. 436 (1966).

⁴ *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

⁵ See, e.g., *Brewer v. Williams*, 430 U.S. 387 (1977); *United States v. Wade*, 388 U.S. 218 (1967).

when no strong-arm tactics were used. “*Miranda* warnings” dispel the coercive atmosphere and insure that the suspect knows that he has a right to choose not to confess and that his interrogators will respect his choice. The Constitution requires that an unwarned confession be excluded because it cannot possibly be the product of a free and rational decision to waive the privilege against self-incrimination and the right to counsel.⁶ The Burger majority believes *Miranda* warnings are not constitutionally mandated, an unwarned custodial confession can be voluntary, and an unwarned voluntary confession should be excluded only if it will deter police from violating *Miranda*.

Baker errs by assuming that *Miranda* was designed to safeguard judicial integrity by excluding confessions obtained through official lawlessness. She argues that this rationale—more appropriately associated with the fourth amendment exclusionary rule⁷—has been buried by the Burger Court and replaced with the deterrence rationale. She asserts that the Burger Court has thus undercut *Miranda* by reversing its logic.

Nonetheless, Baker concludes that *Miranda* is here to stay because the Court declined an express invitation to overrule it in *Brewer v. Williams*.⁸ Her conclusion is premature. The counter-revolution has gathered new steam in the past few years.⁹ In *Colorado v. Connelly*¹⁰ the Court certified a *Miranda* issue not raised in the petition for certiorari. If *Miranda* was the crescendo of the Warren Court, *Connelly* may be the crescendo of the Burger Court before the Nixon bloc surrenders to age and failing health.

Miranda: Crime, Law and Politics contains innumerable subplots. For example, Baker discusses the Congressional response to *Miranda* and increasing crime. She delves deeply into the lives and philosophies of Earl Warren, Warren Burger and Richard Nixon. The book is rich in biographical material about the many individuals directly and collaterally involved in Ernest Miranda’s story. Indeed, the book’s wealth of information may be its greatest fault. The main plot is sometimes obscured by interesting, but unnecessarily detailed, discussions of collateral events and personalities.

Miranda: Crime, Law and Politics is most valuable as a study of the

⁶ See Schrock, Welsh & Collins, *Interrogational Rights: Reflections on Miranda v. Arizona*, 52 S. CAL. L. REV. 1 (1978).

⁷ See *Mapp v. Ohio*, 367 U.S. 643 (1961).

⁸ 430 U.S. 387 (1977).

⁹ See, e.g., *Moran v. Burbine*, 106 S. Ct. 1135 (1986); *Oregon v. Elstad*, 470 U.S. 298 (1985); *New York v. Quarles*, 467 U.S. 649 (1984).

¹⁰ No. 85-660 (*cert. granted* Jan. 13, 1986).

relation between the Supreme Court and national politics. From this perspective, Ernest Miranda and his case symbolize many controversial Supreme Court rulings. The book graphically illustrates how personnel changes lead to altered interpretations of the Constitution and how promises to make these changes can lead politicians to power. Baker illuminates the fallacy on which such promises are based. *Miranda* did not cause the 1960's increase in violent crime and the Burger Court did not stop it. At best, blaming crime on the Supreme Court diverted national energies from the search for more effective solutions.

The end of the Nixon era did not see the end of attempts to "overrule" the Supreme Court with legislation. Nor did it see the end of political manipulation of public fear of social change by a promise to disarm a judicial scapegoat. The last presidential campaign was marked by promises to appoint justices who will overrule *Roe v. Wade*,¹¹ end busing and affirmative action, and allow school prayer. Yet it is unlikely that current efforts to alter unpopular decisions, even if successful, will prove any more effective in erasing our social ills than the Burger Court's effort to return the balance of power to the police in the fight against crime.

CATHRYN JO ROSEN
DEPARTMENT OF CRIMINAL JUSTICE
TEMPLE UNIVERSITY

CRIME BY CHOICE: AN ECONOMIC ANALYSIS. By *Morgan O. Reynolds*.
Dallas: The Fisher Institute, 1985. Pp. 232. \$8.95 (paper),
\$24.95 (cloth).

Is "society" responsible for crime? Well, yes, in the sense that criminals respond rationally to their opportunities. Therefore, Reynolds maintains, it should be no surprise that rising crime rates are associated with the rise of socialism and the welfare state. Criminals, he asserts, rationally respond to incentives. While demographic variables, criminal opportunity, and the absence of deterrence are all factors, the fundamental cause of high crime rates, though intertwined with economic and social variables in subtle ways, reflects the moral fibre of a population.

Reynolds, an economist, seeks to demonstrate the relationship

¹¹ 410 U.S. 113 (1973).

between the culture of the welfare or redistributive theft state and the decrease in containment of criminal behavior notwithstanding escalating sums of capital and manpower supposedly directed to the crime problem. In doing so, he looks at the definition and measurement of crime, criminals and victims, the police, courts, punishment, drugs, organized crime, labor violence, and the debate over deterrence. With respect to academic criminology, Reynolds feels that scholars do not so much confront the evidence as ignore it. The consequence is that books with titles like *Rape and Inequality*, which purports to demonstrate allegedly "strong linkages among rape, sexual inequality and capitalist socioeconomic systems" and which supposedly shows "that an exploitative mode of production such as capitalism produces socio-economic inequalities, which spawn increased violence," find academic favor.

Reynolds feels there is a relationship between escalating crime and a public polity which operates on the premise of taking from the politically uninfluential and distributing to the politically influential. Crime and most of what takes place in politics, Reynolds asserts, are the same thing. Stealing is legal if performed by government, while the same act performed by individuals is treated as theft. Neither government officials, nor beneficiaries of public distribution, nor shoplifters, nor more serious criminals, think of themselves as stealing; they just "take" things.

Increased crime is said to be the result of a top-down revolution in public policy. Socialism was never at first a working class movement, but a movement of the intelligentsia. Reynolds maintains that the same is true for the expanded concern for the welfare, comfort, and "rights" of criminals, and notions of "rehabilitation." According to him, more social programs, more generous welfare benefits, and similar accoutrements of the welfare state, intensify and perpetuate family dissolution, nonfamilial reproduction, nonexistent work skills, and contribute to the kind of disorganization which promotes criminal activity.

Reynolds contends that the welfare state is destroying the most basic and fundamental capital—a legacy of middle-class virtue—and replacing it with an ethic of the politics of redistributive theft. Atrophy of the rule of law has been associated with governmental coercion in order to achieve compulsory instruction for the benefit of educationists; protection from competition for the benefit of favored businesses; prohibition of reading material or drugs for moralistic busybodies; elimination of competition and the screwing of consumers for the benefit of unionists; price supports, grants, gifts, and gratuities for agriculturists; and "entitlements" for veterans and

other career welfarists. Reynolds maintains that robbery and tyranny by the coercive state marches hand-in-hand with the kind of "crime" processed by the criminal justice system. Although recognizing that the connection between the rise of coercive collectivism and recognized "crime" may be tenuous from the point of view of bureaucrats, lawyers, social workers, and academics involved in the criminal justice industry, Reynolds is convinced that the redistributive political state undermines the rule of law on which relatively crime-free social intercourse depends.

Academics and other influentials do not like to be told that their ideas are the cause of the miasma of which they are supposedly the experts at resolving (if only the unenlightened hoipolloi could be persuaded to accept *their* ideas). There is a tendency, when confronting such challenges, to dismiss rather than confront. Parts of *Crime by Choice* may be more journalistic than convincing, and parts are probably less focused than might be desired. Reynolds doubtless has set forth propositions which many will dismiss as nonconforming to their socialization and the imprimatur of acceptable faith and doctrine. Nevertheless, Reynolds has made some clear challenges to standardized four-cornered, flat-earth criminal justice assumptions he feels are widely influential. The substance of his challenge should not be dismissed by ostrichism, nor by doctrinal aversion to the radical nature of Reynold's analysis.

TOMMY W. ROGERS
JACKSON, MISSISSIPPI

AGING CRIMINALS. By *Neal Shover*. Beverly Hills, Cal.: Sage Publications, 1985. Pp. 175. \$28.00 (cloth), \$14.00 (paper).

Neal Shover is a sociologist who has published several highly regarded articles on offenders' careers. In *Aging Criminals*, Shover investigates one of the few criminological truisms: there is an inverse relationship between men's ages and their involvement in property crime. At first glance this does not seem to be a particularly challenging issue. Some crimes, such as robbery and burglary, are like soldiering—they obviously require youth's abilities and bravado to match the risks. But men withdraw from lives of crime at different times; indeed, some never withdraw at all. So the problem is not simply to explain the relationship between crime and age but also to account for variations and exceptions.

Shover draws his data from official records and from interviews with fifty men over the age of forty years ($\bar{x} = 51$) who had been incarcerated one or more times for ordinary property offenses. Six subjects were incarcerated at the time of the interviews. Of the remaining forty-four, five claimed crime as their principal source of income and six admitted to occasional minor criminality. Thus about two-thirds of the sample had abandoned crime, some for a considerable period of time—in one instance for over a quarter of a century. Shover classifies his sample into three groups based upon the individuals' identification with crime and their success as criminals. Nearly three-quarters of the sample are categorized as "unsuccessful:" while they have or have had occasional aspirations to support themselves by crime, personal limitations and perhaps lack of luck made crime unrewarding. The remainder were either "uncommitted" to crime or were "successful" in that they maintained a livelihood through illicit means.

Shover first examines the consequences of being an ex-con. It appears that time does heal all wounds, even a prison record. Over the long run a "stigma erosion" occurs for those who stay out of trouble. Contributing to this erosion are social contexts in which prison records are not uncommon or in which one's background is simply of no interest to friends and coworkers. Shover is rightly critical of labeling theorists who fail to consider that time can diminish stigma. The major threat of resurrecting the stigma comes not from acquaintances and employers but from bureaucracies—especially the police—whose disclosure policies often seem calculated to cause unnecessary damage.

Shover's major theme is what happens during the aging process to turn men away from crime. His focus here is on "unsuccessful" offenders, since the "uncommitted" never had serious criminal ambitions and the "successful" felt no need to alter their conduct. Between the years of 35 and 45 the unsuccessful underwent a period of self appraisal. What had they accomplished? What were they going to accomplish? They concluded that their criminal years had been wasted, that their prospects for success in crime were not going to improve, that time was running out, and that they were getting tired of the hassles from the criminal justice system. A few had developed new legitimate commitments in their personal or working lives which replaced their commitment to crime. Shover concludes that these unsuccessful offenders modified their "calculus" about crime: as they aged they became less able to explain away the high risks and low profit which criminality entails.

Evidently Shover had no intention of testing a specific theoretic-

cal approach to explain why aging and diminished criminal behavior are related. There is nothing wrong with being atheoretical at the onset of qualitative research. But once the findings are known, most readers will expect an extended discussion of the implications, both theoretical and practical. According to Shover, the major deterrent to crime among the aging is an increased perception of risk relative to the likely profit. What does this finding contribute to our understanding about criminogenic factors? Shover briefly and tentatively considers control theory as a candidate for explaining the age-crime relationship. He rejects the theory for reasons unrelated to his own findings about risk and decision-making. Shover might have pointed out that control theorists almost totally ignore the impact of controls on risk perception, so for his purposes the theory provides little to work with. He then proposes Daniel Glaser's "theory of differential expectation" as a basis from which to argue that:

[w]ith advancing age, men increasingly become deterred, not so much because of the nature of external social controls, but primarily because of changes within themselves. These changes in expectations and perceived social controls appear to be more important, ultimately, in deterring criminal behavior than is objective variation in the social control apparatus and process (p. 125).

This is a provocative notion, but it is unclear how Shover can separate the effects of the objective social control apparatus from the changes in men's perceptions. The discussion is too terse to make sense of the findings.

Readers looking for practical implications will also be disappointed. There should be some speculation about whether the new calculus must develop at its own pace or can be speeded up by extraordinary means—perhaps some form of reality therapy—to convince prisoners that they are doomed to fail as criminals. There should be some consideration of whether the findings can be generalized to other types of criminals: white-collar, violent, or sex offenders. In short, the book's one flaw is that it leaves too many loose ends. There is little summary of what it all means, and no advice about where to go from here.

Nonetheless, *Aging Criminals* is an important book on a topic which is crucial for the understanding of criminal behavior. Anyone interested in criminology and corrections should read it. The book is an imaginative and revealing work which is logically organized and well written. The generous use of quotations from Shover's sample and from other biographical research enables Shover to strongly support his conclusions; further, it gives the research a feeling of flesh and blood. One reads about the regrets and bewilder-

ment of middle aged men trying to turn a corner and realizes that crime has more than one set of victims.

CHARLES H. MCCAGHY, PH.D.
DEPARTMENT OF SOCIOLOGY
BOWLING GREEN STATE UNIVERSITY

AMERICAN VIOLENCE AND PUBLIC POLICY. *Lynn A. Curtis*, ed. New Haven: Yale University Press, 1985. Pp. xi, 263. \$23.00.

American Violence and Public Policy is a series of essays on personal, cultural, national and international violence. Topics such as assault, robbery, homicide, nuclear weapons, gun control, and terrorism are discussed in reference to sociological concepts, institutions, structures, and micro- and macro-level theories. Violence is discussed from a fresh viewpoint. National statistics on crime are analyzed and criticized. There is, however, a notable absence of a discussion on violence resulting from organized and white-collar crime, a very important topic.

Two themes, well known to criminologists, are emphasized both at the very beginning of the book and again later by some authors. These are (1) the United States' crime rate is astronomical compared to the other countries of the world, and (2) the American incarceration rates are the highest of any industrialized nation in the world, and our prisons are an institution dominated by blacks and Hispanics. These themes are emphasized to remind us that violence is still one of America's most pressing social problems, resistant to easy solutions.

Wolfgang and Weiner analyze national crime statistics and conclude that there is a discrepancy between the rates reported by the Uniform Crime Reports (UCR), and the National Crime Survey (NCS), prepared annually by the U.S. Bureau of the Census for the Bureau of Justice. The UCR indicates that violent crime rose through the 1970s, reaching its highest levels in the first years of the 1980s, and then showed a steady decline. The NCS shows no regular fluctuations for forcible rape and aggravated assault, and it shows higher rates for robbery in the 1970s than does the UCR. The NCS shows that statistics on forcible rape, personal robbery, and aggravated assault did not change strikingly between 1973 and 1980, in contrast to the UCR, which shows that between 1969 and 1982, murder, non-negligent manslaughter, rape, robbery, and ag-

gravated assault rose significantly. The authors conclude that although the differences between the UCR and NCS are far from being resolved, violent crime has increased, but somewhat less than indicated by the UCR. The authors state that: crime is restricted to certain groups, namely, the urban young, males, and minority groups; victims in robbery, which is frequently interracial, are often whites; and injury in violent crime is higher when offenders and victims are intimates than when they are strangers. Wolfgang and Weiner conclude that the American crime rate is one of the highest internationally, in spite of the poor record-keeping practices of countries outside of Europe.

Comer analyzes the sociological variables responsible for black violence in the United States. He concludes that the family is the primary institution in society on which the nation must focus in order to eradicate crime and violence. He states that slavery in the United States disrupted the kinship system as well as the governmental, judicial, religious, social and economic systems in Africa. Because of this, blacks from West Africa who were brought to the United States were more susceptible to control by slavery, and more unable to adapt to the individualistic culture they entered after slavery than were other groups who had not experienced this type of communal and kinship social organization prior to their immigration to the United States.

Comer notes that because of the unequal opportunities afforded to blacks prior to the 1940s, and because of their particular background, society failed to develop a large enough black middle- and upper-income class. Even when governmental spending for blacks increased and barriers from discrimination were lifted, only the less traumatized black families were able to take advantage of the increased opportunities available in education, employment and business. Comer claims that much black-on-black violence is a reaction to this inability to cope with the larger society and to identify with black and white leaders and institutional achievements. Comer concludes that a national family program is needed.

Lavrakas, at the beginning of his essay, concludes that in contrast to the belief that crime exists because of the failure of the criminal justice system, the system, including the police, can only react to crime and cannot prevent it. He suggests that what is needed to prevent crime in neighborhoods is a caring and vigilant citizenry. Historically, he notes, people took for granted their responsibility for their own safety. He states that some programs implemented by Congress to fight crime, such as the Community Anti-Crime Programs (CACP), and Law Enforcement Assistance Administration

(LEAA), were not successful for political reasons or because the funds were cut by the Reagan administration. Lavrakas claims that the major barrier to successful implementation of citizen anti-crime policies in neighborhoods is the shallow knowledge base on which funding decisions for many of these programs have been based. He concludes that crime prevention starts by improving the quality of life at the local, neighborhood level.

Gordon and Morris evaluate the LEAA program. The authors state that the program called for the funding to be applied to all phases of the criminal justice system, but in practice most of the funding went to the police. Another weakness of the LEAA program was coordination, getting the various components of the criminal justice system to work and plan together.

Zimring discusses firearm policy from several fresh viewpoints. One gets the impression after reading Zimring's essay that research on gun control and firearms is just beginning and that there is much to be done. Zimring emphasizes that the attrition rate in handguns must be taken into account when speaking of the relation between crime and firearms, although he admits that the statistics on attrition rates are presently unavailable. Also, statistics on transfer of guns are also important in estimating the total population of handguns. He documents the relation between violent crime and handgun use. Zimring states that by 1980, about half of all American households reported some gun ownership and that about one-quarter to one-fifth of all households contained handguns. Future research must concentrate on the relationship between firearms and accidents, between firearms and suicides, costs and benefits of handguns, motives for handgun acquisition, and attitudes on loaded guns from both families who have them and those who have considered but rejected the acquisition of handguns. The complex relationship between violence and gun availability must also be evaluated because, Zimring claims, the time-series studies and multiple correlational cross-sectional analyses are weak in this area.

Zimring concludes that although the number of Americans willing to own guns has increased, so has the number of Americans opposed to gun ownership. He asserts that certain groups are vulnerable to increased gun ownership, namely, women, the young, the elderly and blacks. He emphasizes the need to focus on a national gun policy.

Ball-Rokeach and Short argue that criminal justice agents can only "put the lid on" any future collective violence. They claim that one reason for the decline in collective violence in the urban ghettos is the exodus of the black middle-class and the decline of the indus-

trial city as a viable political and economic entity. However, they claim that collective violence is again possible. They reiterate the details of the Miami riot in 1983 as an example; the riot was sparked by the shooting of a young black male by a Hispanic police officer. The authors claim that heightened expectations from blacks may elicit collective violence from far right groups. They also cite the violence from the Ku Klux Klan against the Vietnamese and the Jews and the counter-demonstration against the Klan in Washington, D.C., in 1982 as examples of violence from extremist movements. They cite conditions in prisons as a prospect for potential future violence. They claim that the urban underclass, a group deprived economically, socially, and politically, that inhabits the urban ghettos, is a potential force for future collective violence.

Kupperman reminds us of the growing dangers of terrorism and claims that this is in the realm of "unconventional warfare." It appears that empirically these dangers are escalating.

Curtis states that crime prevention starts in the neighborhood and that employment and family programs are needed in conjunction with neighborhood community programs. He cites Japan as an example of how the police become integrated into neighborhoods by visiting socially with their citizens and living in the neighborhoods where they work. The result is that Japanese citizens cooperate more with the police in Japan than do citizens in the United States.

The themes of all the authors are well integrated into the subject matter. The following points are emphasized:

1. The social and structural conditions for violence are alive, both individually and collectively, and exist in American society due to an increasing number of "the underclass" who are living in urban ghettos or inhabiting our prisons; the increase in the use of handguns; the increasing incidence of crime; the failure of such institutions as the family, the criminal justice system, and the police to completely deter crime; the increasing incidence of terrorism; and the politicalization of such groups as blacks, extremists, and the young. The belief that collective violence has permanently disappeared is false because the conditions for collective violence are alive and are growing. The danger is that the lid can blow off at any time.

2. The remedies for improving the situation are affirmative action programs, more employment opportunities for the underclass, the strengthening of the family as an institution, improvement in the

neighborhoods, the strengthening of community programs funded by Congress, and a national firearms policy.

Although much of what the authors propose as solutions have been stated before, the authors are to be congratulated for re-emphasizing the dangers and the importance of the problem and the need to bring about an immediate solution. We must profit from our past mistakes and our false sense of security.

JAMES R. DAVIS, PH.D.
DEPARTMENT OF PROBATION
NEW YORK CITY

THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT. By *Stephen P. Halbrook*. Albuquerque: University of New Mexico Press, 1984. Pp. 265. \$19.95.

Although it is one of the constitutional provisions that citizens and politicians argue about most, the second amendment heretofore has never been the subject of a scholarly treatise that is both comprehensive and in-depth and that is, in addition, based primarily on original sources. Stephen P. Halbrook's *That Every Man Be Armed* is the first such book.

Halbrook holds a law degree and a doctorate in social philosophy and does an excellent job of integrating the two disciplines as he traces the amendment from its roots in ancient Greece and Rome through modern court decisions.

Because of the controversial nature of gun control, thoughts on the second amendment have become polarized into two positions. The differences center on the interpretation of the words "the people" and "well regulated militia."¹ Gun control advocates take what has been termed the "collective rights" approach, which holds that the amendment confers no rights on individuals. The provision is seen as protecting the right of state governments, which represent "the people" collectively, to maintain a National Guard (i.e., "a well regulated militia"). Those who believe in an individual rights approach, in contrast, contend that "the people" is composed of numerous individuals who have an individual right to keep and bear arms independent of any state militia or National Guard. To them,

¹ The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S. CONST. amend. II.

a "militia" is composed of citizens who will bring their own arms and form organized and disciplined (i.e., "well regulated") resistance units should the need arise. *That Every Man Be Armed* clearly supports an individual rights approach.

Approximately one-fourth of the book is devoted to examining the political and legal thought that influenced the Founding Fathers. The analysis begins with Plato and Aristotle, moves to Machiavelli and then to later theorists such as Hobbes, Locke and Sidney.

Halbrook finds that pre-revolutionary British common law, the 1689 English Bill of Rights, Blackstone and many other sources support an individual right to keep and bear arms for individual and collective self-defense. These rights flow from the natural right of personal self-defense and the political right of the people to protect themselves from foreign aggressors and governmental oppression by a standing army. In contrast to these common law rights were various statutes and proclamations by which various governments sought to disarm their political and religious enemies.

American revolutionaries and the Founding Fathers claimed British common law rights and rejected oppression by King and Parliament. British attempts to disarm the colonists brought home the importance of individual arms ownership. Anticipating violent confrontation with Britain's standing army and government-controlled (i.e., "select") militias, some Americans, including George Washington and George Mason, began forming their own local militias. In 1775 when George Mason wrote of a "well regulated militia," he, like Machiavelli, was referring to able-bodied citizens who organized themselves into military companies in which each individual furnished his own arms. According to Halbrook, those who drafted and approved the second amendment intended to confer on individuals a right to have their private arms so that they could organize such militias.

Halbrook contends that the term "the people" in the amendment does not refer to the states or to the people collectively. The same two words are also used in the first, fourth and ninth amendments and clearly refer there to individual rights. Further, the tenth amendment refers to both the states and the people, indicating that the drafters could, when necessary, distinguish the two.

Halbrook moves on to the fourteenth amendment after discussing court opinions and commentary from the first half of the nineteenth century (which he finds overwhelmingly supportive of an individual rights interpretation). Halbrook's analysis of the debates over the amendment and the contemporary political climate—in-

cluding radical republican sensitivity to the disarming of freedmen by the Klan and southern state governments—leads him to conclude that those who drafted and approved the fourteenth amendment believed that the second amendment conferred individual rights, and that the fourteenth amendment was intended to make those individual rights secure from state infringement. Thus, after passage of the fourteenth amendment, both federal and state gun control laws had to meet second amendment requirements. Halbrook, however, provides very few specifics as to how far state and federal governments may go in regulating arms and ammunition.

A review of the handful of U.S. Supreme Court cases dealing with the second amendment shows that there is much ambiguity, some sloppy research and little in-depth analysis of the historical and philosophical background. We are still awaiting a definitive ruling on the core meaning of the amendment.

Although Halbrook generally makes a clear and convincing case, many readers might prefer that he more frequently and directly address the points of those who have taken a contrary position. He does this only occasionally in the book. For instance, to those who argue that an individual right to keep and bear private arms would be dangerous and ineffective to prevent oppression, Halbrook responds that even if that were true, the “Founding Fathers may be overruled only by a constitutional amendment” (p. 194). After analyzing a federal court decision cited by many with opposing viewpoints, Halbrook convincingly shows that the opinion “falls below the undergraduate level in scholarly standards” (p. 189).

If, as Halbrook contends, the time is ripe for the U.S. Supreme Court to take a fresh look at the second amendment, instead of attempting to reconcile the ambiguous case law, the Court cannot, in an intellectually honest manner, ignore *That Every Man Be Armed*. One need not, however, be a legal scholar to follow Halbrook. His book is suitable for a much wider audience than most law review articles on the subject.

The relatively short length of this book belies the tremendous amount of time and effort that must have been put into it. Halbrook’s assertions are well documented and he has uncovered important new material. On a topic such as this, where opinion is largely polarized, one can expect a rejoinder to *That Every Man Be*

Armed. We will all benefit if future works rise to the level of scholarship established by Dr. Halbrook.

RAYMOND G. KESSLER
DEPARTMENT OF CRIMINAL JUSTICE
MEMPHIS STATE UNIVERSITY

PREDICTION IN CRIMINOLOGY. *David P. Farrington and Roger Tarling*, eds. Albany, N.Y.: State University of New York Press, 1985. Pp. 278. \$39.50 (cloth), \$14.95 (paper).

Scientific advancement and vitality can be measured, in part, by the capacity of theoretical advances and research findings to increase the options available to scientific consumers. Important among these consumers are those who formulate and implement public policies. Successful prediction, which is both an outcome and index of scientific advancement, widens the fields of potential policy and practical applications. An attractive feature of enhanced criminological prediction, for instance, is that, based on the selective supervision and confinement of the most frequent, serious, and persistent offenders, fewer offenders might need to be placed under the jurisdiction of criminal statutes; additionally, the severity and duration of these statutory impositions might be reduced. Absent predictive capabilities and the option of a selective response to offenders which this approach can potentially provide, the umbrella of judicial impositions might have to be greater than is theoretically supported, ethically justified, or economically feasible and prudent.

Prediction research remains a promising approach to the study of multi-causal and correlative processes within theoretical frameworks which investigate, for example, the onset and development of criminal behavior and the dynamics of criminal justice organization, management, and decision-making. This research has also played a major role in identifying factors and processes related to the recurrence of serious criminal behavior. This latter application is rooted largely in the search by criminal justice agencies both to improve the assessment of recidivism risks and offender dangerousness and to develop effective case-management strategies based upon these assessments. However, although widely acknowledged and adopted as an important technical resource and central methodological tool in criminology and criminal justice, prediction research

has not been a panacea in the pursuit of fuller theoretical explanations and greater administrative rationality and effectiveness.

Farrington and Tarling's *Prediction in Criminology* is an important, comprehensive review of and contribution to the ongoing work in criminological prediction. Researchers and practitioners at the forefront of British, American, and Canadian prediction work present insightful statements of current findings, applications, and methodologies and highlight some of the most sensitive and pressing issues concerning the broader social and political context in which prediction research occurs. Ethical and legal dilemmas are explored with respect to applying prediction methodologies to the potentially coercive management of individuals. One of the more challenging discussions in the volume focuses on the tension between civil liberty and the authority and responsibility of social control agencies to employ predictive explanation in order to intervene in the lives of individuals who are at-risk of becoming offenders or who are already so involved. Some key issues in this regard concern the kinds of information that should be used in prediction, the justification for predictive intervention, the nature and consequences of prediction uncertainty and error, and the collaborative mechanisms which might be used to efficiently and ethically implement prediction results.

Traditional applications of prediction include attempts to identify delinquents before the behavioral or officially recorded onset of their delinquency, the assessment of dangerousness (usually among mentally disordered persons), the determination of probation and parole risk, correctional treatment planning and evaluation, sentencing decision-making, and the selection of high-risk and high-rate serious offenders for purposes of selective incapacitation, specific deterrence, or treatment regimens. *Prediction in Criminology* builds upon the work done previously in many of these areas and introduces prediction analyses of other less investigated topics, e.g., escapes from correctional institutions and self-inflicted injuries by young female offenders. Many other criminal justice applications are possible, underscoring the wide potential utility of the prediction methodology. Aggregate prediction is also examined with respect to models of the criminal justice system which can aid substantially in the formulation and evaluation of criminal justice policies from the perspective of a network of mutually influential organizational components.

In addition, *Prediction in Criminology* presents penetrating critical reviews of the major methodological issues in criminological prediction. Several selections discuss the advantages of alternative formu-

lations of outcome measures. For example, defining recidivism as the presence of an infraction within a fixed observation period is less informative than defining it as the time until the next offense, because the former measure discards temporal information which is usually available or easily retrievable. Other plausible outcome measures might be the frequency, seriousness, or mix of infractions committed by an offender. Self-report and observational indicators of each recidivism criterion must also be considered as potentially productive and complementary measures, as several of the contributors recommend. The convergence and respective benefits of these outcome measures are evaluated in one of the selections. Several contributions compare alternative strategies for choosing predictor variables and for combining information into a composite statistical prediction of future criminal or dangerous behavior. The benefits and pitfalls of several methods of evaluating the accuracy of prediction models are also assessed. Reviewed also is some of the most up-to-date work on estimating the magnitude of the loss of predictive accuracy prior to the application of prediction results to populations other than those on which the prediction models were developed.

One of the recurrent themes in *Prediction in Criminology* is that statistical sophistication in prediction has outdistanced the field's capacity to provide valid or reliable measurements of theoretically relevant prediction variables. To progress substantially, prediction research will require quality data on theoretically relevant variables. As several of the presentations note, the rival statistical methods employed thus far have yielded comparable levels of accuracy: the more sophisticated multivariate models fare somewhat better in the construction samples, whereas the less sophisticated models fare as well, if not better, in the validation samples. Furthermore, alternative prediction models generally identify the same individuals as high or low recidivism risks. Importantly, competing prediction models are comparably robust when employing biographical and offense information of varying reliabilities, producing similar levels of predictive association with the outcome measure. Reported findings also indicate that legally repugnant predictor variables, such as race, augment only marginally, if at all, the explanatory power of those prediction models which omit these variables.

The editors of and contributors to *Prediction in Criminology* are cautiously optimistic that better measurement of theoretically relevant predictor variables, in combination with advancements in methodologies for designing and evaluating prediction studies, will result in progress beyond the moderately successful efforts to date.

These advancements will have to be wed, as one of the contributors urges, to a coordinated team approach to criminological and criminal justice prediction in which researchers, policy analysts, and practitioners work in concert to develop and evaluate ethically responsible applications. If the uniformly high quality of the contributions to this volume can be used as a barometer of what lies ahead, prediction research is likely to have a productive future.

Advancements will surely be made both in methodology and in the effective use of results. While these developments unfold, corollary ethical, moral, and legal dialogues must be vigorously encouraged if the results of prediction efforts are to find a permissible and enduring place in the social and political fabric of democratic institutions. *Prediction in Criminology* is an important milestone on the road to a greater understanding of prediction which will undoubtedly stimulate creative new work in the area.

NEIL ALAN WEINER

RESEARCH ASSOCIATE

SELLIN CENTER FOR STUDIES IN CRIMINOLOGY AND CRIMINAL LAW

THE WHARTON SCHOOL, UNIVERSITY OF PENNSYLVANIA

VICTIMIZATION IN SCHOOLS. By Gary D. Gottfredson and Denise C. Gottfredson. New York: Plenum, 1985. Pp. vii, 350. \$29.50.

In their preface, the Gottfredsons explain their twofold purpose: "if the public schools are to be improved, if we are to achieve educational equity rather than leave the have-nots of our cities to flounder in deteriorating schools, then we must understand what makes some schools orderly and others havoc-ridden." In line with this purpose, the authors draw upon victimization data collected by the National Institute of Education from 31,373 students and 23,895 teachers in 623 public secondary schools. Since the Gottfredsons wanted to *help improve the schools*, rather than merely to find out why individuals were victimized, they did not utilize the individual-level data that were available. "None of our research bears directly on differences in the behavior of individuals within these environments" (p. 15). Instead, the authors aggregated data by school and tried to understand why some schools had higher rates of "disorder" or "disruption" than others.

One reason the authors adopted this research strategy may have been the absence of self-reported offense data from the stu-

dents, who were presumably responsible for much of the victimizations reported. That is to say, they could not explain the behavior of perpetrators because they had no means of distinguishing perpetrators from other students. Clearly, however, there was another reason. The Gottfredsons did not want to criticize disadvantaged kids. Thus, there was very little mention of crime or violence.

The definition of the criterion as 'crime' was eschewed because this word implies a legal definition . . . *Disorder* and *disruption* are used because they appear to capture the essence of the kinds of misconduct involved, some of which by themselves are relatively minor and some of which certainly do constitute crime

(pp. 25-6) (emphasis in original).

This decision about nomenclature contributed to their failure to make what might have been helpful distinctions. The Gottfredsons included violent acts, such as robbery and assault, as well as nonviolent behavior, such as larceny from lockers and desks, in their global measure of overall disruption, in their measure of teacher victimization, and in their measure of student victimization. Had they been more sensitive to the problem of violence and the question of who perpetrated it, they might have considered the possibility that intruders, rather than students, committed some of the more serious, violent crimes, especially those against teachers in central-city schools. They say virtually nothing about intruders in the book.

Not distinguishing between non-violent and violent victimizations and between student- and intruder-perpetrators contributed to low relationships in the data analysis. For example, the Gottfredsons found weak positive correlations between the rates of teacher victimization and the rates of student victimization by individual school. They also noted that community characteristics are "strongly linked" to rates of teacher victimization, but are "fairly independent" of rates of student victimization. Their comment: "an interesting puzzle" (p. 72). If they had kept the possibility of intruder perpetrators in mind, they would have realized that teachers were more likely to be robbed or otherwise victimized by intruders, whereas students were more likely to be victimized by fellow students. Consequently the low correlations would not have seemed so puzzling.

The Gottfredsons point out that theirs is an organizational analysis and warn researchers "with a reductionist bent" that the implications of their research "for individual processes are ambiguous." "Our concern here is with schools as human aggregates rather than as settings where individual-level processes are played out" (p. 30). The authors seem to be saying that the thefts, assaults, and robber-

ies occurring in a school cannot be explained except in terms of the collective attributes of the school. This reluctance to talk about "causes" on the individual level is least convincing in their short chapter entitled "School Security and Disorder."

The Gottfredsons begin their analysis of school security measures by pointing out that such measures, even if successful in preventing crime, affect *opportunities* to engage in "disruption." "A studentry that refrains from beating up on its members or on teachers because school security measures prevent it is not necessarily displaying more virtue than an unrestrained studentry characterized by mayhem" (p. 118). Apparently the Gottfredsons are more interested in the moral character of students than in their overt behavior, but their dependent variable is *behavior*, not *character*. The research issue is whether security measures can or cannot reduce school violence against teachers and students.

On the issue of the effectiveness of security measures, the Gottfredsons do not address the complex problem of causal order in an adequate fashion. They show that there are strong *positive* correlations between the extensiveness of security measures and *teacher* victimization (but no relationship with *student* victimization). They say "we are obliged to note that these results do *not* provide any support for suggestions that security measures increase safety" (p. 121) [emphasis in original]. The authors conclude that the absence of a *negative* relationship between the extensiveness of security measures and teacher and student victimization rates disconfirms the proposition that security measures prevent school crime-disorder. That would be a correct inference if security measures were adopted by the randomization procedures of a well-conducted experiment. In the real world, however, high rates of crime-disorder cause school officials to devote greater effort and resources to security measures.¹ Thus, a *positive* correlation between the victimization rate in schools and the extensiveness of their security measures is quite plausible. Had the Gottfredsons contrasted the strong positive relationship with teacher victimizations and the absence of any relationship with student victimizations, they would have been on stronger ground. They might have argued that security measures were, surprisingly, more effective for protecting *students* than for protecting *teachers*.

The Gottfredsons include a chapter discussing policy recommendations ("Advice for Policymakers," pp. 170-80). Many of their recommendations seem eminently sensible, such as pointing out

¹ Toby, "Violence in School," in M. TONRY AND N. MORRIS, CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH (1983) at 25-6.

that "spectacular results are not to be expected immediately" (p. 179) and that wise policymakers should "make explicit plans to evaluate programs" (p. 180), especially pet notions about what will reduce school disorder. Unfortunately, the authors' policy recommendations bear only a tenuous relationship to their research. For example, the Gottfredsons believe that smaller schools would have less disorder and would constitute a better environment for learning. Perhaps so. But there is no relationship at all between school size and *student* victimizations either in junior or senior high schools (pp. 86-7). And the zero-order relationships between *teacher* victimizations and school size (.36 for junior high schools and .25 for senior high schools) were reduced to a partial correlation of .11 for junior high schools and, although not presented, less for senior high schools. This is not a strong research basis for an important and costly recommendation.

In sum, the Gottfredsons are to be complimented on their diligence in presenting fascinating data that bear on peacekeeping in public schools. Somehow, however, the result of their labors is not terribly illuminating. Part of the problem stems from the limitations of a cross-sectional study without a measure of self-reported crime. Apparently, another part of the problem is the depth of the authors' sympathy for children who receive poor education in chaotic and violent public schools. The Gottfredsons are reluctant to point accusing fingers at perpetrators of the violence the undermines school order.

JACKSON TOBY
PROFESSOR OF SOCIOLOGY AND DIRECTOR,
INSTITUTE FOR CRIMINOLOGICAL RESEARCH
RUTGERS UNIVERSITY

CONFRONTING CRIME: AN AMERICAN CHALLENGE. By *Elliott Currie*.
New York: Pantheon Books, 1985. Pp. viii, 326. \$19.95.

As science has become increasingly powerful in affecting public policy, the line between scientific analysis and political analysis has sometimes been difficult to discern. Elliott Currie, in his work *Confronting Crime: An American Challenge*, provides a political agenda to reduce violent crime in the guise of scientific analysis. As such, Currie's book is deficient in two important ways. First, the analysis of the existing literature on crime is consistently biased to substantiate

the position that the control of crime can only be achieved through fundamental social change. Second, the political program proposed by Currie consists of policy goals but contains no viable strategies to achieve these goals.

No one would seriously question the observation that in recent years the approach to controlling crime in American society has placed greater emphasis on the role of the criminal justice system. Currie identifies James Q. Wilson as the architect of this approach—what Currie calls the “conservative model” of crime control. Much of the discussion of this current approach (which is contrasted to a liberal model that emphasizes the role of class and the concept of political economy to explain crime) and much of the criticism of scholarship supporting this position is directed at Wilson. It is not unusual in political writings to identify an opponent. This is certainly the case in Currie’s work.

Unfortunately, by focusing on the opponent and not the theory and research behind the “conservative model,” the ideas underlying this “conservative model” are not fully considered. For example, one of the central elements of the current approach to crime control is the effort to focus the resources of the criminal justice system on chronic, repeat offenders. While Currie notes that violent crime and violent crimes committed by certain individuals are essential concerns of his agenda for crime control, he fails to provide an understanding of the way in which the focus on repeat offenders has placed the criminal justice system at the center of crime control efforts. Chronic, repeat offenders are rare. Crime in the life cycle of most criminals is a rare event. For example, in the highest crime rate areas of the most depressed sections of urban areas, the proportion of individuals who engage in serious repeat criminal behavior may be no more than ten or twelve percent. It has become increasingly clear that explaining the rare events of chronic offenders or the rare events of crime in a non-chronic life cycle requires concepts that are more specific than the general conditions of social and economic life. The vast majority of individuals under these deplorable conditions somehow manage to maintain a lifestyle that is relatively (in comparison to chronic offenders) crime-free. The majority of the inhabitants of such areas remain free of serious, violent crime as adults. Chronic offenders represent the primary focus of the “conservative model,” which calls for modes of explanation and response that, while including general social factors, places greater emphasis on explanatory factors at the individual, small group or situational level. Currie fails to adequately consider this

consequence of the recent research on careers of criminals and especially delinquents.

Currie's commitment to the role of macro-social and economic factors in causing and controlling crime is reemphasized in his discussion of the critical relationships between work, welfare and crime. Currie contends that unemployment is a powerful factor in the generation of criminal behavior and that welfare programs, when properly funded and staffed, can effectively reduce unemployment and crime. He reaches this position from a review of a variety of studies on these topics. It is in this review (and similar reviews of the relationship between crime and family, community, and inequality) that Currie's ideological bias and political agenda are most clear. When the research reviewed is consistent with his position that work programs or welfare programs are effective in controlling crime, Currie accepts the results. When the results are inconsistent with his position, the research is then critically analyzed to find weaknesses in the design or program that would account for the findings.

The primary evidence cited by Currie for the strength of the relationship between unemployment and crime is the work of Harvey Brenner. Brenner's work is a macro-level, cross-sectional analysis of the relationship between recorded crime rates and recorded unemployment rates. At such a level of analysis, a relationship exists between these indicators in a simple regression model. However, there is little in Brenner's work or in Currie's analysis that substantiates the notion that at an individual level unemployment and crime are substantially linked *particularly for chronic, violent offenders*.

In the discussion of welfare programs and crime, Currie argues that programs such as the Job Corps and Head Start have had a significant impact on their participants. While one can accept, at least for the point of argument, that these programs did have an impact on certain aspects of participants' social behavior, there is little empirical work that demonstrates that these programs had any impact upon delinquent or criminal behavior. Currie's review of these efforts emphasizes the limited nature of these programs and the fact that they were not continued long enough or were not funded sufficiently to fully achieve their goals. Throughout his analysis of the relationship between work, welfare, families, community, etc., and crime, there is a consistent tendency to interpret the data as supportive of the conclusion that crime is strongly related to general social problems. From this conclusion, Currie further concludes that only through the manipulation of these general social

conditions can crime be controlled. If only the results of criminological research on these (and other) topics were so consistent and conclusive.

Currie's reading of the research literature on the correlates and causes of crime is influenced heavily by his notion of what approach should be taken to control crime. As such, Currie has provided a very valuable service to those who want to marshal support for a particular political or ideological position. He has not, however, provided a very useful analysis for the further development of our understanding of crime.

At the political level, Currie's work is even more disappointing. He lays out a program for reducing crime that includes the following emphasis in the criminal justice system: there should be a stronger response to domestic violence by the police and courts, increased attention should be paid to innovative police strategies including the use of foot patrols and the hiring of youths for auxiliary police work, and middle-range sanctions, including intensive probation and community service, should be used more frequently. Outside the criminal justice system Currie emphasizes: the exploration and development of intensive rehabilitation programs for youthful offenders particularly in the community, community-based comprehensive family support programs emphasizing local participation, and approved family planning services and support for teenage parents. Finally, and most importantly, at the social level Currie's program involves paid work leaves and more accessible child care for parents with young children, high quality early education programs for disadvantaged children, expanded community dispute resolution programs, comprehensive locally based services for victims of domestic violence, intensive job training, strong support for equity in pay and conditions, substantial permanent public or private job creation in local communities at wages sufficient to support a family bread-winner, and, finally, universal and generous income support for families headed by individuals outside the paid labor force.

At one level these are perfectly reasonable (and frequently articulated) goals of public policy or what Currie calls a "blue-print" for public policy. It would be a much better world if we had less poverty, less ignorance, less hatred, and less unemployment. However, as a political document Currie's work fails because it does not lay out a strategy to achieve these goals. How are we to bring about these increases in public support for education and employment? In the last presidential campaign a proposal to increase taxes to minimally achieve some of these goals was met with a resounding

negative response from the electorate. Policies without strategy represent, at best, an incomplete prescription—particularly when these policy goals have so often been suggested in the past. While the literature does not indicate that most of the programs suggested by Currie would substantially reduce chronic, violent crime, the programs are desirable in and of themselves. If Currie or anyone else can develop the political, technological, and strategic agenda to achieve these goals, it should be encouraged. As Currie notes, “[t]he obstacles [to achieving his agenda] are ideological and political.” The critical issue for Currie is how to overcome these obstacles.

Confronting Crime: An American Challenge is a document that will reawaken our thinking about the social causes of crime; however, it will not significantly advance our understanding of these causes. Nor will it advance our understanding of the political strategies that must be developed in order to achieve the changes suggested in this book. At best, this book represents a competent effort to marshal a large body of research in support of a particular political ideology and a set of widely accepted public policy goals. At the critical strategic level, this book is strangely silent, and thus as limited as the “liberal criminology” Currie purports to go beyond.

CHARLES F. WELLFORD
INSTITUTE OF CRIMINAL JUSTICE AND CRIMINOLOGY
UNIVERSITY OF MARYLAND

STRAFRECHTSENTWICKLUNG IN EUROPA. *Albin Eser and Barbara Huber*, eds. Freiburg: Eigenverlag Max-Planck-Institut für ausländisches und internationales Strafrecht, 1985. Pp. 917.

There is probably no place on earth where more comparative law work is being done than in Freiburg, Germany.¹ For several decades the Max-Planck-Institute for Foreign and International Criminal Law has been turning out a steady stream of serious scholarly studies dealing with various subjects falling within the scope of comparative criminal law, criminal procedure and criminology.

Strafrechtsentwicklung in Europa, edited by Institute Director Albin

¹ Other centers of organized systematic institutional comparative criminal law activity include the Council of Europe and the United Nations. See Jescheck, *The Significance of Comparative Law for Criminal Law Reform*, 5 HASTINGS INT'L & COMP. L. REV. 1, 15-17 (1981).

Eser and Institute Research Associate Barbara Huber, represents one of the latest in a series of important contributions and materials produced by the Institute's Criminal Law Research Group. It consists of a collection of national reports presenting an overview of the most significant recent European developments in the area of criminal law. Written by individual specialists at the Institute, each national report contains a preliminary remarks section designed to quickly inform the reader of landmarks and milestones in criminal law in the country under study. A national report typically proceeds to describe recent legislative and regulatory activity, criminal law reform projects, caselaw developments, and noteworthy scholarly writings on a wide range of topics relating to criminal law and corrections.

Since the scope of such an inquiry is potentially vast and, if done in depth, could easily reach encyclopedic proportions, the editors had to make some hard choices. For one thing, only "recent" developments are covered, and by "recent" the editors set a time frame of 1982-84. To be sure, some of the national reports cover material falling somewhat outside that period of time, but generally the editors attempted to confine the materials to these temporal guidelines.

Another editorial problem—and one with which all comparatists are familiar—has to do with source material. Since not all countries publish their legislation, caselaw, and legal literature as regularly, promptly and completely as do others, it was not possible for the editors to include reports on all European countries in this book. Thus, the volume contains national reports on Austria, Denmark, the Federal Republic of Germany, France, the German Democratic Republic, Greece, Ireland, Switzerland, Turkey, and the United Kingdom, but none on Albania, Belgium, Bulgaria, Finland, Hungary, Luxembourg, Norway, Roumania, Yugoslavia, or the Union of Soviet Socialist Republics. The editors intend to close these gaps in coverage in future volumes outlining subsequent developments in European practice.

This is an important book providing accurate, timely and useful information. Scholars, judges and practitioners will refer profitably to it. Legislators contemplating reforms to improve their criminal laws or to bring their laws into harmony with those of other countries should use this book to gain insight into the experiences and approaches of their counterparts elsewhere. Americans with a reading knowledge of German will find *Strafrechtsentwicklung in Europa* an

indispensible research tool for working in the comparative criminal law area.

JOSEPH J. DARBY
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

THE RIGHT TO KEEP AND BEAR ARMS: A CONTINUING AMERICAN DILEMMA. By *Earl R. Kruschke*. Springfield, Ill.: Charles C. Thomas, 1985. Pp. ix, 158. \$24.50.

The Right to Keep and Bear Arms convincingly illustrates the debate over the second amendment as a difficult dichotomy. Dr. Kruschke asserts that the central, underlying difficulty in interpreting the second amendment has been the question of whether the right to keep and bear arms is a "collective" or an "individual" liberty. Kruschke reviews historical arguments and analyzes court opinions supporting each side of the argument. He then discusses the United States Supreme Court's four decisions dealing with the second amendment. Kruschke concludes with a pro-individual right assertion and a short commentary on the ramifications of both positions.

Support for the "collective" view of the right to keep and bear arms originates in the opening clause of the second amendment to the United States Constitution. That clause states "A well regulated Militia, being necessary to the security of a free state . . ." ¹ This clause has been relied upon by courts in support of the "collective" view. For example, the court in *City of Salina v. Blaksley* ² stated that "[t]he defendant was not a member of an organized militia . . . and was therefore not within the provision of the bill of rights and was not protected by its terms." Kruschke cites other cases that employ similar reasoning.

Further support for the "collective" view comes from the courts' reluctance to acknowledge the applicability of the second amendment to the states. Kruschke provides citations to decisions which relied on this reasoning as well. For example, in *Harris v. State* ³ the court announced "[t]hat amendment applies only to the Federal Government and does not restrict state action."

Courts have endorsed the "individual" view with equal enthusi-

¹ U.S. CONST. amend. II

² 72 Kan. 230, 83 P. 619 (1905).

³ 83 Nev. 404, 432 P.2d 929 (1967).

asm, however. To illustrate this philosophy, Kruschke cites eleven cases. After quoting the second amendment to the United States Constitution and the Idaho Constitution, the court in *In re Brickley*⁴ noted that “[u]nder these constitutional provisions, the legislature has no power to prohibit a citizen from bearing arms in any portion of the state”

Kruschke then discusses the four United States Supreme Court decisions that deal with the second amendment. Three of the cases were decided during the nineteenth century; the last case was decided in 1939.

In *United States v. Cruikshank*⁵ the Court stated emphatically that the Bill of Rights (and thus the second amendment) applied only to Congress. However, in *United States v. Miller*⁶ the Court abandoned this position of non-incorporation of the Bill of Rights. Instead, the Court based its decision on a rejection of an “individual” right viewpoint. The Court stated that

[i]n the absence of any evidence tending to show that possession or use of a “shotgun having a barrel of less than eighteen inches in length” at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.

After reading *The Right to Keep and Bear Arms*, one will yearn for a fresh Supreme Court interpretation of the second amendment. If Kruschke’s work is lacking, it is because of his lack of detail. However, the book is an excellent resource. It is a superb introduction to the second amendment controversy. The book is easy to read, and it provides the serious constitutional law student with a clear understanding of past and present philosophies underlying the second amendment dichotomy. Additionally, Krusche’s extensive editing of court opinions provides a welcome continuity of thought.

SAMUEL HEASTER
PENNSYLVANIA STATE UNIVERSITY

⁴ 8 Idaho 597, 70 P. 609 (1902).

⁵ 92 U.S. 542 (1867).

⁶ 307 U.S. 174 (1939).