

BOOK REVIEWS

STUDIES OF LAW AND PSYCHIATRY

***The Rule of Law and The Role of Psychiatry.* Justine Wise Polier. (Baltimore: The Johns Hopkins Press, 1968, xii + 176 pp. \$7.95.)**

***The Jury and the Defense of Insanity.* Rita James Simon. (Boston: Little, Brown and Company, 1967. xiv + 269 pp. \$10.00.)**

***Mental Illness, Due Process and the Criminal Defendant: A Second Report and Additional Recommendations.* Special Committee on the Study of Commitment Procedures and the Law Relating to Incompetents. Association of the Bar of the City of New York, J. Kenneth Campbell, Chairman, in cooperation with Fordham University School of Law. (New York: Fordham University Press, 1968. xv + 261 pp. \$5.95.)**

Reviewed by: William Cunningham, S.J.

Like the central panel of a triptych altarpiece, Judge Polier's work poses the central theme of these studies of law and psychiatry, while the other two works focus more detailed attention on subordinate themes. Judge Polier's work, an expansion of her 1966 Isaac Ray Award lectures, is chosen as the central "panel" because of its unity of theme and its balance of interest.

One could summarize the purpose of Judge Polier's lectures in several general statements. First, effective action in the fields of both law and psychiatry has in the past been blocked by society's fear and dislike of the criminal, the juvenile delinquent, the mentally ill, and the poor. But while the legal profession has shown an increasing concern for

judicial due process in dealing with these groups, this concern cannot serve as a substitute for social services, or be regarded as an end in itself. It is the task of both the legal and the medical professions to indicate ways in which law and psychiatry can work together to end the segregation and exile that have been the lot of the deviant, the mentally ill and the poor. And if the rule of law and the role of psychiatry have grown and become interrelated simultaneously, it remains for both to discover where each is going and how they might be mutually helpful to one another. To this end the two professions must see each other as allies, rather than foes or strangers.

Judge Polier shows in the introductory chapter that only suspicion and distrust between the two professions explain the harmful gulf between them. Psychiatrists retreat from the responsibility of predicting success or failure in compulsory therapy. But this fear is based on an inadequate understanding of the distinction made in the legal system between diagnosis and treatment. Moreover, there has been too ready an acceptance of the theory that, while medicine must recognize a wide spectrum of mental health and illness, the law must act on the basis of clear lines of demarcation between them.

Society's reactions complicate the picture since many prefer static law in this field over a dynamic law based on a science they fear. Since it fears the deviant and realistically recognizes the limitations on methods of control, society seeks new ways to use, but not be controlled by, the knowledge being presented to it by the social sciences. And the wall preventing application of new knowledge by civil and criminal courts is buttressed by a false complacency in the community that the new services supposedly dealing with the problems of our society are actually being responsibly performed. The lack of trained clinicians reduces the likelihood of competent performance. All of these problems are aggravated by a general lack of social conscience about them.

Chapter 2 brings out the shift in recent years from a view of law as negative and restraining to a recognition of "law as a social institution that must be understood and modified if new concepts for treatment are to be made widely available, and if preventive mental health services are to be established" (p. 33). She points to developments such as the Supreme Court's utilization of social science in *Brown v. Board of Education*,¹ growing federal legislation dealing with problems of physical and mental health, and the increasing use of federal funds for treatment.

1. 347 U.S. 483, 493 (1954).

But she warns that the proliferation of administrative agencies can obscure the fact that "the merit of social legislation will be determined by two factors: the development of services essential to translating legislative purpose into reality and the provision of adequate safeguards to protect the rights of the individual subject to the legislative program" (p. 68).

The third chapter explores the barriers to cooperation between law and psychiatry in creating programs to substitute rehabilitation and treatment for punishment. The civil-servant-psychiatrist not only plays an ineffectual, minor role in the legal process, but he is too often only a moralist due to his long separation from advanced findings in his field. Granting a legitimate community concern for self-protection, Judge Polier contends that a society within which individual dignity is ignored is a milieu at odds with a therapeutic approach. Yet individual treatment falls victim to the pressure of heavy caseloads which reduce the quantity and quality of psychiatrists available and induces the resort to institutional treatment.

The fourth chapter contains Judge Polier's most original contributions. She describes the philosophy of child development and rehabilitation which led to the flexible procedure of the juvenile courts, and highlights the goal-defeating effects of untrained judges and inadequate mental health services in these courts. The persistence of these crucial flaws led to Supreme Court examination of due process in juvenile court proceedings and the spelling out of minimal due process safeguards.² These moved the juvenile court in the direction of adult criminal court procedure, though leaving many differences.

The gap that remains between promise and practice in these courts is part of a larger pattern of society's neglectful response to whole groups of children. Judge Polier even raises the question "as to whether in our society a court should continue to dispose of the lives of children" (p. 137) and notes that this question is rarely raised by others. As an alternative to the adversary process, she suggests the use of local family councils, composed of experienced social workers, in which each case is dealt with as far as possible in consultation with the family. The court would be involved only where facts are in dispute. This emphasis on the role of the social worker may meet resistance from the legal profession.

2. *Kent v. United States*, 383 U.S. 541 (1966); *In re Gault*, 387 U.S. 1 (1967).

In the final two chapters she discusses the adequacy, both actual and potential, of legal and medical institutions for the needs of the poor. The general public remains distrustful of the mentally ill, and lawyers have failed to face the human effect of legal neglect of the poor. Medical organizations have similarly been resistant to the provision of adequate mental health services for the poor. Nor can "public assistance as now given to the poor, with its subpoverty standards and its humiliating procedures, [be] consistent with either sound concepts of law or of mental health . . ." (p. 151).

Law should provide the framework for healthy individual growth, and psychiatry should provide new insights for the promotion of that growth; but it is not clear whether these disciplines can be more effective in attacking specific problems or broader social issues. What is certain is that these professions must translate "into action the commitment to the worth of the individual, long embodied . . . in our Constitution, now rediscovered and rewritten into law" (p. 169).

The report, *Mental Illness, Due Process and the Criminal Defendant*, is an outgrowth of the issuing committee's earlier work³ which led to New York's revision in 1965 of the laws governing hospitalization in civil institutions. This current report deals with the hospitalization of patients at the two mental institutions in New York for the so-called "Criminal Insane," Matteawan and Dannemora.

In addition to a summary and five appendices containing statistical and historical data and the contents of current legislation, the report offers many recommendations in its four chapters. Special attention is given to problems raised by the postponing of criminal action against mentally ill defendants. Each recommendation made by this committee of lawyers, judges, and psychiatrists, is accompanied by a historical synopsis of the laws under consideration, the administration of those laws, and specific data on the patients and institutions involved. Recommendations concern mentally ill prisoners under sentence, former prisoners and the allegedly dangerously mentally ill, the mentally ill defendant, and persons acquitted of crime by reason of insanity.

The committee, for instance, recommended that:

Psychiatric examinations ordered by the courts should expressly be allowed to be conducted on an out-patient basis without mandatory incar-

3. COMMITTEE OF THE ASS'N OF THE BAR OF THE CITY OF NEW YORK, IN COOPERATION WITH THE CORNELL UNIVERSITY LAW SCHOOL, *MENTAL ILLNESS AND DUE PROCESS* (1962).

ceration or hospitalization in any case in which there is no reason to suspect the defendant to be dangerously mentally ill or in need of immediate hospitalization, providing the director of the examining hospital or clinic or other appropriate official agrees and providing the defendant is otherwise entitled to release on bail. The period of remand for observation at the place of incarceration or in a hospital should be limited to thirty days, subject to extension for cause where necessary (pp. 90-91).

The New York statute permits the confinement of a defendant for up to 60 days for observation, either in jail, state or county hospital, or prison wards of city hospitals in New York City. Yet the statistics presented indicate that the thousands of persons thus committed far exceed the number actually judicially declared unfit to proceed. Since bail is denied those in such confinement, many persons eventually acquitted must spend 60 days in an institution for an examination which usually takes only a few hours. "Protection of the defendant," the report concluded, "against the possibility of an unfair trial, and of the public against an unwarranted danger, can be achieved in a less costly manner . . ." (p. 89), e.g., through increased reliance on out-patient examination and bail procedures.

This recommendation, of course, deals directly with a specific case of what Judge Polier called the need for individualized as opposed to institutional treatment. And it reflects, in part, the overemphasis placed by psychiatrists on their predictive, rather than diagnostic, function in the criminal law process. Thus the report develops a subordinate theme handled more generally in Judge Polier's lectures.

The third panel of this triptych, Rita James Simon's, *The Jury and the Defense of Insanity*, "is a social psychological study of a legal institution: the American jury system. More particularly, it is a study of the jury's reactions to criminal cases involving the defense of insanity" (p. 3). Focusing primarily on the factors that influence the opinions and decisions of individual jurors and juries as collective units, it examines:

- (1) the relationships between the social psychological and economic backgrounds that the juror brings with him to the trial and the opinions he has about the case;
- (2) the information presented during the trial, especially the testimony of experts and rules of law and verdicts; and
- (3) the relative influence of different persons on the jury in persuading others to accept their view of the case (*ibid*).

As part of the large-scale study of the American jury system undertaken at the University of Chicago Law School, this study utilized the

tape-recorded trials and mock juries selected from the regular jury pools of Chicago, Minneapolis, and St. Louis. While this simulation allows for great control over variables and subjects, it of course is weakened by being only an approximation of "real jury trials." The author probably overstates the case in saying that "this distribution provides the same kind of information that could be obtained if the same case were tried over and over again before different juries within a given jurisdiction" (p. 35).

The project began by recording actual jury proceedings, but the public outcry which resulted forced a recourse to the simulation method. Two actual trials were then recorded, and juries were questioned before hearing the case, after hearing it but before deliberation, and after the deliberations. Thus, the reader sees the jury through the eyes of the jurors themselves, and not directly. This comes close to the reductions used in Husserl's phenomenological approach to a given observable datum. Given the sanctity of jury deliberations in our legal system, however, it is difficult to imagine a better design than the one attempted here.

The book is divided into five parts which deal respectively with: (1) background and method; (2) impact (on verdicts) of major experimental variables; (3) influence of jurors' social status and attitudes (towards mental illness, psychiatry, and other related topics) on decisions; (4) major determining factors in the jury deliberation process; and (5) the future from both the jury's and the court's perspective. An appendix reproduces a full deliberation of a jury in one of the experimental cases.

Judge Polier's lectures deserve to be the central panel of this triptych. One of the recurring considerations in her lectures was a plea for the increased cooperation of law and psychiatry in dealing with the deviant and indigent persons charged with crime and either afflicted with, or suspected of, mental illness. She even seems at one point to distrust our adversary system as the basic tool for dealing with these questions, however informed that legal process may be by psychiatric and medical expertise. I think she sees, despite her pleas for adequate institutional care for these people, the need for individual response within these professions to perform the curing work that is so necessary to rehabilitate and to assert the individual's worth. There is about her lectures the unmistakable candor of one who participates in, and must certainly be agonized by the shortcomings of, the legal process as an

instrument for healing society or contributing to the life and growth that carry in their wake the inevitability of change.

To the extent that the *Report of the Association of the Bar of the City of New York* makes known in one particular state the need for specific change, that book shows the concrete steps that must be taken as a prelude to change. Finally, Rita James Simon's study of the jury's reaction to the defense of insanity is the most penetrating look yet at what the jurors, as laymen, regard as practical ways of handling some of the specific problems that confront society and are dealt with in all three books.

I would recommend Judge Polier's book to all those interested in law and psychiatry. I would recommend the other two books only to the specialist within those broader fields of study.